FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**MEMORANDUM**

May 11, 1987

TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REFERRAL OF MATTER IN REAGAN-BUSH '84
GENERAL ELECTION COMMITTEE

On March 31, 1987, the Commission voted to refer the attached matter (Exhibit I) to your office for appropriate action. In addition, based on the Commission's vote on April 23, 1987, on matters contained in the final audit report, it was necessary to make revisions to the referral. Specifically pages 3, 5, and 7 of Exhibit I and also footnote d/ on pages 4 and 9. Should you have any questions, please contact Steve Sanford, Ray Lisi or Rick Halter at 376-5320.

Attachments as stated

00407851994

Expenditure Limitation

The Act provides at 2 U.S.C. § 441a(b)(1)(B) that no candidate for the office of President of the United States who is eligible under section 9003 of Title 26 (relating to condition for eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $20,000,000 in the case of a campaign for election to such office as adjusted for increases in the Consumer Price Index. Further, 2 U.S.C. § 441a(b)(2)(B) states that an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by:

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

The expenditure limitation for the 1984 general election for the office of President is $40,400,000 which is computed in accordance with 2 U.S.C. § 441a(c).

Interim Report Analysis

As noted in the interim report, the Audit staff analyzed the GEC's reports and activity covering the period from inception through April 25, 1985 and noted that with respect to expenditures subject to the $40,400,000 limitation, it appeared the GEC had exceeded the limitation at 2 U.S.C. § 441a(b)(1)(B) in the amount of $1,484,107.92. It was also apparent from this analysis that without the inclusion of the Reagan-Bush '84 ("the Primary Committee") activity ($2,072,283.83), the GEC had not exceeded the spending limitation. This amount represents unreimbursed expenditures for voter registration and other political activities which were made by the Primary Committee but which appeared to benefit the candidate's general election campaign only. The expenditures represent only payments for goods and services used in a state after the date of that state's primary or caucus.1/

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1/ This matter was also presented to the Primary Committee in an interim report sent July 17, 1985. In its response to the interim report, the Primary Committee disagreed that these expenditures were GEC related.

At the exit conference, GEC officials responded that they disagreed with the inclusion of the $2,072,283.83 as apparent general election expenditures and that the treatment of those disbursements represents a philosophical difference between the GEC and the Audit staff.

In the interim report the Audit staff recommended that absent a showing to the contrary, the Commission make a determination that the expenditure limitation at 2 U.S.C. § 441a(b)(1)(B) had been exceeded by $1,484,107.92.

During its deliberations on the Final Audit Report of the Primary Committee, the Commission considered the Committee's response to this Finding, as well as the Audit staff's recommendations. A more detailed discussion of this issue is included in that Final Audit Report at pages 3-7.

On June 26, 1986 the Commission made a determination that the $2,072,283.83 in expenses for voter registration and other political activities were made in connection with the candidate's campaign for nomination for election. Therefore, these expenses represent qualified campaign expenses of the Primary Committee and need not be reimbursed by or considered as qualified campaign expenses of the GEC.

Adjustments to Interim Report Finding

The Audit Staff considered the Commission's decision with respect to the voter registration expenses, analyzed the GEC's response relative to the media consulting fee addressed at finding III.A.4., reviewed information made available by the Primary Committee in response to a March, 1986 Commission request for additional media documentation (see Attachment B), and performed additional fieldwork resulting in the analysis depicted on the next page.

Upon completion of the additional fieldwork, the Audit staff's analysis of the GEC's reports and activity covering the period from inception through March 31, 1985, and available records relating to receipts and expenditures from April 1, 1985 through April 25, 1985 revealed the following with respect to expenditures subject to the $40,400,000 limitation.

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## Reagan-Bush '84 General Election Committee
## Overall Limit - Audit Analysis

| | | |
|---|---|---|
| 1. | Reported expenditures subject to limitation from inception through 3/31/85 | $40,269,476.68 |
| | **Adjustments to the Above Reported Totals** | |
| 2. | Add: Misclassification of expenditures on 1984 year-end report | 200,000.00 |
| 3. | Add: Expenditures made from 4/1/85 through 4/25/85 subject to limitation | 64,482.79 |
| 4. | Add: Accounts payable - State bank accounts | 5,861.98 |
| 5. | Less: Accounts receivable at 3/31/85 | (111,671.14) a/ |
| | Subtotal | $40,428,150.31 |
| 6. | Less: Audit-verified amount of expenditures which may be reimbursed by the Compliance Fund at GEC's option | (50,811.90) b/ |
| 7. | Subtotal: Expenditures subject to limitation per analysis of GEC's reported activity, as adjusted | $40,377,338.41 b/ |
| 8. | Add: Apparent general election expenditures made by the Primary Committee | 831,510.15 c/ |
| | | $41,208,848.56 |
| 9. | Less: Apparent nonqualified campaign expenses included above | -0- d/ |
| 10. | Total expenditures subject to limit | $41,208,848.56 e/ |

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a/ Included in this amount is an account receivable of $20,655.60, representing reimbursements due the GEC from an entity for travel on GEC chartered aircraft. This amount may be adjusted downward as additional information becomes available concerning the collectibility of the receivable.

b/ The Audit staff's analysis of the GEC's calculation of the amount available for allocation of exempt legal and accounting costs between the Compliance Fund and the GEC indicated that $926,355.27 could be properly allocated. As of 3/31/85, the Compliance Fund has reimbursed the GEC $875,543.37, thus leaving a balance of $50,811.90 eligible for reimbursement. The GEC, at its election, may allocate all or a portion of the $50,811.90 to the Compliance Fund. For the purpose of this calculation, it is assumed that the allocation and reimbursements from the Compliance Fund will be made, thereby reducing expenditures subject to the limitations.

c/ Included in this amount is $792,066.60 representing the unreimbursed portion of the media consultant fee due the Primary Committee. Also included is $39,443.55 representing the unreimbursed portion of production costs due the Primary Committee for commercials shared by both campaigns. See Attachments A and B.

d/ On April 23, 1987, the Commission decided that $12,561.78 in apparent nonqualified campaign expenses were qualified. This amount had been deducted from the Audit staff's analysis of expenditures subject to the limit in our March 9, 1987 memorandum to the Commission containing the proposed referral. However, based on the Commission's decision, this amount is no longer deductible from expenditures subject to the limit.

e/ Since several components upon which this total is based are subject to change, adjustments to this total may also be necessary.

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Based on the above analysis, it appears that the GEC has exceeded the $40,400,000 limitation at 2 U.S.C. § 441a(b)(1)(B) in the amount of $808,848.56.

This amount represents a net decrease of $675,259.36 from the amount in the interim report ($1,484,107.92). The components are summarized at items a-d.

| | | |
|---|---|---|
| a. | Payments by the Primary Committee for voter registration and other political activities that the Commission determined were qualified campaign expenses of the Primary Committee and not GEC related. (See pages 1-2) | ($2,072,283.83) |
| b. | Apparent nonqualified campaign expenses (not included in the interim report amount) which, based on the Audit staff's and Commission analysis of the GEC's response to the Interim Report are includable in the overall limit (see note d/ on page 4) | 565,514.32 |
| c. | Unreimbursed portion of the media consultant fee due the Primary Committee (See Attachment A) | 792,066.60 |
| d. | Unreimbursed portion of production costs due the Primary Committee for commercials shared by both campaigns (See Attachment B) | 39,443.55 2/ |
| | Net Decrease | ($675,259.36) |

2/ This amount is $15,986.00 less than the amount noted in the Primary Committee's audit report at Attachment 5, line 12 (Audit analysis as Adjusted column). The $15,986 reduction is necessary since this amount, representing the portion of the fee paid to TTI by the Primary Committee, has already been included in the $792,066.60 figure in item c. above. If the Commission determines that the $792,066.60 media fee allocation is not appropriate, the $15,986.00 will be added back to the production cost allocation amount. (See Attachments A and B).

Items c. and d. above were developed as a result of additional information supplied by the committees after the GEC's response to the interim audit report in December 1985. Both matters were presented to the Primary Committee in the July 1986 publicly released audit report. As that report notes, on June 26, 1986, the Commission made initial determinations that the Primary Committee seek reimbursement from the GEC for both $792,066.60 related to an allocation of the media consulting fee and $55,429.55 2/ related to a reallocation of media production costs. It should be noted that the Primary Committee has formally disputed these initial determinations.

In a memorandum to the Commission, dated March 9, 1987 the Audit staff recommended that this matter be referred to the Commission's Office of General Counsel.

On March 31, 1987, during its consideration of this referral, the Commission approved the motion detailed below.

Decided by a vote of 6-0 to refer to the Office of General Counsel the matter detailed in Exhibit I of the staff report dated March 9, 1987, with the change made to delete the $792,066.60 shown on page 7, and that a corresponding adjustment be made regarding the application of the 40%*/ fee applicable to the primary production costs allocated to the general election, thus showing a total figure of $111,455.45,*/ with the understanding that the $792,066.60 is still subject to resolution in the course of dealing with the primary campaign audit.

The revised Overall Limit analysis depicted below reflects the approved changes with respect to certain figures used in the Audit Analysis at page 3.

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2 See previous page.

*/ These figures were preliminary as they were calculated during the 3/31/87 meeting. Final figures relative to the Commission decision may be found at page 7, line 8 and footnote c/, page 8.

Reagan-Bush '84 General Election Committee
Overall Limit

Revised in Accordance With Commission Decisions
of 3/31/87 and 4/23/87

| | | |
|---|---|---|
| 1. | Reported expenditures subject to limitation from inception through 3/31/85 | $40,269,476.68 |
| | **Adjustments to the Above Reported Totals** | |
| 2. | Add: Misclassification of expenditures on 1984 year-end report | 200,000.00 |
| 3. | Add: Expenditures made from 4/1/85 through 4/25/85 subject to limitation | 64,482.79 |
| 4. | Add: Accounts payable - State bank accounts | 5,861.98 |
| 5. | Less: Accounts receivable at 3/31/85 | (111,671.14) a/ |
| | Subtotal | $40,428,150.31 |
| 6. | Less: Audit-verified amount of expenditures which may be reimbursed by the Compliance Fund at GEC's option | (50,811.90) b/ |
| 7. | Subtotal: Expenditures subject to limitation per analysis of GEC's reported activity, as adjusted | $40,377,338.41 b/ |
| 8. | Add: Apparent general election expenditures made by the Primary Committee | 115,809.98 c/ |
| | Subtotal | $40,493,148.39 |
| 9. | Less: Apparent nonqualified campaign expenses included above | -0- d/ |
| 10. | Total expenditures subject to limit | $40,493,148.39 e/ |

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a/ Included in this amount is an account receivable of $20,655.60, representing reimbursements due the GEC from an entity for travel on GEC chartered aircraft. This amount may be adjusted downward as additional information becomes available concerning the collectibility of the receivable.

b/ The Audit staff's analysis of the GEC's calculation of the amount available for allocation of exempt legal and accounting costs between the Compliance Fund and the GEC indicated that $926,355.27 could be properly allocated. As of 3/31/85, the Compliance Fund has reimbursed the GEC $875,543.37, thus leaving a balance of $50,811.90 eligible for reimbursement. The GEC, at its election, may allocate all or a portion of the $50,811.90 to the Compliance Fund. For the purpose of this calculation, it is assumed that the allocation and reimbursements from the Compliance Fund will be made, thereby reducing expenditures subject to the limitations.

revised c/ Excluded from this amount is $792,066.60 representing the unreimbursed portion of the media consultant fee due the Primary Committee. (See Attachment A). In accordance with the Commission's decision of 3/31/87, a 40.09% mark up ($1,000,000 TTI fee/$2,494,543.58 Total Cost of Buys and Production per TTI financial statements) was applied to the Amount Allocable shown on Line 7 of Exhibit I, Attachment 2, resulting in an amount yet to be reimbursed by the GEC of $115,809.98 [$191,770.68 + ($191,770.68 x .4009) - ($7,012.10 + $2,881.03 x 1.052) - $142,434.00]. The 40.09% mark up was calculated utilizing figures reflected on TTI's finiancial statements. The same figures were used to calculate the fee allocation amount discussed in Attachment A. A difference of approximately $149,000 exists between the production cost ($576,811.62) reflected on TTI finiancial statements and the amount ($726,300.51) of Net production costs reviewed by the Audit staff. To date, the committees have not provided access to records which will explain this difference. Once those records are provided and reviewed by the Audit staff, adjustments will be made.

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revised d/ On April 23, 1987, the Commission decided that $12,561.78 in apparent nonqualified campaign expenses were qualified. This amount had been deducted from the Audit staff's Analysis of expenditures subject to the limit in our March 9, 1987 memorandum to the Commission containing the proposed referral. However, based on the Commission's decision, this amount is no longer deductible from expenditures subject to the limit.

e/ Since several components upon which this total is based are subject to change, adjustments to this total may also be necessary.

Conclusion

In accordance with the Commission's decision of 3/31/87, this matter is being referred to the Office of General Counsel.

NOTE: Except for minor changes for clarity, attachments A and B, along with Attachments 1 and 2, remain unchanged from the 3/9/87 circulation document.

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Fee Payment to Media Firm

For a primary Presidential candidate, the term "qualified campaign expense" is defined at 26 U.S.C. § 9032(9) as a purchase, payment, advance, or gift of money or anything of value incurred by a candidate or by his authorized committee, in connection with his nomination for election (emphasis added).

For a General Election Presidential candidate, the term "qualified campaign expense" is defined at 26 U.S.C. § 9002(11)(A)(iii) as an expense incurred by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such office. Under 26 U.S.C. § 9007(b)(4)(A), if the Commission determines that any amount of any payment made to the eligible candidates of a political party under Section 9006 was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made, it shall notify such candidate of the amount so used, and such candidate shall pay to the Secretary of Treasury an amount equal to such amount.

The Regulations at 11 C.F.R. § 106.1(a) require that expenditures made on behalf of more than one candidate shall be attributed to each candidate in proportion to the benefit reasonably expected to be received.

The Primary Committee and the GEC contracted with Tuesday Team, Inc. (TTI) to handle the production and time buying for commercials to be aired during both the primary and general electon campaigns. For these services, the Primary Committee paid a consultant fee of $1,000,000 to TTI. The consultant fee for the GEC was $1,315,000.29. All but $26,225.00 of the GEC's fee was paid by the Republican National Committee in accordance with 2 U.S.C. § 441a(d)(2).

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In the interim report, the Audit staff cited 2 U.S.C. § 441b and said it appeared the consultant fee paid by the GEC to its media firm was too low and a possible in-kind corporate contribution had been made by the firm. Our analysis was based on the application of a standard 17.65% mark-up on media time buys and production costs normally charged by media firms. (In fact, the Primary Committee used this standard mark-up rate to justify the $1,000,000 fee it paid to TTI.) Since the GEC incurred $25,278,001.03 in media buys and production expenses (according to TTI's financial statements), the $1,315,000.29 fee appeared much too low in light of the normal 17.65% mark-up.

At the exit conference, GEC officials responded that the fee paid for the general election period was negotiated when the market was "soft." They also said that their contract was similar to media contracts with other "prestigious" firms that purchase a large volume of media time.

In the interim report, the Audit staff recommended that the GEC submit evidence demonstrating an in-kind contribution had not been received from the corporate media consulting firm. The Audit staff added that based on a review of that documentation, additional recommendations could be forthcoming.

In its response to the interim report, the GEC dismissed the Audit staff's interpretation of the Primary Committee's justification for the fee paid TTI during the nomination period. The GEC simply stated that it sought and obtained a flat fee arrangement through arms length negotiations.

The GEC concluded that the fee was substantial when considering the time frame "(a)nd there is absolutely no evidence whatever that the fee did not compensate Tuesday Team for the market value of its services." The response did not elaborate on this point, but instead contained documentation supporting the contention that the media firm was compensated for the market value of its services in accordance with normal advertising business practices. The documentation consists of articles from trade journals and a letter from an advertising firm stating that negotiations often result in a set fee instead of the standard 17.65% commission on media buys. The articles indicate that in lieu of the standard commission, advertising firms will accept less when (1) the budgets are large, (2) the

clients are prestigious, and (3) the opportunity for growth is present.1/ One article quotes an industry official as stating "as long as the advertiser recognizes our right to have a decent profit, 7.5% to 10% of gross billings, you can project profit and manpower usage."

The Audit staff agrees that the documentation supplied supports the contention that TTI was compensated for the market value of its services to both the Primary Committee and the GEC in accordance with normal industry practices. This conclusion is based on the Audit staff's analysis of combined activity of both the Primary Committee and GEC. The analysis summarized on line 3 of Attachment 1 indicates that TTI received an average gross profit of 8.336% for its services to both committees. This rate of return is consistent with normal advertising firm practices as outlined in the articles supplied in the response. Therefore, it no longer appears that the media firm has made an in-kind contribution to the GEC. Rather, it appears that the fees negotiated by both committees were not allocated properly between them. Our analysis summarized on Attachment 1 and detailed below indicates that the GEC should reimburse the Primary Committee $792,066.60 to reflect the proper allocation of the fee paid TTI in accordance with 11 C.F.R. § 106.1(a).

Attachment 1, at line 1, reflects total GEC and Primary Committee expenditures for media buys and production expenses as reflected on TTI's financial statements. Then we combined the media time buys and production expenses of both committees and compared that to the combined fees received by the media firm (Attachment 1, lines 1. and 2., Total column). On line 3. we calculated the average gross profit rate (before administrative expenses) of 8.336% received by the media firm for its services to both committees. Applying this rate to the $25,278,001.03 paid by the GEC for production expenses and media time buys results in an appropriate fee of $2,107,066.89 or $792,066.60 more than the $1,315,000.29 actually paid. Conversely, application of the 8.336% gross profit rate to the Primary Committee's payments for production and time buys of $2,494,543.58 results in an appropriate fee of $207,933.40 or $792,066.60 less than the $1,000,000.00 actually paid. As

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1/ It is apparent that the Primary Committee could be viewed as possessing all three attributes, however, it is unlikely that the GEC could be viewed in the same manner. TTI ceased operating after completing its contract with the GEC.

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explained below, this calculation was based on amounts contained in TTI's financial statements which appear to already reflect an allocation of $331,366.44 for production costs possibly related to shared commercials.

The Audit staff's analysis based on the Committee's response to the interim report, began with a review of financial statements prepared by TTI. We noted the following breakdown of expenses:

| | GEC | Primary | Total |
|---|---|---|---|
| 1. Production Costs | $ 2,630,633.26 | $ 576,811.62 | $ 3,207,444.88 |
| 2. Media Time Buys | 22,647,367.77 | 1,917,731.96 | 24,565,099.73 |
| 3. Total of 1. and 2. | $25,278,001.03 | $2,494,543.58 | $27,772,544.61 |
| 4. Consulting fee | $ 1,315,000.29 | $1,000,000.00 | $ 2,315,000.29 |

Prior to obtaining TTI's financial statements, the Audit staff had reviewed bank statements and related supporting documentation with respect to these amounts. With the exception of item 1., production costs, the documentation provided by the committees and TTI materially supported these amounts. Our review of bank records and related supporting documentation indicated that prior to any allocation for shared commercials (addressed at Attachment B), Primary Committee production costs totaled $908,178.06 and GEC production costs totaled $2,299,019.22. Since total production costs for both committees per bank records and supporting documentation totals $3,207,197.28 ($908,178.06 + $2,299,019.22) or only $247.60 less than the total per the TTI accountant's financial statements, it is the opinion of the Audit staff that the TTI financial statements may reflect an adjustment for allocation of shared commercials. In other words, it appears that TTI may have allocated $331,366.44 in production costs from the Primary Committee to the GEC. This contrasts with the Commission's determination that indicated an appropriate allocation of $181,877.55 (Attachment 2, line 9, Audit Analysis as adjusted). For a more detailed discussion of the Audit staff's analysis see Attachment B.

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On February 4, 1986, the Audit staff met informally with Counsel and the Deputy Treasurer for the committees and requested an explanation regarding this apparent allocation reflected on TTI's financial statements. The Committee officials could not account for the apparent allocation. Therefore, the Audit staff supplied the Committee officials with workpapers similar to Attachment 1 and explained how the consulting fee allocation of $792,066.60 was calculated using the figures from TTI's financial statements which appeared to already reflect the larger allocation of $331,366.44 for shared commercials.

The issue involving proper allocation of the fees paid to TTI was not included in the GEC interim report. Therefore, the GEC will be afforded an opportunity to respond to the Commission's initial determination. This response will be considered by the Commission in reaching a final determination (See 11 C.F.R. § 9007.2(c)).

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Media Production Costs

The Regulations, at 11 C.F.R. § 106.1(a) require that 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.

Certain production costs, identified by the Primary Committee as relating to commercials to be aired during both the primary and general election campaigns, were viewed by Committees as allocable between the primary and general election campaigns. On September 7, 1984, the GEC reimbursed $304,389.50 to the Primary Committee. The Primary Committee indicated that this amount represented 50% of total production costs associated with certain commercials. The committees' Deputy Treasurer stated that this allocation was based on the fact that the same commercials were produced for use in both the primary and general election campaigns and that the allocation percentage was developed in early 1984 based on planning and estimated usage of production pieces. For a complete discussion of this issue, please refer to Finding III.B.2. contained in the Final Audit Report on Regan-Bush '84.

On June 26, 1986, the Commission determined that the audit analysis at Attachment 2 should be adjusted to reflect Commission approval of the committees' 50/50 formula for allocating production costs between the two campaigns.[1/] The Commission further determined that within 30 days of receipt of this report, the Primary Committee is to seek from the GEC the amount ($39,443.55) [2/] of allocable production costs still owing. It should be noted that the Primary Committee disputed this determination.

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5/ As noted on pages Attachment A, pages 3-5, the financial statements prepared by TTI indicate a possible reallocation of $331,366.44 or $149,488.89 more than the Audit Analysis as Adjusted as shown on line 9 of Attachment 2.

6/ This amount is $15,986.00 less than the amount noted in the Primary Committee's audit report at Atachment 5, line 12 (Audit Analysis as adjusted column). The $15,986.00 reduction is necessary since this amount, representing the portion of the fee paid to TTI by the Primary Committee, has already been included in the $792,066.60 media fee allocation. If the Commission determines that the $792,066.60 media fee allocation is not appropriate, the $15,986.00 will be added back to the production cost allocation amount.

**Reagan-Bush '84 General Election Committee**
**Reagan-Bush '84 (Primary Committee)**
**Proper Allocation of Fee Paid to Media Firm (TTI)**

| | | Reagan-Bush '84 General Election Committee | | Reagan-Bush '84 (Primary Committee) | | Total |
|---|---|---|---|---|---|---|
| 1. | Media Buys and Production Expenses | $25,278,001.03 a/ | | $ 2,494,543.58 a/ | | $27,772,544.61 |
| 2. | Media Fee Paid | $ 1,315,000.29 | | $ 1,000,000.00 | | $ 2,315,000.29 |
| 3. | Calculation of Average Gross Profit (line 2 total ÷ line 1 total) | ($ 2,315,000.29 | ÷ | $27,772,544.61) | = 8.336% | |
| 4. | Application of Gross Profit to Buys (8.336% x line 1 = Proper Fee Payment) | $ 2,107,066.89 | | $ 207,933.40 | | $ 2,315,000.29 |
| 5. | Less: Actual Fee paid from line 2 | (1,315,000.29) | | (1,000,000.00) | | (2,315,000.29) |
| 6. | Reimbursement Due Primary From GEC | $ 792,066.60 | | ($ 792,066.60) | | $ -0- |

a/ Amounts are based on Audit staff reconciliations of bank accounts maintained by TTI exclusively on behalf of the committees, and TTI Financial Statements.

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# Reagan-Bush '84 General Election Committee
## Calculation of Allocable Production Costs

| | Committee | Audit Analysis | Audit Analysis as adjusted |
|---|---|---|---|
| 1. Total Allocable Production Costs | $662,533.00 | $696,726.36 | $696,726.36 |
| 2. Less: Primary Only Commercials: | | | |
| Spring of 84:30 | (49,206.00) | (49,206.00) | (49,206.00) |
| Spring of 84:60 | | (73,810.00) | (73,810.00) |
| America's Back:30 | (146,354.00) | (146,354.00) | (146,354.00) |
| America's Back:60 | (97,569.00) | (97,569.00) | (97,569.00) |
| Prouder Stronger Better:30 | (84,537.00) | | |
| 3. Less: General Only Commercial: The Bear | ( 53,754.00) | ( 53,754.00) | ( 53,754.00) |
| 4. Net Production Costs to be split | 231,113.00 | 276,033.36 | 276,033.36 |
| 5. Allocation to GEC of shared Commercials | $115,557.00 | $166,131.44 | $138,016.68 |
| 6. Add: General Only Commercial: The Bear | 26,877.00 | 53,754.00 | 53,754.00 |
| 7. Amount Allocable | 142,434.00 | 219,885.44 | 191,770.68 1/ |
| 8. Less: GEC payments for Primary Only Commercials: | | | |
| America's Back:60 | -0- | (7,012.10) | (7,012.10) |
| America's Back:30 | -0- | (2,881.03) | (2,881.03) |
| 9. Net Amount Allocable | 142,434.00 | 209,992.31 | 181,877.55 |
| 10. Amount Reimbursed | (142,434.00) | (142,434.00) | (142,434.00) |
| 11. Amount yet to be Reimbursed by GEC | $ -0- | $ 67,558.31 | $ 39,443.55 |

1/ The $181,877.55 of allocable production costs from the Primary Committee to the GEC production account indicates Primary Committee production costs of $726,300.51 ($908,178.06 - $181,877.55). It is noted that in Attachment A, Fee Payment to Media Firm, Primary Committee production costs are reflected as $576,811.62. This figure was taken from the 1/31/85 TTI financial statements. To date, the committees have not provided access to records which will explain this difference. Once those records are provided and received by the Audit staff, adjustments will be made.

AR-87-26

RBG7/051887

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 18, 1987

MEMORANDUM

TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: MATTERS REFERABLE - REAGAN-BUSH '84
GENERAL ELECTION COMMITTEE

On March 31, 1987, the Commission voted to refer the attached (Exhibit II) to your office for appropriate action. This matter was inadvertently omitted from our memorandum to your office of May 11, 1987.

Should you have any questions, please feel free to call Steve Sanford or Ray Lisi.

Attachment as stated

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## Review of Get-Out-the-Vote Contracts

The Act, at 26 U.S.C. § 9002(11)(A)(iii) defines a "qualified campaign expense" to mean an expense incurred by an authorized committee of the candidates of a political party for the office of President and Vice President to further the election of either or both of such candidates to such offices. This section further states if an authorized committee of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Commission prescribes by rules or regulations.

In accordance with 26 U.S.C. § 9003(b)(2), the candidates agreed in writing that no contributions to defray qualified campaign expenses will be accepted by the candidates or their authorized committees.

Under 11 C.F.R. § 106.1 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. An authorized expenditure made by a candidate or political committee on behalf of another candidate shall be reported as a contribution in-kind (transfer) to the candidate on whose behalf the expenditure was made.

The GEC contracted with commerical vendors, state political parties, and individuals often affiliated with state parties for voter identification and get-out-the-vote telemarketing services. We have identified 39 such contracts in 27 states with payments by the GEC and the Republican National Committee (under 2 U.S.C. § 441a(d)(2)) of $3,012,930.70.

There are other non-contract GOTV expenditures which may also represent or include GEC support for other candidates. These expenditures, primarily for mailings, amount to $484,170. Similarly, direct mail expenditures in states with GOTV contracts were $1,166,962. These direct mail costs are not categorized by the GEC as GOTV expenditures; however, these expenses were for letters targeted to state voter groups and may have benefited other candidates.

Contract fees were based either on a fixed price per call or a cost reimbursement basis. All of the contracts required advance GEC approval of the telephone scripts. Only eight (8) of the 39 scripts have been made available to the Audit staff. These scripts included a question asking which candidates the respondents supported. Twenty-three of the contracts, (generally with cost reimbursement provisions) required that a separate bank account be opened in the state for the GOTV activity. Most of the bank statements were not made available to the Audit staff. Contractors on a cost reimbursement basis had to submit weekly expenditure reports with documentation to the GEC. The only records made available for our review included the GOTV contracts and expenditure documentation provided by the GOTV cost center manager as well as documentation for the non-contract GOTV and direct mail expenditures.

The Treasurer said that they built safeguards into the contracts, such as script approval, to prevent other candidates or committees from not paying their fair share. Costs were allocated to other candidates and state committees based upon these scripts. For example, we were told that if a script asked questions about the Presidential, Senatorial, and Congressional candidates, the three candidates' committees would each pay one-third of the costs. If a "party building" question was also included, the split would be 25% each (Candidates 25% each and appropriate state party committee the remaining 25%). The GEC said they believed this type of allocation was in conformity with FEC requirements. To date we have identified 19 contracts with GEC payments of $804,493 with state party affiliations and four (4) contracts with GEC payments of $177,747 with affiliations with other candidates.

The GEC also said that beyond script approval, they would not have any idea how the contractors were implementing the programs. They did conduct some field audits to determine what was being done. Although these audit results were requested, only copies of four (4) field audit reports were made available for our review.

The Audit staff's review of the GOTV contracts and GEC supporting documentation raised several problems:

1) We could not determine if the GEC's cost allocations are appropriate for 31 of 39 contracts because scripts were not made available.

2) Two (2) of the eight (8) scripts made available include references to other Federal and non-Federal candidates who were not party to the contracts.

3) We could not determine total receipts and disbursements for the 23 contracts requiring bank accounts because most bank statements were not made available. In addition, we did not have any assurance that the GOTV contractors did not receive money from other sources for the 23 contracts requiring separate bank accounts.

4) We did not know how many problems the GEC discovered during its field audits and the resolution of these matters.

In the interim report, the Audit staff recommended that the GEC supply additional documentation to verify that the GEC paid its fair share of expenses under these contracts. The documentation supplied should have included the following:

(1) Scripts for all contracts - both for the voter identification phase, usually in September, and for the later GOTV follow-up calls.

(2) Bank records for the 23 contracts requiring separate bank accounts.

(3) The GEC daily log book used to monitor GOTV activity.

(4) Samples of GEC mailings to voters identified as a result of these contracts.

(5) A list of GEC field audits conducted and copies of the field reports and workpapers.

Based on a review of this documentation, additional recommendations could be forthcoming.

In its response to the interim report, the GEC indicated it had made a diligent effort to find the documents requested. Any documents located would be provided. Unfortunately, the GEC was unable to locate any additional documents requested by the Audit staff. The GEC goes on to say however, that they do not believe that they have an obligation to maintain or retain any of the requested items. They simply assert that a diligent search of their records satisfies their obligation.

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The Audit staff believes that these documents are necessary to determine if the GEC is in compliance with the Act and Regulations as cited above. In addition, 2 U.S.C. § 9003(a)(1) and (2) require that in order to be able to be eligible to receive any payments under Section 9006, the candidates of a political party in a presidential election shall agree in writing to obtain, keep, and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates records, books, and other information as it may request. Without the records requested, the Audit staff can not verify if the expenses discussed above were for qualified campaign expenses.

Conclusion

In accordance with the Commission's decision of 3/31/87, this matter is being referred to the Office of General Counsel.

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AR-87-26A

ORBG/110387

MUR 2415

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 3, 1987

**MEMORANDUM**

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUPPLEMENT TO REFERRAL

In a recent discussion with your staff regarding the use of subpoenas to obtain records necessary for the Audit staff to complete an analysis of GOTV activities undertaken by the Reagan-Bush '84 General Election Committee (GEC) and other parties, additional information was requested to supplement our original referral made to your office on May 18, 1987. In accordance with your request, the attached list includes the name and available mailing addresses of persons/firms associated with each of the 39 contracts identified by the Audit staff, accompanied by the identification of the records necessary to complete our analysis of this activity.

As noted in our May 18, 1987 referral, our review of these contracts and GEC supporting documentation raised several problems:

1) We could not determine if the GEC's cost allocations are appropriate for 31 of 39 contracts because scripts were not made available.

2) Two (2) of the eight (8) scripts made available include references to other Federal and non-Federal candidates who were not party to the contracts.

3) We could not determine total receipts and disbursements for the 23 contracts requiring bank accounts because most bank statements were not made available. In addition, we did not have any assurance that the GOTV contractors did not receive money from other sources for the 23 contracts requiring separate bank accounts.

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4) We did not know how many problems the GEC discovered during its field audits and the resolution of these matters.

Further, our May 18, 1987 referral detailed the additional documentation necessary to verify that the GEC paid its fair share of expenses under the contracts:

1) Scripts for all contracts - both for the voter identification phase, usually in September, and for the later GOTV follow-up calls.

2) Bank records for the 23 contracts requiring separate bank accounts.

3) The GEC daily log book used to monitor GOTV activity.

4) Samples of GEC mailings to voters identified as a result of these contracts.

5) A list of GEC field audits conducted and copies of the field reports and workpapers.

Finally, our May 18, 1987 referral cited 2 U.S.C. § 9003(a)(1) and (2) which requires that in order to be able to be eligible to receive any payments under Section 9006, the candidates of a political party in a presidential election shall agree in writing to obtain, keep, and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates' records, books, and other information as it may request. Without cancelled checks, invoices, receipted bills, contemporaneous memoranda, and other documentation supporting the disbursements made under these contracts, the Audit staff cannot verify if these expenditures were for qualified campaign expenses.

If you have any questions, please feel free to call Ray Lisi or Steve Sanford at 376-5320.

Attachment as stated

00040735218

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| | CONTRACT REVIEW | | | | RECORDS REVIEWED | | |
|---|---|---|---|---|---|---|---|
| | STATE | PARTICIPANT(S) | ADDRESSES | TIME PERIOD | SCRIPTS | BANK STATEMENTS | OTHER 1/ |
| 1. | Alabama | a. Martin J. Conners dba Alabama GOTV-Madison | 1814 First Ave. N. Birmingham, AL 35203 | October 8, 1984-November 6, 1984 | Yes | Incomplete (10-1 - 10-15 only) | List of some payments and invoices |
| | | b. Alabama Republican Party 2/ Federal Account | 2940 Clairmont Ave. 3/ Birmingham, AL 35205 | | | | |
| 2. | Alabama | a. Martin J. Connors dba Alabama GOTV-Mobile | 1814 First Ave. N. Birmingham, AL 35203 | October 8, 1984-November 6, 1984 | No | Appears to be same account as #1 above | A few receipted bills, phone bank contract |
| | | b. Alabama Republican 2/ Party-Federal Account | P.O. Box 31046 Birmingham, AL 35233 3/ | | | | |
| | | c. Smith For Senate Committee | 4200 Stone River Cir. Birmingham, AL 35213 | | | | |
| | | d. Callahan For Congress Committ e | P.O. Box 7641 Mobile, AL 36607 | | | | |

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1/ Unless otherwise noted, no ca icelled checks, other bank records, invoices, receipted bills, contemporaneous memoranda, or other supporting documenta .ion was available for review.

2/ According to the Statement of Organization, Martin J. Conners III was Treasurer of the Alabama Republican Party-Federal Account in 1984, thus the party is also listed as a participant.

3/ 2940 Clairmont Ave. is the current address, P.O. Box 31046 was the address in 1984.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| | CONTRACT REVIEW | | | | RECORDS REVIEWED | | |
|---|---|---|---|---|---|---|---|
| | STATE | PARTICIPANT(S) | ADDRESSES | TIME PERIOD | SCRIPTS | BANK STATEMENTS | OTHER[1] |
| 3. | Arizona | Maggie Orth[4] | Arizona State GOP<br>3501 N. 24th Street<br>Phoenix, AZ 85016 | September 17, 1984-<br>November 4, 1984 | No | No | Several invoices |
| 4. | Arkansas | a. Arkansas Republican Party's State Candidate Committee | 1 Riverfront Place<br>Suite 620<br>N. Little Rock, AR 72114 | September 12, 1984-<br>October 1, 1984 | No | Incomplete (9-13 - 9-28 only) | None |
| | | b. Bethune For Senate Committee | P.O. Box 3160<br>Little Rock, AR 72203 | | | | |
| | | c. Republican Natioral Committee | 310 First Street, SE<br>Washington, D.C. 20003 | | | | |
| 5. | Arkansas | Direct Communication Corp. [5] | 832 Fifth Avenue[5]<br>San Diego, CA 92101 | October 29, 1984-<br>November 5, 1984 | No | No (Not required by contract) | None |
| 6. | California | Direct Communication Corp. [5] | 832 Fifth Avenue[5]<br>San Diego, CA 92101 | October 23, 1984-<br>November 6, 1984 | No | No (Not required by contract) | None |
| 7. | Colorado | Colorado Campaig '84 | 3900 E. Mexico Avenue<br>Suite 200<br>Denver, CO 80210 | September 13,1984-<br>November 6, 1984 | No | Incomplete (Nov. 16 - Nov. 30 only) | None |

1/ See page 1 of this attachment

4/ According to Committee notations, Maggie Orth worked for the Arizona Republican Party.

5/ According to its stationery, Direct Communication Corp. also has offices at 133 W. 25th Street, Suite 3 West, New York, NY 10001; and 1750 Pennsylvania Avenue N.W. Suite 304, Washington, D.C. 20006.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| | CONTRACT REVIEW | | | | RECORDS REVIEWED | | |
|---|---|---|---|---|---|---|---|
| | STATE | PARTICIPANT(S) | ADDRESSES | TIME PERIOD | SCRIPTS | BANK STATEMENTS | OTHER 1/ |
| 8. | Connecticut | Betsy Hemingway & Brian Gaffney, dba Connecticut Voter Contact | 502 Wilbur Cross Parkway Berlin, CT 06037 | September 17, 1984- November 6, 1984 | No | No | Many Invoices, Computer printouts, and lists of payments |
| 9. | Delaware | a. D'lores Alfano, dba Delaware GOT | 504 Greenhill Ave. Wilmington, DE 19805 | September 17, 1984- November 6, 1984 | Yes | No | A few invoices and short list of payments |
| | | b. Delaware Republi an 6/ State Committee | 2008 Pennsylvania Ave. Wilmington, DE 19806 | | | | |
| 10. | Florida | a. Direct Communica tion Corp. | 832 Fifth Avenue 5/ San Diego, CA 92101 | September 17, 1984- November 6, 1984 | No | No (Not required by contract) | None |
| | | b. Republican Party of Florida | 719 N. Calhoun Street P.O. Box 311 Tallahassee, FL 32302 | | | | |
| 11. | Florida | a. Hinton-Wesson, Inc. | 340 E. Hillcrest Street Altamonte Springs, FL 32701 | September 17, 1984- November 6, 1984 | No | No | None |
| | | b. Republican Party of Florida | 719 N. Calhoun Street P.O. Box 311 Tallahassee, FL 32302 | | | | |

1/ See page 1 of this attachment.

5/ See page 2 of this attachment.

6/ Although not a participant per contract, available documentation makes reference to this committee.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| | CONTRACT REVIEW | | | | RECORDS REVIEWED | | |
|---|---|---|---|---|---|---|---|
| | STATE | PARTICIPANT(S) | ADDRESSES | TIME PERIOD | SCRIPTS | BANK STATEMENTS | OTHER 1/ |
| 12. | Florida | Computerized Telemarketing | 19 Rector Street New York, NY 10006 | Not Available 7/ | No | No | None |
| 13. | Florida | FMG Telecomputer Inc. | 671 NE 40th Court Fort Lauderdale, FL 33334 | Contract Not Available | No | No | None |
| 14. | Georgia | a. Direct Communication Corp. | 832 Fifth Avenue 5/ San Diego, CA 92101 | September 17, 1984-November 6, 1984 | No | No | None |
| | | b. Georgia Republican Party | 1776 Peachtree St., NW Suite 500-S Atlanta, GA 30309 | | | | |
| 15. | Illinois | Giordano & Giordano | 636 Witherspoon Springfield, IL 62704 | September 15, 1984 November 3, 1984 | Yes | No | Some invoices and list of payments |
| 16. | Iowa | a. Tamara Paulin, dba Iowa Voter Contact | 1540 High Street Des Moines, IA 50309 | September 4, 1984-November 6, 1984 | No | No | Some invoices, phone bank schedules, list of payments |
| | | b. Iowa Republican Party 8/ | 1540 High Street Des Moines, IA 50309 | | | | |

1/ See page 1 of this attachment.

5/ See page 2 of this attachment.

7/ The Committee approved funding for this vendor, but the only contract in its Florida file for this vendor relates to a telemarketing effort in the Tennessee file.

8/ Although not a participant to the contract, this committee has the same address as the participant and is noted in some of the invoices made available.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| | CONTRACT REVIEW | | | | RECORDS REVIEWED | | |
|---|---|---|---|---|---|---|---|
| | STATE | PARTICIPANT(S) | ADDRESSES | TIME PERIOD | SCRIPTS | BANK STATEMENTS | OTHER1/ |
| 17. | Iowa | Iowa Republican Party, State Candidate Committee | 1540 High Street Des Moines, IA 50309 | September 17, 1984-November 6, 1984 | No | No | Schedules of calls and voters by district |
| 18. | Iowa | Direct Communication Corp. | 832 Fifth Avenue5/ San Diego, CA 92101 | October 26, 1984-October 29, 1984 | No | No (Not required by contract) | None |
| 19. | Iowa | Direct Communication Corp. | 832 Fifth Avenue5/ San Diego, CA 92101 | October 1, 1984-November 6, 1984 | No | No | None |
| 20. | Kentucky | a. Direct Communication Corp. | 832 Fifth Avenue5/ San Diego, CA 92101 | September 17, 1984-November 6, 1984 | No | No (Not required by contract) | None |
| | | b. Kentucky Republican Party | 105 W. Third Street P.O. Box 1068 Frankfurt, KY 40602 | | | | |
| 21. | Louisiana | Louisiana Republican Party9/ | P.O. Box 3015 Baton Rouge, LA 70802 | 9/ | No | No | None |

1/ See page 1 of this attachment.

5/ See page 2 of this attachment.

9/ Reagan-Bush '84's disbursement records, filed with the FEC, show a $58,000.00 disbursement for telemarketing expense to the Louisiana Republican Party on 11/6/84, but no relevent contract was available in R-B '84's files. The records of neither of the Republican Party committees registered with the FEC to undertake federal election related activity in Louisiana in 1984 show receipt of such a contribution. One of the committees, the Louisiana Republican Federal Campaign Committee, terminated on 8/27/84. The second, Campaign '84, the Reagan Victory Team, registered with the Commission on 7/13/84 and has changed its name to Campaign '86, following a 1985 inquiry from the FEC's Reports Analysis Division. Furthermore, Kelli Wingette of the Louisiana Office of Campaign Finance was unable to locate any document showing receipt of $58,000.00 by the Louisiana Republican Party or any other Republican committee registered with the state office.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| | | CONTRACT REVIEW | | | RECORDS REVIEWED | | |
|---|---|---|---|---|---|---|---|
| | STATE | PARTICIPANT(S) | ADDRESSES | TIME PERIOD | SCRIPTS | BANK STATEMENTS | OTHER 1/ |
| 22. | Maine | a. Loyal Sewall, db Maine Voter ID '84 | P.O. Box 691 Portland, ME 04104 | September 24, 1984- November 6, 1984 | Yes | Incomplete (September only) | Some Invoices and lists of payments |
| | | b. Citizens For Congresswoman Olympia Snowe | P.O. Box 1988 (1984 for 1984 Campaign) Auburn, ME 04210 | | | | |
| | | c. McKernan For Congress | P.O. Box 5601 Augusta, ME 04330 | | | | |
| | | d. Cohen For Senate | P.O. Box 251 Bangor, ME 04401 | | | | |
| | | e. Maine Republican 10/ State Committee | 51 Chapel Street Augusta, ME 04330 | | | | |
| 23. | Michigan | a. Michigan Republican Party-State Account | 2121 E. Grand River Lansing, MI 48912 (also see b. below) | August 15, 1984- November 6, 1984 | Yes | No 11/ | List of payments |
| | | b. Michigan Republican Party-Federal Account | Same as a., also 1665 First National Building Detroit, MI 48226 | | | | |
| 24. | Michigan | FMG Telecomputer, Inc. | 671 NE 40th Court Ft. Lauderdale, FL 33334 | October 26, 1984- November 5, 1984 | No | No (Not required by contract) | None |

1/ See page 1 of this attachment.

10/ Although not a participant to the contract, documentation makes reference to this committee.

11/ The file indicates that the state committee told Reagan-Bush it was against state law for the vendor to carry a separate account for the get out the vote effort, despite the contractual provision for a separate account.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| STATE | CONTRACT REVIEW: PARTICIPANT(S) | CONTRACT REVIEW: ADDRESSES | CONTRACT REVIEW: TIME PERIOD | RECORDS REVIEWED: SCRIPTS | RECORDS REVIEWED: BANK STATEMENTS | RECORDS REVIEWED: OTHER 1/ |
|---|---|---|---|---|---|---|
| 25. Mississippi | | | | | | |
| | a. Andy Taggart, dba Mississippi GOTV | P.O. Box 1178 Jackson, MS 39205 | September 10, 1984 November 6, 1984 | No | Almost complete ($450 Residual Balance) | None |
| | b. Citizens For Cochrane For Senator | P.O. Box 22761 Jackson, MS 39225 | | | | |
| | c. Mississippi Republican Party | P.O. Box 1178 Jackson, MS 39205 | | | | |
| 26. Missouri | Missouri Republican Party 12/ | 204 E. Dunklin P.O. Box 73 Jefferson City, MO 65102 | Contract Not Available | No | No | None |
| 27. New Jersey | | | | | | |
| | Direct Communication Corp. | 832 Fifth Avenue 5/ San Diego, CA 92101 | September 17, 1984 November 6, 1984 | Yes | No | None |
| 28. New Mexico | Lyles Marketing Consulting, Inc. | 1208 Vassar NE Albuquerque, NM 87106 | September 10, 1984 November 6, 1984 | Yes | No (Not Required by Contract) | Invoices and Lists of Payments |
| 29. North Carolina | | | | | | |
| | a. FMG Telecomputer, Inc. | 671 NE 40th Court Ft. Lauderdale, FL 33334 | August 13, 1984 August 31, 1984 | No | No (Not Required by Contract) | None |
| | b. Helms For Senate | P.O. Box 177000 Raleigh, NC 27619 | | | | |

1/ See page 1 of this Attachment.
5/ See page 2 of this Attachment.
12/ Reagan-Bush '84 disbursement records and reports show a $23,860 disbursement to Missouri GOTV on 9/5/84. Documents produced during the audit include an apparent memorandum to the file dated 10/8/84 and signed by Elizabeth Holliman which states that the Missouri Republican Party had created eleven phone banks for Voter ID and GOTV purposes. According to the memorandum, questions included ones related to gubernatorial and U.S. Congressional preferences as well as presidential preference, although these additional questions were "not mentioned in the contract on file ... at R/B '84." The need for allocation is acknowledged in the memorandum.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| STATE | CONTRACT REVIEW PARTICIPANT(S) | ADDRESSES | TIME PERIOD | RECORDS REVIEWED SCRIPTS | BANK STATEMENTS | OTHER 1/ |
|---|---|---|---|---|---|---|
| 30. North Carolina | | | | | | |
| | a. FMG Telecomputer, Inc. | 671 NE 40th Court Ft. Lauderdale, FL 33334 | October 31, 1984 November 6, 1984 | No | No (Not Required by Contract) | None |
| | b. Helms For Senate | P.O. Box 177000 Raleigh, NC 27619 | | | | |
| 31. Ohio | Direct Communication Corp. | 832 Fifth Avenue 5/ San Diego, CA 92101 | September 17, 1984 November 6, 1984 | No | No | None |
| 32. Ohio | Direct Communication Corp. | 832 Fifth Avenue 5/ San Diego, CA 92101 | November 3, 1984 November 5, 1984 | No | No (Not Required by Contract) | None |
| 33. Oregon | Moore Information | 1133 SW Market St. Suite 204 Portland, OR 97201 | September 17, 1984 November 6, 1984 | No | No | None |
| 34. South Carolina | | | | | | |
| | a. Ed Foulke | 1719 Gervais St. P.O. Box 11596 13/ Columbia, SC 29211 | September 17, 1984 November 6, 1984 | No | No | Some Invoices and lists of payments. |
| | b. South Carolina Republican Party | P.O. Box 5247 Columbia, SC 29250 | | | | |

1/ See page 1 of this Attachment.

5/ See page 2 of this Attachment.

13/ Also c/o Rainey, Britton, Gibbes, & Clarkson, PA, P.O. Box 10589 Greenville, SC 29603.

REAGAN-BUSH '84 GENERAL ELECTION COMMITTEE
SUMMARY OF VOTER IDENTIFICATION AND GET-OUT-THE-VOTE CONTRACTS

| STATE | CONTRACT REVIEW PARTICIPANT(S) | ADDRESSES | TIME PERIOD | RECORDS REVIEWED SCRIPTS | BANK STATEMENTS | OTHER 1/ |
|---|---|---|---|---|---|---|
| 35. Tennessee | a. RGR, Inc. | 121 N. Henry St. Alexandria, VA 22314 or 2769 Carter Farm Court Alexandria, VA 22306 | October 12, 1984 November 6, 1984 | Yes 14/ | No | None |
| | b. Republican Party of Tennessee 14/ | 2817 West End Ave. Nashville, TN 37203 | | | | |
| 36. Tennessee | Direct Communication Corp. | 832 Fifth Avenue 5/ San Diego, CA 92101 | October 17, 1984 November 6, 1984 | No | No (Not Required by Contract) | None |
| 37. Texas | Republican Party of Dallas County | 5010 Greenville Ave. Suite 101 Dallas, TX 75206 | Contract is dated December 13, 1984- Appears to be after work performed. Time Period of Work not provided | No | No (Not Required by Contract) | None |
| 38. Vermont | Julian Goodrich, dba Vermont Voter Identification 1984 | 65A Patchen Rd. P.O. Box 9475 Burlington, VT 05401 | September 15, 1984 November 6, 1984 | No | Incomplete (One October statement available) | None |
| 39. Washington | Computer Concepts, Inc. | 4220 Aurora Ave.N. Seattle, WA 98103 | September 17, 1984 November 4, 1984 | No | No | None |

1/ See page 1 of this Attachment.

5 See page 2 of this Attachment.

14/ The available script may be incomplete. Although the Republican Party of Tennessee was originally a party to the contract, (subsequently the contract was amended to exclude the party committee) the agreement refers only to Presidential candidates and not other candidates.

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

88 FEB -2 PM 3:17

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE
EXECUTIVE SESSION
FEB 23 1988

February 2, 1988

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Withdrawal and Resubmission of First General Counsel's Report in MUR 2415

On November 27, 1987, the Office of the General Counsel submitted to the Commission a First General Counsel's Report in MUR 2415 involving Reagan-Bush '84 (General Election Committee). On December 8, 1987, the Commission voted to defer consideration of this matter until after its consideration of the audit of Reagan-Bush '84 (Primary Committee). During its subsequent consideration of the draft Statement of Reasons prepared by this Office for submission to the Primary Committee, the Commission voted not to require repayment by the General Election Committee to the Primary Committee of $779,604.78 in fees paid by the Primary Committee to the Tuesday Team for services. As a result of this decision and of certain other recent adjustments to the figures contained in the calculation of total General Election Committee expenditures subject to the expenditure limitations, this Office hereby withdraws the First General Counsel's Report signed on November 25, 1987, and submits the attached revised First General Counsel's Report.

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

# FIRST GENERAL COUNSEL'S REPORT

MUR 2415
STAFF Anne Weissenborn

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENTS: Reagan-Bush '84 (General Election Committee)
Angela M. Buchanan Jackson, as treasurer

RELEVANT STATUTES:
2 U.S.C. § 432(e)(2)
437d(a)(3)
441a(b)(1)(B)
441a(c)
441a(f)
26 U.S.C. § 9002(1)
9002(11)
9003(a)
9003(b)
9005(a)
9007(a)
11 C.F.R. § 106.1
9002.11(b)(3)
9003.1(b)
9003.5
9005.1

INTERNAL REPORTS CHECKED: Reagan-Bush '84 (FEC) Audit Reports and Work Papers

FEDERAL AGENCIES CHECKED: NONE

## I. GENERATION OF MATTER

Pursuant to 26 U.S.C. § 9007(a) and 11 C.F.R. § 9007.1, the Commission conducted an examination and audit of the qualified campaign expenses of Reagan-Bush '84 (General Election Committee). Following this examination and audit, the Commission voted on March 31, 1987, to refer certain matters to the Office of the General Counsel. These matters were referred on May 11 and 18, 1987. Attachments 1 and 2.

00040765229

## II. SUMMARY OF ALLEGATIONS

I. The Committee made expenditures on behalf of the campaign of Ronald Reagan for election to the Office of President of the United States which exceeded the overall expenditure limitation in violation of 2 U.S.C. § 441a(b)(1)(B), as adjusted by 2 U.S.C. § 441a(c), and in violation of 2 U.S.C. § 441a(f).

II. In violation of 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5 the Committee failed to provide certain evidence of its qualified campaign expenses as well as records, books, and other information requested by the Commission during its examination and audit of the Committee, such evidence and records being necessary for a determination of whether certain disbursements for get-out-the-vote activities constituted qualified campaign expenses of the Committee pursuant to 26 U.S.C. § 9002(11)(A)(iii) or were allocable to other candidates pursuant to 11 C.F.R. § 106.1 as in-kind contributions to such other candidates.

## III. FACTUAL AND LEGAL ANALYSIS

### A. Background

Ronald Reagan was the nominee of the Republican Party, a major party pursuant to 26 U.S.C. § 9002(6), for election to the office of President of the United States in the General Election held on November 6, 1984. George Bush was the nominee of the Republican Party for the office of Vice President of the United States in that election. They designated Reagan-Bush '84 (General Election Committee) as their authorized campaign committee for that election. Angela M. Buchanan Jackson has been, and is, the

treasurer of the Committee. Following the receipt of the candidate agreement and certification made by Ronald Reagan and George Bush pursuant to 26 U.S.C. § 9003(a) and (b) and 11 C.F.R. §§ 9003.1 and 9003.2, the Commission certified on August 27, 1984, their eligibility to receive payments from the Presidential Election Campaign Fund in the amount of $40,400,000. See 26 U.S.C. § 9005(a) and 11 C.F.R. § 9005.1.

**B. Expenditure Limitation**

The Federal Election Campaign Act of 1981, as amended ("the Act") provides that "[n]o candidate or political committee shall knowingly ... make any expenditure in violation of the provisions of this section." 2 U.S.C. § 441a(f). The Act states that "[n]o candidate for the Office of President of the United States who is eligible under Section 9003 of Title 26 . . . to receive payments from the Secretary of the Treasury may make expenditures in excess of . . . (B) $20,000,000 in the case of a campaign for election to such office." 2 U.S.C. § 441a(b)(1). The Act further provides for adjustment of this limitation based on changes in the Consumer Price Index. 2 U.S.C. § 441a(c).

The expenditure limitation for 1984 Presidential General Election candidates who were certified as eligible to receive payments from the Secretary of the Treasury was set at $40,400,000. The Committee reported total expenditures from its inception through March 31, 1985, of $40,269,476.68. Following the examination and audit of the Committee, the Commission determined that adjustments should be made to this figure, bringing the apparent total expenditures subject to this limitation to at least

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$40,493,148.39, and thus in apparent excess of the limitation established by 2 U.S.C. § 441a(b)(1)(B) as adjusted by 2 U.S.C. § 441a(c). This figure was employed in the referral by the Commission to this Office of the issue of apparently excessive expenditures, and included $115,809.98 in media-related fees assertedly owed the General Election Committee by the Primary Committee.[1/]

Recently, at the time of the Commission's December 17, 1987, consideration of the Statement of Reasons to be submitted to Reagan-Bush '84 (Primary Committee) pursuant to 11 C.F.R. § 9038(c)(4), the Commission determined not to require repayment by the General Election Committee of $779,604.78 [2/] in expenditures by the Primary Committee for media-related fees, thus accepting the

---

1/ For purposes of the referral of this matter to the Office of the General Counsel on March 31, 1987, the Commission determined that the amount of apparent general election expenditures made by the primary committee should be $115,809.98. This amount was reached by taking the amount of primary committee production costs determined by the examination and audit to be allocable to the General Election and adding the 40.09 percent fee charged by the media consultant (i.e., $191,770.68 plus $191,770.68 X .4009 or $268,651.55), and then subtracting the amount of General Election Committee production costs charged the General Election Committee plus the related media consultant fee ($7,012.10 + $2,881.03 X 1.052 or $10,407.57) and the amount the General Election Committee had reimbursed to the primary committee ($142,434.00). See pages 7-9 and 18 of Attachment 1.

2/ It should be noted that the figure of $115,809.98 contained in the referral to this Office was employed in lieu of $792,066.60, later $779,604.78, which represented the portion of the media consultant fee which the Commission, in the course of the audit and repayment processes involving the Reagan-Bush '84 Committee (Primary) and the Reagan-Bush Committee (General), had initially found to be owed the General Election Committee by the Primary Committee. As stated above, the audit figure of $779,604.78 was disputed by the Primary Committee and later rejected by the Commission.

Committee's allocation of such fees to the two committees. This determination requires in turn a reduction of the $115,809.98 referral figure to $39,443.55, the $76,366.43 difference representing media production-related fees no longer allocable to the General Election Committee. Such a reduction, together with other adjustments by the Audit Division of figures related to the calculation of overall expenditures (See Attachment 3), has reduced the amount of General Election Committee expenditures subject to the limitation to $40,395,826.17 and thus to a figure below the statutory limitation.

Accordingly, the Office of the General Counsel recommends that the Commission find no reason to believe Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441a(b)(1)(B).

C. Get-Out-The-Vote Contracts

The Presidential Election Campaign Fund Act ("the Fund Act") defines qualified campaign expense to include expenses incurred by the authorized committee of the candidates of a political party for the Offices of President and Vice President to further the election of either or both to such offices. 26 U.S.C. § 9002(11)(A)(iii). This definition further provides that if the authorized committee of such candidates also incurs expenses to further the election of one or more other individuals to federal, state, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Commission

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prescribes by rules or regulations. During the 1983-84 election cycle 11 C.F.R. § 9002(11)(b)(3) stated that "[a]ny expenditures incurred by a candidate or his or her authorized committee(s) to further the election of any other individual to a Federal, State or local office shall be a qualified campaign expense to the extent such expenditure is to further the candidate's own campaign for election. If the expenditure is incurred specifically to further the election of such other individuals, it will not be considered a qualified campaign expense."[3/]

Commission regulations provide, as a general rule, that 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. 11 C.F.R. § 106.1(a). The regulations further provide that an authorized expenditure made by a political committee on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made. 11 C.F.R. § 106.1(b).

In accordance with 26 U.S.C. § 9003(b)(2), Ronald Reagan and George Bush certified that no contributions to defray qualified campaign expenses would be accepted by them or their authorized

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3/ This regulation was amended effective August 18, 1987, to clarify that presidential candidates may make expenditures in conjunction with other candidates, but that each must pay his or her proportionate share of the cost pursuant to 11 C.F.R. § 106.1(a).

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committee. Also, as a condition of their eligibility to receive payments from the Secretary of the Treasury, they agreed "to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates" as well as to keep and furnish to the Commission such records, books, and other information as it may request and to agree to an audit and examination by the Commission under Section 9007. 26 U.S.C. § 9003(a). Commission regulations further elaborate upon these requirements and specifically place on the candidates the burden of proving that disbursements made by their authorized committee(s) are qualified campaign expenses. See 11 C.F.R. §§ 9003.1(b) and 9003.5.

The examination and audit of the Committee identified 39 contracts between the Committee and commercial vendors, state political parties, and individuals often affiliated with state parties for voter identification and get-out-the-vote telemarketing services. These contracts were in 27 states with payments having been made by the Committee and the Republican National Committee (pursuant to 2 U.S.C. § 441a(d)(2)) totalling $3,012,930.70.

All of the identified 39 contracts[4/] required advance Committee approval of the telephone scripts, which were

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4/ To assist the Commission in its consideration of this matter, this Office has prepared a chart of the 39 contracts based on the Audit Divison's work papers. See Attachment 4. This chart lists the state, vendor, type of contract, and availability to the auditors of the contract, the script and bank statements.

apparently the basis for the Committee's asserted allocation of costs to other candidates, or to state committees if a "party building" question was included. During the examination and audit, the Committee, provided only 8 of the 39 scripts. Two of the eight telemarketing scripts made available to the Audit Division, those related to projects in Delaware and New Jersey, included questions concerning candidates which the respondent supported for federal and non-federal offices other than those of President and Vice-President. These other candidates were not parties to the contracts.

In addition, other documents made available to the auditors included information indicating that the questions asked pursuant to the contract with the Missourian Republican Party included ones related to other federal and non-federal races, thereby necessitating allocation. The contract with Lyles Marketing Corporation regarding activities in New Mexico specified allocations to three additional political committees, each of which entered into a separate agreement with the vendor.

Twenty-three of the contracts required that a separate bank account be opened in the state for the GOTV activity, but, during the examination and audit, most of the bank statements for these accounts were not provided by the Committee. In fact, it appears that the file for only one of the 39 contracts is complete. Moreover, although the Committee apparently conducted some field audits of these contracts, the Committee provided only four field audit reports during the examination and audit.

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The only GOTV contract-related records made available for review included the contracts and expenditure documentation provided by the GOTV cost center manager.

Given the incompleteness of the information available, the examination and audit could not determine (1) the appropriateness of the Committee's cost allocations for 31 of 39 contracts based upon the scripts used; (2) the total receipts and disbursements for the 23 contracts requiring separate bank accounts to assure that the GOTV contractors did not receive funds from other sources; and (3) the problems the Committee may have discovered during its field audits and its resolution of such problems.

The examination and audit also identified additional, non-contract GOTV expenditures, mostly for mailings, in the amount of $484,170 which may also have involved Committee support for other candidates. Further, direct mail expenditures of $1,166,962 in states with GOTV contracts were not categorized by the Committee as GOTV expenditures, although they were for letters targeted to state voter groups and, thus, may have benefited other candidates.

The documentation which the Committee was requested to provide in the interim audit report included:

(1) scripts for all contracts, including both voter identification and GOTV follow-up;

(2) bank records for the 23 contracts requiring separate bank accounts;

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(3) the Committee's daily log book used to monitor GOTV activity;

(4) samples of Committee mailings to voters identified as a result of the 39 contracts; and

(5) a list of Committee field audits and copies of field reports and workpapers.

In response to the Interim Audit Report, the Committee stated that it "had made a diligent effort to find the documents requested by [Commission] Staff . . . ." It was also stated that "if these documents were located they would be produced. The Committee does not believe, however, that it "has an obligation under the Commission's regulations to have had initially or to have retained any of the material requested by the Staff and believes that a diligent search of records in its possession satisfied its obligation."

It is the opinion of the Office of General Counsel that the Committee did have an obligation pursuant to 26 U.S.C. § 9003(a) and 11 C.F.R. §§ 9003.1(b) and 9003.5 to obtain and retain the records related to the contracts discussed above which were requested during the examination and audit. This documentation was needed by the Audit Division in order to make an informed judgement as to the appropriateness of the parties' allocations of the expenditures arising from these contracts. Accordingly, this Office recommends that the Commission find reason to believe Reagan-Bush

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'84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 26 U.S.C. § 9003(a).[5/]

## IV. RECOMMENDATIONS

1. Find no reason to believe Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441a(b)(1)(B).

2. Find reason to believe Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 9003(a).

3. Approve the attached letter and factual and legal analysis.

2/2/88
Date

Lawrence M. Noble
General Counsel

Attachments

1. Audit Referral - May 11, 1987
2. Audit Referral - May 18, 1987
3. Audit Division Update of Expenditures Subject to Limit
4. Chart of contracts
5. Letter and Factual and Legal Analysis

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5/ Although this section refers to the candidates' agreement to provide certain requested information, the Commission's policy is to proceed against the authorized committee and its treasurer rather than candidates personally. Furthermore, in the present instance the candidates authorized the Committee to incur expenses to further their election, and the Commission's request for certain information was made during the examination and audit of the Committee pursuant to 26 U.S.C. § 9007(a) which refers to the qualified campaign expenses of candidates for President and Vice President. Moreover, the Act treats candidates as agents of their authorized committees regarding the making of disbursements. See 2 U.S.C. § 432(e)(2). Finally, there is no factual basis arising from the examination and audit to justify any finding against the candidates personally.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN

DATE: FEBRUARY 5, 1988

SUBJECT: OBJECTIONS TO MUR 2415 - FIRST G.C. REPORT SIGNED FEBRUARY 2, 1988

The above-captioned document was circulated to the Commission on Wednesday, February 3, 1988 at 11:00 A.M.

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

| | |
|---|---|
| Commissioner Aikens | X |
| Commissioner Elliott | X |
| Commissioner Josefiak | X |
| Commissioner McDonald | |
| Commissioner McGarry | |
| Commissioner Thomas | X |

This matter will be placed on the Executive Session agenda for February 23, 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 | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| Angela M. Buchanan Jackson, as treasurer | ) | |

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 23, 1988, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2415:

1. Find no reason to believe Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441a(b)(1)(B).

2. Find reason to believe Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5(c).

3. Direct the Office of the General Counsel to send the appropriate letter and factual and legal analysis.

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

Attest:

2/29/88
Date

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

00040765241

plm

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

March 2, 1988

Ms. Angela M. Buchanan Jackson, Treasurer
Reagan-Bush '84 (General Election Committee)
5201 Leesburg Pike, Suite 1207
Falls Church, VA 22041

RE: MUR 2415

Dear Ms. Jackson:

On February 23, 1988, the Federal Election Commission found that there is reason to believe that Reagan-Bush '84 (General Election Committee) ("the Committee") and you, as treasurer, violated 26 U.S.C. § 9003(a), a provision of Title 26, U.S. Code, and 11 C.F.R. § 9003.5(c). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. The Commission also found no reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(B) and 441a(f).

Under the Act you have an opportunity to demonstrate that no action should be taken against you and your committee. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information which demonstrates 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.

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.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of 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 or other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 427g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Thomas J. Josefiak
Chairman

Enclosure
Factual and Legal Analysis
Procedures
Designations of Counsel Form

00407852243

CCC#8812

PIERSON, BALL & DOWD
ATTORNEYS AT LAW
1200 18TH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 331-8566
CABLE ADDRESS "PIERBALL"
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TELEX NO. 64711

OKLAHOMA OFFICE
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210 W. PARK AVENUE
OKLAHOMA CITY, OKLA. 73102
(405) 235-7686

NEW YORK OFFICE
20 WEST 55TH STREET
NEW YORK, NEW YORK 10019
(212) 307-0520

VIRGINIA OFFICE
510 KING STREET
ALEXANDRIA, VA. 22314
(703) 549-4800

JOHN J. DUFFY
(202) 457-8616

March 16, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 MAR 16 PM 2:20

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

Re: MUR 2415

Dear Chairman Josefiak:

This is in response to your letter dated March 2, 1988.

Reagan-Bush '84 (General Election Committee) ("the Committee") declines to enter into pre-probable cause conciliation.

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FEDERAL ELECTION COMMISSION
88 MAR 17 AM 11:03

The Committee also requests, respectfully, that the General Counsel be required to file his brief setting forth his position on the legal and factual issues of this case by April 1, 1988.

Good cause exists to support expedited consideration of this matter. The Audit Division first requested the additional documentation at issue in this proceeding in its Interim Audit Report, which was issued on September 10, 1985. The Committee's negative response, which is quoted in the General Counsel's Factual and Legal Analysis, was filed on December 9, 1985, more than two years ago. In light of the General Counsel's delay in raising this issue, the recent resolution of the outstanding issues in the General Election Audit, and the Committee's and the

Commission's desire to have the Commission's review of Reagan-Bush '84's activities completed prior to the end of the 1988 election cycle, we submit respectfully that a tight schedule for the General Counsel's briefing of this matter would be appropriate.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD:dp
cc: Anne A. Weissenborn, Esq.
Commissioner Scott E. Thomas
Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott
Commissioner John W. McGarry
Commissioner Danny L. McDonald

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
88 JUN -2 AM 10: 21

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| | ) | MUR 2415 |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | |
| Angela M. Buchanan Jackson, as tresurer | ) | |

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to Reagan-Bush '84 (General Election Committee), based on the assessment of the information presently available.

6/1/89
Date

Lawrence M. Noble
General Counsel

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GCC#9415

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN -2 AM 8:59

PIERSON, BALL & DOWD
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1200 18TH STREET, N. W.
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JOHN J. DUFFY
(202) 457-8616

May 31, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN -2 AM 10:24

Anne A. Weissenborn, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Reagan-Bush '84 (General Election Committee) - MUR 2415

Dear Anne:

This is to inform you that, effective June 1, 1988, I will have withdrawn from Pierson, Ball & Dowd to become a partner in the firm of Piper & Marbury. My new address will be:

Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036
861-3938

Please send all correspondence regarding the above-referenced matter to my new address.

Sincerely,

John J. Duffy

JJD:dp

MWE

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN -8 PM 2:01

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

**MEMORANDUM** June 8, 1988

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2415

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe was mailed on June 8, 1988. Following receipt of the respondents' reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Brief
2. Letter to respondents

9004073552 48

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1988

John J. Duffy, Esquire
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan-Bush '84 (General Election Committee)
Angela M. Buchanan Jackson, as treasurer

Dear Mr. Duffy:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, the Federal Election Commission, on February 23, 1988, found reason to believe that your clients, Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 9003(a), and instituted an investigation in this matter.

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

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 (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of 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.

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.

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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 Anne A. Weissenborn, the attorney assigned to handle this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

9004078652 50

**BEFORE THE FEDERAL ELECTION COMMISSION**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) Angela M. Buchanan Jackson, as treasurer | ) | MUR 2415 |

**GENERAL COUNSEL'S BRIEF**

## I. STATEMENT OF THE CASE

On February 23, 1988, the Federal Election Commission found reason to believe that Reagan-Bush '84 (General Election Committee) ("the Committee") and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 9003(a) by failing to obtain and retain records related to contracts for voter identification and get-out-the-vote ("GOTV") services. This matter was initiated in the normal course of the Commission's administrative responsibilities following the audit of the Committee's qualified campaign expenses mandated at 26 U.S.C. § 9007(a).

## II. ANALYSIS

### a. Factual Background

In 1984 the Committee entered into contracts for voter identification and GOTV services in twenty-seven states with thirty-nine commercial vendors or with state or local party committees. The Committee and the Republican National Committee ("RNC") made expenditures pursuant to these contracts of $3,012,930.70. Certain of the contracts were shared with Senatorial and/or Congressional candidate committees, and/or with state party committees or the RNC.

All of the contracts required Committee approval of the scripts to be used. The contracts for two-phase programs (voter

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-identification and GOTV) stated, "Such proposed scripts shall be submitted to each of the PARTICIPANTS [Reagan-Bush '84 and any other entity sharing the contract] prior to any use thereof and CONSULTANT [vendor] agrees that it shall use only scripts that have been approved by each of the PARTICIPANTS." (Emphasis added.) The contracts for only GOTV programs read, "CONSULTANT agrees that it shall only use the telephone message approved by Reagan-Bush '84." (Emphasis added.)

Costs were allocated to candidates and state committees based upon the scripts. However, only eight of these scripts were made available at the time of the Commission's audit. Two of the eight scripts produced included questions concerning candidates who were not parties to the respective contracts. 1/

Twenty-three of the contracts required that the contractor open a separate bank account. During the audit a complete set of bank statements was made available for only one of these accounts; incomplete bank records were supplied for five others. Further, although the Committee apparently conducted some field audits of the contracts, only four field audit reports were provided during the Commission audit.

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1/ Other documents made available to the auditors indicated that in at least one instance, that involving the Missouri Republican Party, questions asked pursuant to the contract included ones related to other federal and non-federal races. The contract with Lyles Marketing Corporation related to activities in New Mexico specified allocations to three additional political committees, each of which entered into a separate agreement with the contracting corporation.

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In the Interim Audit Report the Committee was requested to provide scripts for all contracts, including both voter identification and GOTV; bank records for the 23 contracts requiring separate bank accounts; the Committee's daily log books used to monitor GOTV activity; samples of Committee mailings to voters identified as a result of the 39 contracts; and a list of Committee field audits and copies of field reports and workpapers.

The Committee's response to the Interim Audit Report stated that "each contract gave the Committee the right to approve in advance the telephone scripts." The response also stated that the cost reimbursement contracts required the opening of separate bank accounts by the vendors and that such contractors were also required to submit documented weekly expenditure reports to the Committee. Committee representatives assertedly visited vendors to review scripts for discrepancies with contract requirements.

Regarding the documentation of these expenditures, the Committee's response noted that eight scripts had been made available to the Commission auditors, and that two others had been located; however, it was assertedly not possible to determine whether the latter had actually been used. The response stated that no bank records not already made available had been found, and that the daily log book requested in the Interim Audit Report had not been identified, although it might be a telephone log created by a named individual which had been made available to the auditors previously. The Committee further

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asserted that it was attempting to locate samples of committee mailings, and that no list of field audits had been found, while a folder containing field audit reports which had been located indicated that they had been reviewed by the Commission auditors.

Finally, the response stated:

> In informal discussion between Committee representatives and the Staff in the process of preparing this response, the Committee has indicated that it made a diligent effort to find the documents requested by the Staff and would make a renewed effort in the process of preparing this Report. It also indicated that if these documents were located they would be produced. The Committee does not believe, however, that it has an obligation under the Commission's regulations to have had initially or to have retained any of the material requested by the Staff and believes that a diligent search of records in its possession satisfied its obligation.

b. The Law

26 U.SC. § 9002(11)(A)(ii) defines "qualified campaign expense" to include expenses incurred by the authorized committee of the candidates of a political party for the Offices of President and Vice President to further the election of either or both such candidates to such offices. 2 U.S.C. § 9003(a) requires that candidates of political parties in a presidential election who are seeking a determination that they are eligible to receive payments from the Presidential Election Campaign Fund, must agree to obtain and furnish to the Commission such evidence as the Commission may request of qualified campaign expenses, and

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to keep and furnish to the Commission such books, records and other information as may be requested.

11 C.F.R. § 9003.1(b)(4) requires presidential candidates to "keep and furnish to the Commission all documents relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 C.F.R. § 9003.5, and other information the Commission may request." 11 C.F.R. § 9003.5(c) requires candidates to "retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, . . . and any related materials documenting campaign receipts and disbursements, for a period of three years . . ." and to present such records to the Commission upon request. 11 C.F.R. § 9003.5(a) places on each candidate the burden of proving that disbursements are qualified campaign expenses.

26 U.S.C. § 9002(11) provides that if the authorized committee of a candidate also incurs expenses to further the election of one or more other individuals to Federal, State or local office, such expenses which do not specifically further the election of another individual shall be considered to further the election of the candidates for President and Vice-President in proportions to be determined by the Commission's regulations. During the 1983-84 election cycle, 11 C.F.R. § 9002(11)(b)(3) stated that "[a]ny expenditure incurred by a candidate or his or

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her authorized committee(s) to further the election of any other individual to a Federal, State or local office shall be a qualified campaign expense to the extent such expenditure is to further the candidate's own campaign for election. If the expenditure is incurred specifically to further the election of such other individuals, it will not be considered a qualified campaign expense."[2/]

11 C.F.R. § 106.1(a) provides, as a general rule, that expenditures made on behalf of more than one candidate are to be attributed to each candidate in proportion to "the benefit reasonably expected to be derived." According to 11 C.F.R. § 106.1(b), an authorized expenditure made by a political candidate on behalf of another candidate must be reported as an in-kind contribution to the candidate on whose behalf the expenditure is made.

26 U.S.C. § 9003(b) states that in order for candidates of major parties in a presidential election to become eligible to receive public funds for the general election campaign, they must certify to the Commission that they will not incur qualified campaign expenses in excess of the limitations established at 2 U.S.C. § 441a(b(1)(B) and that they will not accept contributions to defray qualified campaign expenses. In 1984

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2/ The regulation governed the 1984 elections. It was amended effective August 18, 1987, to clarify that presidential candidates may make expenditures in connection with other candidates, but each must pay a proportionate share of the costs.

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Ronald Reagan and George Bush, as the candidates of the Republican Party for the Offices of President and Vice-President, submitted such certifications.

26 U.S.C. § 9007(a) requires the Commission to conduct "a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice-President." 26 U.S.C. § 9007(b)(2) requires repayment of an amount equal to any amount by which an eligible candidate and his or her authorized committee exceeds the statutory limitation on qualified campaign expenses, while 26 U.S.C. § 9007(b)(4) requires repayment of any amount of public funds used for any purpose other than to meet qualified campaign expenses.

c. Factual and Legal Analysis

The law outlined above requires that costs such as those shared by the Committee with other candidates and committees for voter identification and get-out-the-vote programs be allocated on a reasonable basis. Thus, one of the tasks before the auditors in their examination of the Committee's records was to determine whether the Committee's allocations of the costs of the voter identification and get-out-the-vote contracts cited above were reasonable. Underallocation to, or underpayment by, the Committee could result in contributions by other committees to the Committee in violation of 26 U.S.C. § 9003(b) and possibly in the incurring of qualified campaign expenses in excess of the statutory limitations, while overpayments by the Committee could result in in-kind contributions to other political committees and

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thus in determinations that such contributions did not constitute qualified campaign expenses of the Committee, with possible repayment consequences.

The apparent bases for the Committee's own allocations of costs to other candidates and party committees were the scripts used by the contractors for the telemarketing program involved. All 39 contracts required advance approval by the Committee of these scripts. Yet, during the audit the Committee provided only 8 of the scripts. The auditors were thus unable to verify the reasonableness of all the Committee's script-based allocations.

Further, 23 of the contracts, those providing for cost reimbursements, required that a separate bank account be established by the contractor. Only one complete set of bank statements, plus incomplete sets for five others, were provided to the auditors, making it impossible for them to determine the amounts and/or sources of any monies deposited into these accounts by the Committee and any other entities. The Committee itself conducted field audits of some of the contracts, but provided only four such field audit reports to the Commission. Nor has the Committee provided requested samples of mailings to voters identified by the programs, mailings which could provide alternative bases for allocations.

The Commission has requested no documents beyond those required or created by the Committee itself. The contracts signed by the Committee required Committee approval of all scripts, and, in the case of cost reimbursement contracts, the

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establishment of bank accounts by the contractors. The field audit reports requested were the products of the Committee's own procedures, as were any mailings.

Both the Presidential Election Campaign Fund Act and the Commission's regulations require the production of records and documents which provide evidence in support of the qualified nature of expenditures. The regulations in fact place upon the recipients of public funds the burden of showing that campaign expenditures are qualified. Therefore, contrary to the Committee's assertion in its response to the Interim Audit Report, the Committee did have, and continues to have, an obligation to provide evidence in support of its allocations of costs incurred pursuant to the voter registration and get-out-the-vote contracts here at issue, the evidence requested being scripts, bank records and other documents created in response to the Committee's own requirements.

This Office recommends that the Commission find probable cause to believe that Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 26 U.S.C. § 9003(a).

6/7/88
Date

Lawrence M. Noble
General Counsel

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PIPER & MARBURY
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
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TELECOPIER 202-223-2085
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JOHN J. DUFFY
DIRECT DIAL NUMBER
202-861-3938

1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301-539-2530

June 13, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN 13 AM 11:27

Lawrence N. Noble, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Anne Weissenborn, Esq.

Re: Reagan-Bush '84 General Election Committee

Dear Mr. Noble:

On behalf of the Reagan-Bush '84 General Election Committee, we submit this request for a twenty-day extension of time in which to respond to the General Counsel's brief in this proceeding. The Committee's response is now due on June 27, 1988. We request an extension of time up to and including July 18, 1988. Counsel for the Committee will be out of town on business for eight of the ten working days during the next two weeks. Consequently, additional time is needed to prepare the Committee's response.

We request, therefore, that the time to respond to the General Counsel's brief be extended up to and including July 18, 1988.

Sincerely,

John J. Duffy

JJD:dp

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flm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1988

John J. Duffy, Esquire
Piper & Marbury
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan-Bush '84
General Election Committee
Angela M. Buchanan Jackson,
as treasurer

Dear Mr. Duffy:

This is in response to your letter dated June 13, 1988, which we received on the same date, requesting an extension of twenty days to respond to the General Counsel's Brief in the above-cited matter. I have granted the requested extension. Accordingly, your response is due by the close of business on July 18, 1988.

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

Sincerely,

Lawrence M. Noble
General Counsel

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Ccc # 9754

HAND DELIVERED

RECEIVED
FEDERAL ELECTION COMMISSION

88 JUL 12 PM 12:02

PIPER & MARBURY
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
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1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
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July 11, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 JUL 12 PM 2:53

Lawrence N. Noble, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Anne Weissenborn, Esq.

Re: MUR 2415
Reagan-Bush '84 General Election Committee

Dear Mr. Noble:

On behalf of the Reagan-Bush '84 General Election Committee, we submit this request for an additional 7 day extension of time in which to respond to the General Counsel's brief in this proceeding. The Committee's response is now due on July 18, 1988. The pressure of other matters makes it necessary for counsel to request this extension in order to prepare the Committee's response. No further extensions will be requested by the Committee.

We request, therefore, an extension of time up to and including July 25, 1988.

Sincerely,

John J. Duffy

JJD:dp

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1988

John J. Duffy, Esquire
Piper & Marbury
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan-Bush '84
General Election Committee
Angela M. Buchanan Jackson
as treasurer

Dear Mr. Duffy:

This is in response to your letter dated July 11, 1988, which we received on July 12, requesting an additional extension of seven days in which to respond to the General Counsel's brief in MUR 2415. The additional extension has been granted and we will therefore expect to receive your response no later than July 25, 1988.

Sincerely,

Lawrence M. Noble

Lawrence M. Noble
General Counsel

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GCC# 9927

FEDERAL ELECTION COMMISSION RECEIVED

88 JUL 25 PM 4:46

BEFORE THE
FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| Reagan-Bush '84 and Angela M. Buchanan Jackson, as treasurer | ) | MUR 2415 |

88 JUL 27 AM 11:09

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

REPLY BRIEF OF REAGAN-BUSH '84 AND
ANGELA M. BUCHANAN JACKSON, AS TREASURER

I. INTRODUCTION

Reagan-Bush '84 and Angela M. Buchanan Jackson, as treasurer ("Reagan-Bush") submit this reply to the General Counsel's Brief. The General Counsel contends that Reagan-Bush has violated 26 U.S.C. §9003(a) "by failing to obtain and retain records relating to contracts for voter identification and get-out-the-vote. . . services." For the reasons summarized briefly below, and discussed in greater detail in subsequent sections of this response, we strongly disagree.

II. SUMMARY OF RESPONSE

During the general election campaign, Reagan-Bush entered into contracts with thirty-nine vendors in twenty-seven states to conduct voter identification and/or get-out-the-vote, or GOTV, campaigns. When a campaign involved any candidates or committees in addition to Reagan-Bush, each of the participants was made a party to the contract, and the contract contained a

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payment schedule that allocated the cost of the campaign among the parties.

Because the participants wanted to be able to determine that their vendors were in fact making the number of telephone calls that they had agreed to make, the contracts gave the participants the right to monitor and assess the vendor's performance at any time without notice. The contracts also required the vendors to establish separate books of account and separate bank accounts for the campaign and gave the participants the right to audit these records. Moreover, because the contracts required the vendors to develop the telephone scripts that would be used during the campaign, the contracts also gave the participants the right to review and approve these scripts.

Neither the Presidential Campaign Fund Act, 26 U.S.C. §9001 et seq., nor the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq., required Reagan-Bush to obtain these commitments from its vendors. Many candidates who have received federal funds have conducted voter registration and get-out-the-vote campaigns, but to our knowledge none has made their vendors maintain separate books and bank accounts, submit scripts for approval, etc. Nor did Reagan-Bush need these scripts or records to establish that the expenditures under these contracts were qualified campaign expenses. For that purpose, Reagan-Bush maintained, and produced for the Audit Division, all of the third party documentation required

by 11 C.F.R. §9003.5. Furthermore, when the campaign involved candidates or committees in addition to Reagan-Bush, the vendor contract contained a specific allocation of costs, as well as several provisions designed to insure that no party paid more than its pro rata share of those costs.

Although both the Audit Division and the Commission have concluded that the expenditures for voter identification and GOTV services made pursuant to these thirty-nine vendor contracts were qualified campaign expenses, see, Statement of Reasons released June 2, 1988, the General Counsel nevertheless now contends that Reagan-Bush violated 26 U.S.C. §9003(a), when two and one-half years ago, it failed to follow an Audit Division "recommendation" to supply "additional documentation to verify that Reagan-Bush paid its fair share of the expenses under these contracts." Interim Report of the Audit Division on Reagan-Bush '84 General Election Committee and Reagan-Bush '84 Compliance Fund ("Interim Report") at 15. In that recommendation the Audit Division noted that such additional documentation "should" include the scripts developed by the vendors under the voter identification and GOTV contracts, the records of the separate bank accounts of the vendors, samples of Reagan-Bush mailings to voters identified as a result of these contracts, the "daily log book" used to monitor the vendors' activity, and copies of the "field reports and work papers."

As Reagan-Bush stated in its response to the Interim Report, to the best of its knowledge, no "daily log book" ever existed, and no so-called "field reports" or "work papers" ever existed, other than those that were given to the Audit Division. Since the General Counsel has not suggested that Reagan-Bush had an obligation to create these documents, as opposed to an obligation to retain them once created, Reagan-Bush's denial, combined with the General Counsel's inability to produce any evidence of their existence, should be sufficient to rebut the General Counsel's allegation of wrongdoing with respect to these documents.

As to the scripts and bank records, Reagan-Bush had no obligation under its candidate agreement to have obtained any of these documents, nor did it have any obligation to retain these documents if obtained. Similarly, it had no obligation to retain copies of its mailings to voters. Reagan-Bush's obligation to obtain documentation from third parties is set forth in 11 C.F.R. §9003.5(b), and its obligation to retain documents is set forth in 11 C.F.R. § 9003.5(c). None of the documents that the Audit Division "recommended" Reagan-Bush produce fall within the scope of these sections.

Finally, the General Counsel's contention that Reagan-Bush violated 26 U.S.C. §9003(a) has no legal basis. Section 9003(a) requires only that a candidate <u>enter</u> into a <u>written candidate agreement</u> to "obtain and produce" certain records, it does not itself require the acquisition,

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preservation or production of any records. Failure to abide by the terms of a candidate agreement does not constitute a violation of 26 U.S.C. §9003(a), but only a breach of that agreement. Moreover, since 2 U.S.C. §437g applies only to violations of the Presidential Campaign Fund Act or the Federal Election Campaign Act of 1971, as amended, it cannot be used to enforce a candidate agreement. Such agreements are enforceable in civil actions for declaratory and injunctive relief. See 11 C.F.R. §9007.1(b)(iii).

III. STATEMENT OF FACTS

During the general election period, Reagan-Bush '84 entered into contracts with thirty-nine vendors in twenty-seven states to provide telephone services for voter identification and/or get-out-the-vote, or GOTV, drives. Reagan-Bush paid the expenses for many of these drives itself. In some cases, however, Reagan-Bush shared the expenses of these drives with the Republican National Committee or with candidates for other federal and state elective offices.

When the expenses of a drive were shared by additional organizations, each participant was made a party to the contract, and the total cost of the drive was allocated among the participants in the contract. In the Phone Bank Agreement-Arkansas, for example, attached hereto as Appendix A, the vendor was the "Arkansas Republican Party's State Candidate Committee" (referred to in the agreement as the CONSULTANT). Three "participants" shared the cost of this telephone campaign

-- Reagan-Bush, Bethune for Senate Committee, and the Republican National Committee (see Appendix A at 1) -- and each was made a party to the contract. A payment schedule showing the amount Reagan-Bush '84, the Republican National Committee, and the Bethune Committee would pay was also made a part of the contract. (See Appendix A at 9). The contract further provided that no party would be liable for an amount in excess of its pro rata share of the expenses "as shown on the Payment Schedule." (Appendix A at 4).

The Arkansas contract had other provisions, in addition to the Payment Schedule, that were designed to insure that each party paid only its allocable portion of the expenses. The contract provided, for example, for the termination of the contract in the event a party failed to meet the Payment Schedule, prohibited the making of telephone calls on behalf of a participant that had failed to make a payment, and limited the liability of any party to its pro rata share of the costs incurred up to the effective date of any termination. (Id.)

Because Reagan-Bush wanted to insure that its telephone service vendors made the number of calls that they had agreed to make, it had planned initially to visit vendors and to observe the level of activity, e.g., the number of persons employed, number of telephones, etc., to determine if the level of activity was consistent with the effort required by the contracts.

Consequently, the contract provided that:

> PARTICIPANTS shall have the right to audit the books and records of CONSULTANT at any time during the term hereof and further PARTICIPANTS shall have the right to monitor and assess the performance of CONSULTANT at any time without notice." (Appendix A at 5)

Furthermore, in "cost" contracts, where the contract obligated the participants to pay only the actual cost, plus a fee, of the telephone services, the contract also provided that:

> CONSULTANT shall establish a separate bank account known as [name the account], exclusively for the receipt and payment of all monies hereunder. CONSULTANT shall also maintain separate books and records of all transactions under this Agreement." (Appendix A at 4)

Although in this contract the participants secured the right to visit the vendor at any time and to audit its books and records, including its separate bank account, they never intended to visit every vendor, or to audit the books or bank records of every vendor visited. These provisions were inserted into the contract in an abundance of caution to obtain for the participants rights that <u>might</u> prove useful in the future.

Moreover, during the pressure of the campaign, the level of vendor review fell far below the level anticipated prior to the campaign. Although during the campaign Reagan-Bush made on-site visits to some vendors, these visits were not made on a systematic basis, and every vendor was not visited. Moreover, when made, the visits consisted primarily of a visual inspection of the premises and did not include an examination

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of the books and records of the vendor. Reports of vendor visits were usually oral, and written reports were not usually prepared.

Finally, the contracts required the vendors to "develop proposed scripts to be used by callers." In order to ensure that the text of the scripts was suitable, i.e., contained suitable language, good grammer, etc., contracts for both voter identification and GOTV services provided that "such proposed scripts shall be submitted to each of the PARTICIPANTS prior to any use thereof, and CONSULTANT agrees that it shall use only scripts that have been approved by each of the PARTICIPANTS." The contracts for GOTV programs only provided "CONSULTANT agrees that it shall only use the telephone message approved by Reagan-Bush 84."

Although the participants apparently approved the scripts used, the extent to which the scripts were sent physically to the participants, as opposed to being read over the telephone, is not clear. If scripts were sent physically to Reagan-Bush, copies of the scripts were not retained.

September 10, 1985, almost a year after the close of the general elections, the Audit Staff issued its Interim Report. In that Report (at 12-15), the Audit Division indicated that "its review of the GOTV contracts and supporting documentation raised several problems:

> (1) We cannot determine if the GEC's cost allocations are appropriate for 31 of 39 contracts because scripts have not been made available.

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(2) Two (2) of the eight (8) scripts made available include references to other federal and non-federal candidates who were not party to the contracts.

(3) We cannot determine total receipts and disbursements for the 23 contracts requiring bank accounts because most bank statements have not been made available. In addition, we do not have any assurance that the GOTV contractor did not receive money from other sources for the 23 contracts requiring separate bank accounts.

(4) We do not know how many problems the GEC discovered during its field audits and the resolution of these matters."

For the reasons given above, the Audit Staff made the following recommendation:

"The Audit Staff recommends that within 30 days of receipt of this report [Reagan-Bush] supply additional documentation to verify that the GEC paid its fair share of expenses under these contracts. The documentation supplied should include the following:

(1) scripts for all contracts both for the voter identification phase, usually in September, and for the later GOTV followup calls;

(2) bank records for the 23 contracts requiring separate bank accounts;

(3) the GEC daily log book used to monitor GOTV activity;

(4) samples of GEC mailings to voters identified as a result of these contracts; and

(5) a list of GEC field audits conducted and copies of the field reports and work papers." (emphasis supplied)

The Audit Division made no reference to any provision of the candidate agreement, the Presidential Campaign Fund Act, the Federal Campaign Act of 1971, as amended, or the Commission's regulations as requiring Reagan-Bush to supply these documents.

In its December 9, 1985 response to the Audit Division's Interim Report, Reagan-Bush declined to follow the Audit Division's "recommendation" to supply additional documentation to "verify" the allocations set forth in the contracts. Reagan-Bush concluded that the contracts provided adequate documentation to support the allocation of the expenses, that similar documentation had been accepted routinely in the past, and that additional documentation was not necessary.

Reagan-Bush also addressed each of the five categories of documents that the Audit Division recommended be supplied as follows:

> "Scripts for contracts. Eight scripts have been available, two additional scripts have been located, although under circumstances that make it impossible to determine whether these were the scripts that were actually used. No other scripts have been located. The Committee does not believe it requested scripts with respect to the get-out-the-vote phase.
>
> Bank records. We have no found records that have not been made available previously to the staff.
>
> The Committee's daily log book. We are unable to identify this document. We believe, however, that the reference may be to a telephone log created by Vickers Bryant. This log has been made available to the Audit Staff previously and will be produced again, if requested.

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> Samples of Committee mailings. The Committee is attempting to locate these documents [no copies of these documents were in fact located].
>
> Field audits. No list of field audits has been located. Copies of field audit reports have been located, but the file folder in which they were found indicates that they have been reviewed already by the Audit Staff [no "field audit reports," other than those already provided to the Audit Division were located]."

Response at 16.

On May 7, 1987 the Audit Division released its Report of the Audit Division On Reagan-Bush '84 General Election Committee And Reagan-Bush '84 Compliance Fund ("Final Report"). The Final Report contained no reference to the Audit Division's recommendation or to Reagan-Bush's response. (The Final Report did state, however, that "a certain matter noted during the audit has been referred to the Office of General Counsel." Final Report at 30) Moreover, the Final Report confirmed that Reagan-Bush had satisfied its burden to establish that the expenditures made for the voter identification and GOTV campaigns (including the campaigns with multiple participants) were qualified campaign expenses.

Nothing further was heard about the records until early March 1988, more than two and a half years after the release of the Interim Report containing the Audit Division's recommendation, when the General Counsel informed Reagan-Bush that the Commission had found reason to believe that it had violated 26 U.S.C. §9003(a).

## IV. ARGUMENT

### A. The General Counsel Has Failed To Show That Certain Of The Documents At Issue Here Were Ever Created.

Among the documents the Audit Division "recommended" that Reagan-Bush supply were: "The [Reagan-Bush] daily log book used to monitor GOTV activity" and "[a] list of Reagan-Bush field audits conducted and copies of the field reports and work papers." Interim Report at 15. To the best of our knowledge and belief, a daily log book and a list of field audits never existed. Some written field audit reports were located, but these reports were made available to the Audit Division. Reagan-Bush has no reason to believe that additional written field audit reports were ever created. The General Counsel has not argued that Reagan-Bush was required to create these documents, as opposed to retaining them, if created, and he has provided no evidence of their creation. Consequently, as to these documents, his contention that Reagan-Bush had an obligation to "obtain and retain" them is clearly without merit.

### B. Reagan-Bush Had No Obligation To Obtain Copies Of The Scripts Or The Records Of The Separate Bank Accounts.

Title 26 U.S.C. §9003(a)(1) provides that, as a condition precedent to the receipt of public funds, a candidate must agree to "obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of the candidate." The candidate's obligation under his agreement to "obtain" evidence of qualified campaign expenses is further defined in 11 C.F.R. §9003.5. Subsection 9003.5(a) provides

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that the candidate "shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses . . . as provided in 11 C.F.R. §9003.5(b)." (emphasis supplied) Subsection 9003.5(b) describes in considerable detail the documentation that candidates and committees are required to obtain from vendors and furnish to the Commission. None of the documents at issue here (i.e., the scripts and the records of the vendors' separate bank accounts) is specified there.

C. Reagan-Bush Had No Obligation To Retain Copies Of The GOTV Mailings.

Title 11 C.F.R. §9003.5(c) defines the records the candidate is required to retain with respect to each disbursement. These records include "bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation and any related materials." (emphasis supplied) The GOTV mailings are not mentioned, nor are they "related" to any of the records that are mentioned. Moreover, when the Commission wanted to include in this section material other than financial records (e.g., fundraising solicitation material), it specified this material explicitly.

D. Reagan-Bush Had No Obligation To Retain Copies Of The Scripts Or The Bank Records Of The Vendors, Even If It Received Copies Of Such Records.

As we discussed previously, Reagan-Bush had no obligation to obtain copies of the scripts used by the vendors, or of

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their bank accounts. It is not clear that Reagan-Bush did in fact receive copies of the scripts, which may have been approved by telephone. It is clear, however, that copies of the bank records were not sent routinely to Reagan-Bush and, indeed, the contracts gave Reagan-Bush only a right to inspect, not receive or copy, these records. Thus, unless the General Counsel can show that Reagan-Bush received these documents, he cannot charge Reagan-Bush with a failure to retain them.

In any event, even if Reagan-Bush did receive these documents, 11 C.F.R. §9003.5(c) did not require Reagan-Bush to retain them. Subsection 9003.5(c) makes no reference to "scripts," and its reference to bank records has always been construed, to our knowledge, to refer to bank records of the candidate or its committee, and not to bank records of vendors.

E. Reagan-Bush's Obligation To "Obtain And Retain" Records Arises Under The Candidate Agreement And Not Under 26 U.S.C. §9003(a).

Title 26 U.S.C. §9003(a) does not require a candidate or its committee to "obtain or retain" any records; it only requires the candidate or its committee to agree in writing to obtain or retain records as a condition precedent to the candidate's receipt of public funds. When a candidate has executed a "candidate agreement" in which he undertakes the obligations listed in §9003(a), he has fulfilled his obligation under §9003(a). If a candidate or a candidate's committee later fails to fulfill the candidate's contractual obligation

undertaken in the candidate agreement, the candidate or the committee has breached that agreement, but it has not violated §9003(a).

F. Title 2 U.S.C. §437g Cannot Be Used To Enforce A Candidate Agreement.

Title 2 U.S.C. §437g, the enforcement section of the Federal Election Campaign Act of 1971, as amended ("the Act"), provides that an enforcement action may be pursued only if the Commission finds probable cause to believe that a violation of "the Act" or "chapter 95 . . of title 26," the Presidential Election Campaign Fund Act ("Fund Act") has occurred. A candidate agreement is not a part of the Act or of the Fund Act, and consequently, the Commission cannot proceed with an enforcement action for an alleged violation of a candidate agreement.

Courts have generally held that penal statutes (i.e., statutes that create a penalty, whether civil or criminal) are to be strictly construed, and that a person is not to be subjected to a penalty "unless the words of the statute plainly impose it . . . ." Commission v. Acker, 361 U.S. 87-91 (1959); Gold Kist, Inc. v. United States Dept. of Agric., 741 F.2d 344, 348 (11th Cir. 1984). Here, the words of §437g plainly authorize the imposition of a penalty only for a violation of the "Act" or the "Fund Act." Consequently, we submit that the General Counsel cannot proceed against Reagan-Bush under §437g for an alleged violation of a candidate agreement.

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## V. CONCLUSION

For the reasons given above, we urge the Commission to find that probable cause to believe that Reagan-Bush violated 26 U.S.C. §9003.1 has not been shown.

Respectfully submitted,

REAGAN-BUSH '84 and
ANGELA M. BUCHANAN JACKSON

By _____
John J. Duffy

PIPER & MARBURY
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-3938

July 25, 1988

APPENDIX A

PHONE BANK AGREEMENT - ARKANSAS

This Agreement made and entered into as of the 15th day of September 1984, by and between the Arkansas Republican Party's State Candidate Committee (hereinafter referred to as "CONSULTANT"), and Reagan-Bush '84, (General Election Committee), Bethune for Senate Committee, and the Republican National Committee (hereinafter collectively referred to as "PARTICIPANTS").

WITNESSETH

WHEREAS, CONSULTANT has expertise in the development and implementation of telephone campaigns designed to identify voters favorable to a particular candidate and to encourage such voters to go to the polls to vote for that candidate on an election date, and

WHEREAS, PARTICIPANTS desire to engage the services of CONSULTANT to establish a telephone bank operation in the State of Arkansas.

NOW THEREFORE, on the basis of the foregoing premises and the agreements, covenants, and undertaking hereinafter set forth, the parties do hereby agree as follows:

1. CONSULTANT shall organize and supervise a telephone polling campaign on behalf of PARTICIPANTS. In this regard, CONSULTANT shall utilize a sufficient number persons ("Callers") which it shall hire, train and supervise to conduct a "voter identification" phase whereby Callers shall make approximately 300,000 telephone calls to prospective voters in the State of Arkansas in order to identify whether such voters are favorable to the PARTICIPANTS.

2. CONSULTANT shall supply all names and telephone numbers of the potential voters to be contacted through the telephone polling campaign covered hereunder, it being understood that the telephone calls hereunder shall be made to all households in the counties targeted by the PARTICIPANTS.

3. CONSULTANT shall develop proposed scripts to be used by Callers for the purpose of both phases set forth above, i.e. a script to a) identify voters favorable to PARTICIPANTS, and b) to get out the vote. Such proposed scripts shall be submitted to each of the PARTICIPANTS prior to any use thereof and CONSULTANT agrees that it shall use only scripts that have been approved by all of the PARTICIPANTS.

4. The specific responsibilities of CONSULTANT are as follows:

a. Leasing or subleasing of suitable facilities for the telephone campaign operations; and

b. Hiring, training, supervising, and paying of a sufficient number of Callers and supervisors to perform the telephone campaign; and

c. Payment of insurance and all other related costs of the telephone campaign operations; and

d. Installation or utilization of the required telephones and payment of all telephone calls and charges to the telephone company or telephone vendor; and

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e. Supervision and smooth operation of the telephone campaign operation.

5. This voter identification program shall commence on September 12, 1984, and shall operate through October 1, 1984.

6. The estimated expense reimbursements for the costs of this program to the PARTICIPANTS are set forth in a Payment Schedule attached hereto and by this reference incorporated herein. The total estimated payments as shown on such schedule include a five percent (5%) fee for administrative services. It is understood and agreed that each of the PARTICIPANTS is liable only for its prorata portion of this program. Notwithstanding the provisions of the attached Payment Schedule which sets forth estimates (with the exception of the initial payments) of the amounts which will be owing for expense reimbursements on the dates shown, it is understood that this is a "cost" contract and that CONSULTANT shall provide adequate evidence and verification that an appropriate number of telephone calls as referenced herein have been made prior to any payment required hereunder subsequent to the initial payments and that CONSULTANT shall submit appropriate back-up and supporting documentation to each of the PARTICIPANTS prior to payments (other than the initial payments) including, but not limited to, rent receipts, receipts for payments of telephone charges and evidence of payment of Callers, supervisors and other staff members. Such back-up and supporting documentation shall also be submitted to each of the PARTICIPANTS for all expenses paid from funds advanced as initial payments. CONSULTANT shall upon request provide any additional back-up and documentation as may be requested by PARTICIPANTS, or

any of them. Notwithstanding the foregoing, it is further understood and agreed that in no event shall any of the PARTICIPANTS be liable for an amount in excess of that PARTICIPANT's total costs as shown on the Payment Schedule.

7. This program shall commence only if all of the PARTICIPANTS have made the initial payments required under the Payment Schedule attached hereto. In the event all such payments have not been made on or before September 12, 1984, the amount of payments which have been made shall be refunded to the PARTICIPANT or PARTICIPANTS making such payment or payments less the prorata share of expenses incurred to date by CONSULTANT, and this Agreement shall terminate or be renegotiated. In the event any of the PARTICIPANTS shall fail to make any other payment required under the Payment Schedule after commencement of this program, then and in that event this Agreement shall either terminate or be renegotiated. In no event shall any telephone calls be made on behalf of any PARTICIPANT that is in default hereunder.

8. CONSULTANT shall establish a separate bank account, known as "Arkansas Voter ID", exclusively for the receipt and payments of all monies hereunder. CONSULTANT shall also maintain separate books of account for the programs under this Agreement.

9. CONSULTANT shall report the following response data to each of the PARTICIPANTS on a daily basis: a) total number of calls completed, b) number of favorables to each of the PARTICIPANTS, c) number of Democrats responding, d) number of undecideds. Such daily reports shall cover all completed calls made on the prior day.

10. During the term of this Agreement, CONSULTANT agrees that it will not render any services to any person, group, committee, or organization which makes or contemplates making any independent expenditures on behalf of the re-election of President Reagan or any other candidates for Federal office.

11. PARTICIPANTS, or any of them, shall have the right to audit the books and records of CONSULTANT at any time during the term hereof and further PARTICIPANTS, or any of them, shall have the right to monitor and assess the performance of CONSULTANT at any time without notice.

12. PARTICIPANTS, or any of them, may terminate this Agreement upon five (5) days written notice to CONSULTANT. In the event of a termination by any PARTICIPANT, such terminating PARTICIPANT shall be liable for only its prorata costs and expenses incurred prior to the effective date of such termination.

13. It is expressly understood and agreed that CONSULTANT shall not at any time serve as an agent or employee of PARTICIPANTS. PARTICIPANTS shall neither direct nor control the activities of CONSULTANT, it being understood and agreed that CONSULTANT shall be solely responsible for its own conduct and activities which shall at all times be conducted in accordance with the highest ethical and professional standards and in strict compliance with all applicable laws and regulations. CONSULTANT is neither authorized nor empowered to act on behalf of the PARTICIPANTS, or any of them, nor to represent PARTICIPANTS except as expressly set forth herein.

14. CONSULTANT agrees to keep all of the information and data of PARTICIPANTS strictly confidential, and to use said information and data exclusively for the benefit of PARTICIPANTS, unless the PARTICIPANTS shall consent to the disclosure of any such infomation and data to any third party. CONSULTANT agrees to keep and retain all books, records and accounts hereunder in accordance with all applicable provisions of the Federal Election Campaign Act of 1971, as amended, and all applicable regulations thereunder as well as all applicable laws and regulations.

15. CONSULANT shall indemnify and hold PARTICIPANTS free and harmless from any and all taxes or other governmental or contractual obligations of CONSULTANT or the agents, representatives, servants, or employees of CONSULTANT, as well as all obligations, costs, claims, judgments, attorney's fees and attachments arising out of or in connection with this Agreement.

16. In the event any action at law or equity shall be brought to enforce the terms of this Agreement, in addition to any other relief to which the prevailing party in such action may be entitled, such prevailing party shall be entitled to reasonable attorney's fees, which may be set by the court in the same action or in separate action brought for that purpose.

17. PARTICIPANTS are political committees registered with the Federal Election Commission. The candidates, members, officers, employees, and agents of PARTICIPANTS, as well as the members of their executive committees, shall not be personally liable for any debt, liability, or obligation of PARTICIPANTS. All persons, corporations, or other

entities extending credit to, contracting with, or having any claim against PARTICIPANTS may look only to the funds and property of PARTICIPANTS for payment of any such contract or claim or for the payment of any such contract or claim or for the payment of any debt, damages, judgment of decree, or any money that may other wise become due or payable to them from PARTICIPANTS.

18. Based upon the fact that neither Reagan-Bush '84 nor the Bethune for Senate Committee will continue as active political committees after November 6, 1984, it is understood that lists and tapes of names and addresses used or developed in connection with this program and any enhancements of lists and tapes shall, at the conclusion of this phone bank operation become the property of and shall be transferred to the Republican National Committee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CONSULTANT:

ARKANSAS REPUBLICAN PARTY'S
STATE CANDIDATE COMMITTEE

By _____

PARTICIPANTS:

REAGAN-BUSH '84 (General
Election Committee)

By _____
Angela Buchanan Jackson
Treasurer

BETHUNE FOR SENATE COMMITTEE

By _____

REPUBLICAN NATIONAL COMMITTEE

By _____
Asst Sec

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ARKANSAS

VOTER IDENTIFICATION

PAYMENT SCHEDULE

| | Reagan-Bush '84 | Bethune for Senate Committee | Republican National Committee |
|---|---|---|---|
| September 12, 1984 or upon full execution of Agreement | $ 20,000 | 20,000 | 20,000 |
| Upon completion of program and final accounting | $ 20,000 | 20,000 | 20,000 |

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WASHINGTON, D.C. 20463

SENSITIVE

November 22, 1988

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2415

Attached for the Commission's review is a suppplemental brief stating the position of the General Counsel on a legal and factual issue in the above-captioned matter. This supplemental brief should be considered in conjunction with the brief of the General Counsel in this matter dated June 7, 1988. A copy of this supplemental brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe was mailed on November 22, 1988. Following receipt of the respondents' reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Supplemental Brief
2. Letter to respondents

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 18, 1988

John J. Duffy, Esquire
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan-Bush '84
(General Election Committee)
Angela M. Buchanan Jackson,
as treasurer

Dear Mr. Duffy:

On February 23, 1988, the Federal Election Commission found reason to believe that your clients, Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5(c). On June 8, 1988, you were sent a brief stating the position of the General Counsel with regard to the issue of a violation of 26 U.S.C. § 9003(a). Submitted herewith is a supplemental brief addressing the position of the General Counsel on the issue of a violation of 11 C.F.R. § 9003.5(c). The Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that 11 C.F.R. § 9003.5(c) has been violated.

With 15 days of your receipt of this supplemental brief you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the supplemental brief of the General Counsel. (Three copies of such reply should also be forwarded to the Office of the General Counsel, if possible). The General Counsel's brief and supplemental brief, together with the reply brief which you filed on July 27, 1988, and any additional response, will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe violations have occurred.

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If you are unable to file a response to the supplemental brief within 15 days, you may submit a written request for an extension of time.

Should you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Supplemental Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| Angela M. Buchanan Jackson, as treasurer | ) | |

SUPPLEMENTAL GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On February 23, 1988, the Federal Election Commission found reason to believe that Reagan-Bush '84 (General Election Committee) ("the Committee") and Angela M. Buchanan Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5(c). The General Counsel's Brief dated June 7, 1988, addressed the issue of a violation of 26 U.S.C. § 9003(a). This Supplemental General Counsel's Brief addresses the issue of a violation of 11 C.F.R. § 9003.5(c). The original brief is incorporated by reference into this supplemental brief, and attention is drawn to its recitation of the facts in this matter.

II. ANALYSIS

a. The Law

11 C.F.R. § 9003.5(c) requires that candidates receiving public funds

> retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting system documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years . . . , and shall present these records to the Commission on request.

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b. Factual and Legal Analysis

In the present matter the Committee failed to obtain and retain documents sufficient to permit the Commission's auditors to verify the appropriateness of the Committee's allocations of costs of voter identification (VIP) and get-out-the-vote (GOTV) contracts shared with other candidates and committees. It thus was not possible to determine whether the Committee's expenditures for these services constituted qualified campaign expenses. In order to make these determinations, the auditors had requested particular categories of documents, including telephone scripts, bank records of the separate accounts required to be established by the contractors, daily log books used to monitor GOTV activities, samples of mailings, and a list of Committee field audits and copies of field reports and workpapers. The Committee has argued that it produced for the auditors all requested documents existing and in its possession, and that such production constituted the extent of its responsibility.

It is the position of the Office of the General Counsel that 11 C.F.R. § 9003.5(c) not only requires that the specific types of records listed in this regulation, plus other related materials, be retained for three years, but also that those records be obtained in the first place. To interpret this regulation as requiring committees to retain only documents already in their possession would be to place a premium upon permitting, or even encouraging, non-committee entities such as

vendors not to forward certain documents to vendees, thereby allowing a committee to plead lack of possession or control when asked to produce those materials for purposes of an audit. Such a result would totally frustrate the audit process.

In the present matter the counsel has argued in the Committee's reply brief of July 25, 1988, that, despite the contract language according audit rights to the Committee, the latter did not intend to visit or audit every contractor and did not do so; hence, apparently, the lack of bank records made available to the auditors. Regarding the telephone scripts which were the primary basis for the Committee's allocations of costs, but which are not now in the Committee's possession, the reply brief states that it is unclear how many scripts were actually physically sent to the Committee, and that, if they were, copies were not retained. (Eight were, in fact, retained and furnished to the auditors.) As to samples of Committee mailings, the reply brief implicitly admits that the Committee had these documents in its possession by emphasizing what is seen as its lack of responsibility to retain them; the reply brief states that none have been located. No indication is given that the Committee went beyond its own present records to attempt to obtain or re-obtain such samples from the vendors involved in their production and distribution.

The purpose of 11 C.F.R. § 9003.5(c) is to see that records needed for a complete and thorough audit are made available to Commission personnel. Their availability should not depend upon whether or not a Committee has physical possession at the time

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they are requested. In the present matter the Committee apparently recognizes no responsibility to have secured the missing scripts, bank records and sample mailings from contractors. The overall result of the Committee's failure to produce these documents has been that no final audit determination could be made regarding the appropriateness of the Committee's VIP and GOTV expenditure allocations, nor could the auditors determine the resulting status of the Committee's VIP and GOTV expenditures as qualified or non-qualified.

This Office recommends that the Commission find probable cause to believe that Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan Jackson, as treasurer, violated 11 C.F.R. § 9003.5(c).

11/22/88
Date

Lawrence M. Noble
General Counsel

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BEFORE THE
FEDERAL ELECTION COMMISSION

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| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 and | ) | MUR 2415 |
| Angela M. Buchanan Jackson, | ) | |
| as treasurer | ) | |

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SUPPLEMENTAL REPLY BRIEF OF REAGAN-BUSH '84 AND ANGELA M. BUCHANAN JACKSON, AS TREASURER

Reagan-Bush '84 and Angela M. Buchanan Jackson, as Treasurer ("Reagan-Bush") submit this reply to the Supplemental General Counsel's Brief ("Supplemental Brief"). In his initial Brief, the General Counsel contended that Reagan-Bush violated 26 U.S.C. § 9003(a) when, two and one-half years ago, it failed to follow an Audit Division's "recommendation" to provide certain "additional documentation" relating to voter identification and Get Out The Vote ("GOTV") services.[1/] In its Supplemental Brief, the General Counsel contends that Reagan-Bush's failure to follow this "recommendation" also violated 11 C.F.R. § 9003.5(c). For the reasons given in the Reply Brief of Reagan-Bush '84 and Angela M. Buchanan Jackson, as Treasurer ("Reply"), and for the additional reasons given below, we disagree.

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1/ Interim Report of the Audit Division on Reagan-Bush '84 General Election Committee and Reagan-Bush '84 Compliance Fund ("Interim Report") at 15.

Reagan-Bush's failure to produce the documents requested by the Audit Division did not violate § 9003.5(c). Section 9003.5(c) provides in relevant part that

> "the candidate shall <u>retain</u> records with respect to each disbursement and receipt. . ."

<u>Websters Third International Dictionary</u> defines "retain" to mean to keep or hold in one's possession. In addition, two other provisions in § 9003.5, § 9003.5(a) and § 9003.5(b), define a committee's obligation to "obtain" documents from third parties. For these reasons, Reagan-Bush does not interpret § 9003.5(c) to require a committee to create any records, or to obtain any records from third parties, but merely to require a committee, if it has possession of the records described in that section, to retain those records for three years.[2/] As Reagan-Bush noted in its Reply, the General Counsel has failed to demonstrate that several of the documents sought by the Audit Division were ever created[3/] and he has also failed to show that any of the documents he seeks have ever been in the "possession" of Reagan-Bush. Reagan-Bush has found no evidence that any of the documents sought by the

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2/ Reagan-Bush also contends that the records at issue here are not "described" in § 9003.5(c) and, therefore, that Reagan-Bush would have had no obligation to retain these records, even if it had had possession of them. Reply at 13-14.

3/ Reply at 12.

Audit Division, and not produced, were in its possession. Consequently, Reagan-Bush believes it had no obligation under § 9003.5(c) to "retain" these documents.

Despite the unambiguous language of § 9003.5(c) and the presence in § 9003.5 of particular provisions addressing the obligation of a committee to obtain documentation from vendors, the General Counsel contends in its Supplemental Brief (at 2-3) that

> "11 C.F.R. § 9003.5(c) not only requires that the specific types of the records listed in this regulation plus other related material be retained for three years but also that these records be obtained in the first place."

The General Counsel does not cite any authority to support his interpretation of § 9003.5(c). He argues instead that the plain language of the regulation must be disregarded and that the provision must be given an interpretation inconsistent with that language for policy reasons.[4/]

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4/ Whatever weight such an argument might have in the interpretation of a regulation in another context, it is inappropriate here, where the General Counsel seeks to have the Commission impose a fine on Reagan-Bush for failure to comply with the regulation in question. Fundamental fairness requires that penal statutes provide a person with adequate notice of mandatory or proscribed behavior. In making only a policy argument to support his interpretation of § 9003.5(c), the General Counsel in effect concedes that the plain language of the statute does not support his intepretation and, consequently, did not give Reagan-Bush "notice" of the obligation the General Counsel now asserts it should have had.

According to the General Counsel:

> "To interpret this regulation as requiring committees to retain only documents already in their possession would be to place a premium upon permitting or even encouraging non-committee entities such as vendors not to forward certain documents to vendees, thereby allowing a committee to plead lack of possession or control when asked to produce those materials for purposes of an audit." (emphasis supplied)[5/]

Frankly, we find it difficult to believe that the General Counsel is seriously arguing that § 9003.5(c) requires a committee to obtain all of "the specific types of records listed in the regulation, plus other related material," from its vendors on a routine basis. We're not aware of any committee that obtains bank records, vouchers, worksheets, and accounting system documentation relating to campaign disbursements from each vendor. To our knowledge, most committees now believe that § 9003.5 requires them to obtain from vendors only the documentation listed in § 9003.5(b). We are not aware that § 9003.5(c) has ever been construed to require vendors to forward records such as those sought by the General Counsel here (e.g. vendor bank records) to committees on a routine basis, either during the campaign or at the conclusion of a campaign. Reagan-Bush's construction of § 9003.5(c) would not, as the General Counsel asserts,

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5/ Supplemental Brief at 2-3. The General Counsel does not explain how a committee can "retain" documents not in its possession.

discourage vendors from forwarding the documents described in that section to committees, since vendors do not now forward such documents to committees, nor would any committee have sufficient space in which to "retain" these documents if they did.

The General Counsel contends that, unless committees are required to obtain from their vendors the documents set forth in § 9003.5(c), the audit process would be "totally" frustrated.[6/] We respectfully disagree. Section 9003.5 now insures the availability of a committee's records (surely the primary source documents for an audit) as well as the vendor documents required by § 9003.5(b). As § 9003.5(a) makes clear, the vendor documents specified in § 9003.5(b) are the vendor documents needed to establish that the committee's disbursements are qualified campaign expenses. The documents at issue here were not documents that fall within the scope of § 9003.5(b). Reagan-Bush has produced the documents required by § 9003.5(b). Having produced these documents, Reagan-Bush has satisfied its burden of proof under § 9003.5(a). Had it not done so, the Audit Division should have sought a repayment under 26 U.S.C. § 9007(b) of the monies expended for voter registration and GOTV campaigns. No such repayment was, in fact, requested.

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6/ Id.

The Audit Division sought the documents at issue here because it suspected that Reagan-Bush's vendors had not complied with their contracts with Reagan-Bush and had included candidates other than the parties to the contracts in their voter identification and GOTV efforts.[7/] The Audit Division needed the vendor documents at issue here to investigate this possibility. Section 9003.5(a), however, requires a committee to obtain from its vendors only those documents listed in § 9003.5(b), which are the documents needed to fulfill the committee's affirmative burden to demonstrate that its expenses were qualified campaign expenses, and to enable the Commission to satisfy its audit responsibility under 26 U.S.C. § 9007(a). If the Audit Division believed that it needed to obtain other documents to conduct other examinations, audits or investigations, the Act and regulations contained other mechanisms for it to do so. See 26 U.S.C. § 9009(b); 11 C.F.R. § 9007.4.

Section 9007.4 of the regulations provides that the Commission may, upon an affirmative vote of four members, conduct an audit and field investigation of any committee in

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7/ The General Counsel repeatedly states in his Brief and in his Supplemental Brief that the scripts sought by the Audit Division were the primary basis upon which Reagan-Bush allocated the expenses of the voter identification and GOTV campaigns between the various parties to the voter identification and GOTV contracts. This is simply not correct. The contracts themselves listed the parties involved in the campaigns and described the allocation method.

any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred. Section 111.10 provides that in conducting an investigation, the Commission may issue a subpoena duces tucum to any person for the production of documentary evidence. These provisions gave the Audit Division a mechanism to obtain the documents in question from Reagan-Bush's vendors directly, provided, of course, that it could have demonstrated to the Commission a reason for doing so.

Section 9003.5 creates an efficient structure for the conduct of audits of publicly financed committees. Section 9003.5(b) specifies the disbursement documentation that a committee must obtain from its vendors to satisfy its burden of proving that those disbursements were qualified campaign expenses. Section 9003.5(c) provides that the Committee shall retain its own financial records and the documentation from third parties required by § 9003.5(b). To obtain other documents from third parties, the Audit Division must convince the Commission, pursuant to § 9007.4, that a reasonable basis for suspicion of impropriety exists. The need to obtain this approval provides a necessary check on the scope of the Audit Division's activities.

Finally, the General Counsel's attempt to charge Reagan-Bush with a violation of law because it failed to comply with the Audit Division's "recommendation" lacks fundamental

fairness. The Audit Division never made a formal written demand on Reagan-Bush for the documents at issue, never cited Reagan-Bush to any authority requiring the production of those documents, and never responded to Reagan-Bush's response in which it questioned its obligation to produce those documents. In the Interim Report, the Audit Division suggested only that those documents were necessary to satisfy Reagan-Bush's burden to establish that these expenses were qualified campaign expenses, a position which it later abandoned. Interim Report at 13-15. Reagan-Bush had no notice that its failure to produce the documents would be construed by the Commission to be a violation of law. Had the Commission attempted to obtain these documents in a civil proceeding, it would have had an obligation under Section 9007.1(b)(iii) to "notify the candidate of his or her failure to comply with the agreement and recommend corrective action to bring the candidate into compliance prior to seeking judicial intervention." No less should be required when the Commission seeks to charge a committee with a violation of law.

For these reasons, therefore, we have probable cause to believe that no violation of Section 9003.5(c) should be found to exist.

Respectfully submitted,

REAGAN-BUSH '84 AND
ANGELA M. BUCHANAN JACKSON

By _____
John J. Duffy

PIPER & MARBURY
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-3938

December 13, 1988

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WASHINGTON, D.C. 20463

SENSITIVE
EXECUTIVE SESSION

February 27, 1989

MAR 07 1989

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: General Counsel's Report in MUR 2415

On February 24, 1989, this Office submitted to the Commission a General Counsel's Report in MUR 2415 which we hereby withdraw for corrections. Attached is a new report for Commission consideration.

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BEFORE THE FEDERAL ELECTION COMMISSION

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| In the Matter of | ) | |
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| Reagan-Bush '84 (General Election Committee ) | ) | MUR 2415 |
| | ) | |
| Angela M. Buchanan-Jackson, as treasurer | ) | |
| | ) | |

SENSITIVE
EXECUTIVE SESSION
MAR 07 1989

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 23, 1988, the Commission found reason to believe that Reagan-Bush '84 (General Election Committee) ("the Committee") and Angela M. Buchanan-Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5(c) by failing to obtain and retain records related to contracts for voter identification and get-out-the-vote ("GOTV") services during the 1984 presidential campaign. Following receipt of the response to the reason to believe determination submitted by counsel for respondents, an investigation ensued. This Office prepared a brief addressing the factual and legal issues involved in this matter which was mailed to respondents on June 8, 1988. Counsel requested an extension of time within which to respond to the General Counsel's Brief. This request was granted, and respondents' reply brief was received on July 27, 1988. A supplemental brief was mailed to respondents on November 22, 1988, and a supplemental reply brief was received on December 13, 1988.

II. ANALYSIS

A. 26 U.S.C. § 9003(a)

The Commission is referred to the General Counsel's Brief and Supplemental Brief which are incorporated by reference into

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this report. In his reply brief counsel raises a number of defenses to the alleged violation of 26 U.S.C. 9003(a) which can be broadly categorized as (1) the Committee's lack of obligation to obtain and/or retain certain records and (2) the Commission's assertedly incorrect reliance upon 26 U.S.C. § 9003(a) as the statute violated by the Committee's failure to produce documents during an audit. In the first instance counsel argues that the Committee had no obligation to obtain or retain copies of telephone scripts, or records of the separate bank accounts established by vendors pursuant to contracts with the Committee and other participants, or copies of GOTV mailings, because these specific types of documents are not among those listed at 11 C.F.R. § 9003.5 as required to be obtained and/or retained by presidential committees in support of their expenditures of public funds. It is asserted that while the Committee included in its contracts with vendors requirements pertaining to script approval, separate bank accounts, and the Committee's rights of review and audit, the Committee never intended to enforce those requirements in all instances. Further, counsel states that the Committee did not need this documentation to "establish" that the expenditures were qualified campaign expenses; the documentation expressly required by 11 C.F.R. § 9003.5 was enough.

Counsel's reading of the Commission's regulations ignores the requirement at 11 C.F.R. § 9003.1(b)(4) that committees "keep and furnish to the Commission all documents relating to receipts and disbursements including . . . all documentation required by this subchapter <u>including</u> those required to be maintained under

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11 C.F.R. § 9003.5, and other information the Commission may request. (Emphasis added.) The Commission's requests need not be limited, therefore, to the specific kinds of documentation cited at 11 C.F.R. § 9003.5. Rather, in keeping with the Commission's mandate at 26 U.S.C. § 9007(a) and 11 C.F.R. § 9007.1(a) to conduct a thorough examination and audit of the qualified campaign expenses of candidates of each political party for President and Vice President, and with the burden upon such candidates imposed by 11 C.F.R. § 9003.5(a) to prove the qualified nature of campaign expenses, the Commission has both the right and the responsibility to require the production of documents which it needs to evaluate a committee's assertions that its disbursements constituted qualified campaign expenditures. This right and this responsibility exist whether or not the specific categories of documents needed are listed at 11 C.F.R. § 9003.5(b) and (c), and whether or not a committee itself at the time a program was carried out viewed such documents as essential and thus required its vendors to provide them. The fact that the disbursements audited in the present matter consisted solely of public funds enhances the Commission's position in this regard.

Counsel further argues that the Interim Audit Report "recommended" that the Committee provide additional documentation regarding the allocation of voter identification and GOTV expenditures, and outlined what those documents "should" include. Later, counsel states, the Final Report confirmed that the Comittee had met its burden of showing that the voter

0 0 0 4 0 7 6 5 3 0 3

registration and GOTV expenditures were qualified campaign expenses. Counsel does acknowledge that the Final Report stated that a matter had been referred to the Office of the General Counsel, that matter being the one here at issue.

Counsel's argument regarding the language used in the Interim Audit Report ignores the point that what was being sought by the Commission was documentation which would permit the Audit Division to support a recommendation concerning the validity or non-validity of the allocation of VIP and GOTV expenditures among the candidates benefited. The documentation provided by the Committee was deemed insufficient because it did not establish the identities of all candidates benefited, nor did it establish whether or not other sources of income had been used to make the expenditures. The documentation requested was viewed by the Audit Division as the most likely to provide the evidence needed. If the Committee had offered alternative documentation providing the same information, that documentation might well have been sufficient. But the Committee chose to rely solely upon the insufficient evidence which it had already produced.

Regarding the Final Audit Report issued by the Commission, counsel in the reply brief apparently interprets the silence in the repayment section on the issue of VIP and GOTV expenditures as meaning that those expenditures had been deemed qualified. This reading ignores the meaning of the referral of the documentation issue to the Office of the General Counsel. By this referral, the Commission took the issue of the VIP and GOTV expenditures out of the audit; thus, the determination in the

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Final Report that no repayment was required did not include a determination as to the VIP and GOTV expenditures one way or the other.

Counsel's additional line of defense involves interpretation of 26 U.S.C. § 9003(a) and the applicability of enforcement under 2 U.S.C. § 437g. Counsel argues that Section 9003(a) only requires a candidate to agree to obtain and retain records, that his or her obligation under this provision is fulfilled when such an agreement is executed, and that failure to meet the requirements of this agreement must be pursued by the Commission as a breach of the candidate agreement, not as a violation of Section 9003(a). Counsel further argues that since the candidate agreement "is not a part of the Act or of the Fund Act," the Commission cannot pursue a violation of such an agreement through an enforcement action pursuant to 2 U.S.C. § 437g. Rather, counsel asserts that the candidate agreements "are enforceable in civil actions for declaratory and injunctive relief," and cites 11 C.F.R. § 9007.1(b)(iii).

Section 9007.1(b)(iii) states that the Commission may seek judicial intervention pursuant to 26 U.S.C. § 9010(c) if a candidate or his committee fails to provide committee records during an audit. This is, however, certainly not the only recourse open to the Commission. 26 U.S.C. § 9003(a)(1) and (2) require that presidential candidates "agree to keep and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates;" and "agree to keep and furnish to the Commission such records, books, and other

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information as it may request." This provision was not intended by Congress to be a sterile one requiring only that a candidate enter into an agreement to provide records and documents, but providing no way for the Commission to enforce that agreement except through judicial intervention. Rather, this statute was meant to be effective, creating for candidates desirous of receiving public funds the obligation and responsibility for accounting for their use of those funds in ways to be established by the Commission.

Section 9003(a) requires that candidates agree to obtain and furnish to the Commission evidence, and to keep and furnish records, books and other information, both as requested by the Commission. No reference is made to the need for subpoenas, orders, or other forms of discovery; certainly there is no requirement for an injunction or declaratory judgement. The Commission has the right under this provision to be furnished with records and other documents as requested; the candidate and his or her authorized commmittee are given no parallel right to resist. 1/

---

1/ The authority of federal agencies to obtain information in order to fulfill their statutory responsibilities depends upon the authority conferred by statute. This authority may well not depend upon the enforcability of a subpoena or upon other judicial process. See Link v. NLRB, 330 F.2d 437, 439 (4th Cir. 1964); NLRB v. Lewis, 310 F.2d 364, 366 (7th Cir. 1962). In the present instance the Commission's rights are even stronger because they involve the application of candidates for public funds for the certification of which the Commission is responsible.

00040765311

Based on the foregoing, this Office recommends that the Commission find probable cause to believe that Reagan-Bush '84 and Angela M. Buchanan-Jackson, as treasurer, violated 2 U.S.C. § 9003(a).

b. 11 C.F.R. § 9003.5(c)

The Commission also found reason to believe that the Committee had violated 11 C.F.R. § 9003.5(c) by failing to retain for three years the documents deemed necessary for a determination of the qualified nature of expenditures related to the GOTV and VIP programs cited above. Counsel for respondents in his supplemental reply brief argues that Section 9003.5(c) only requires that a committee retain those records already in its possession and that the only records required to be retained are those listed at 11 C.F.R. 9003.5(b). Counsel further argues that by furnishing the records required by Section 9003.5(b), the Committee has satisfied the burden of proof imposed by 11 C.F.R. § 9003.5(a), and that by retaining its own financial records and those from third parties required by 2 U.S.C. § 9003.5(b), it has satisfied the requirements of 2 U.S.C. § 9003.5(c). Counsel states that if documents outside the scope of Section 9003.5(b) were required by the Commission in order to verify the qualified nature of the VIP and GOTV expenditures, recourse should have been made to other "mechanisms" such as an additional audit and/or issuance of a subpoena or the filing of a civil action pursuant to 2 U.S.C. & 437d or 26 U.S.C. 6 9010(c) for enforcement of the candidate agreement. Finally, counsel argues that it is now unfair to pursue the Committee for failure to

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produce the documents at issue without having given prior notice that such failure "would be construed by the Commission as a violation of law."

There is nothing in the language of 11 C.F.R. § 9003.5(c) which limits its coverage to the Committee's own financial records and to those vendor records specifically itemized at Section 9003.5(b). Section 9003.5(c) in fact expressly goes beyond the categories of documents specified at Section 9003.5(b) in listing "bank records, . . . worksheets, . . . journals, ledgers, fundraising solicitation materials, accounting system documents, and any related materials documenting campaign receipts and disbursements" among the records required to be kept. (Emphasis added.) This regulatory provision was intended to be a broad one aimed at assuring the availability of all records and documents needed by the Commission for audit purposes. The materials to be retained were not to be limited to those required by Section 9003.5(b) or to those already in the Committee's possession at some unspecified point in time. Counsel's references to other mechanisms available to the Commission for obtaining the documents here at issue is an apparent attempt to shift the burden of proof regarding the qualified nature of expenditures from the Committee to the Commission.

This Office recommends that the Commission find probable cause to believe that Reagan-Bush '84 and Angela M. Buchanan-Jackson, as treasurer, violated 11 C.F.R. § 9003.5(c).

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## III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

## IV. RECOMMENDATIONS

1. Find probable cause to believe that Reagan-Bush '84 and Angela M. Buchanan-Jackson, as treasurer, violated 26 U.S.C. § 9003(a).

2. Find probable cause to believe that Reagan-Bush '84 and Angela M. Buchanan-Jackson, as treasurer, violated 11 C.F.R. § 9003.5(c).

3. Approve the attached conciliation agreement and letter.

2/27/89
Date

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation Agreement
2. Letter

Staff Assigned: Anne Weissenborn

00407853 14

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| | ) | |
| Angela M. Buchanan-Jackson, as treasurer | ) | |
| | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of March 9, 1989, do hereby certify that the Commission decided by a vote of 6-0 to reconsider the action taken on March 7, 1989, on the above-captioned matter and place it on the agenda for March 28, 1989.

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

Attest:

3-10-89
Date

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

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| Angela M. Buchanan-Jackson, as treasurer | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 4, 1989, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2415:

1. Find probable cause to believe that Reagan-Bush '84 and Angela M. Buchanan-Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 CFR § 9003.5.

2. Amend the concliation agreement attached to the General Counsel's report dated February 27, 1989, as recommended in Commissioner Josefiak's memorandum dated March 29, 1989, subject to the further amendments agreed to during the meeting discussion.

(continued)

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3. Approve the letter attached to the General Counsel's report dated February 27, 1989, subject to amendment to conform it to the actions noted above.

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

Attest:

4-4-89
Date

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

00040705511

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 10, 1989

John J. Duffy, Esquire
Piper & Marbury
1200 19th Street, N.W.
Washingotn, D.C. 20036

Re: MUR 2415
Reagan-Bush '84 (General
(Election Committee)
Angela M. Buchanan-
Jackson, as treasurer

Dear Mr. Duffy:

On April 5, 1989, the Federal Election Commission found that there is probable cause to believe that your clients, Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan-Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5 in connection with their failure to produce upon request evidence in support of the committee's allocations of costs incurred pursuant to the voter registration and get-out-the vote contracts entered into with corporate vendors and with state and local party committees in twenty-seven states in 1984.

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

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

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 Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

00040785319

060 2605

PIPER & MARBURY
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-861-3900
TELECOPIER 202-223-2085
CABLE PIPERMAR WSH
TELEX 904246

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL COPY ROOM
89 APR 28 PM 2:34

JOHN J. DUFFY
DIRECT DIAL NUMBER
202 861-3938

1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301-539-2530

April 28, 1989

89 MAY -1 PM 2:36

Anne Weissenborn, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2415
Reagan-Bush '84 (General Election Committee) and
Angela M. Buchanan-Jackson, as treasurer

Dear Anne:

We have received Larry Noble's letter dated April 10, 1989, indicating that the Federal Election Commission has found probable cause to believe that Reagan-Bush '84 (General Election Committee) and Angela M. Buchanan-Jackson, as treasurer, have violated 26 U.S.C. §9003(a) and 11 C.F.R. §9003.5.

Our client is considering the conciliation agreement, and intends to respond by May 15, 1989. If, for some reason, this is not satisfactory to you, please give me a call.

Sincerely,

John J. Duffy

JJD:dp

00040765320

OGC 3493

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

89 JUL 20 PM 5:31

July 20, 1989

MUR 2415

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

Dear Sir or Madam:

Please amend your records to reflect that I have resigned as Treasurer of Reagan-Bush '84, Reagan-Bush '84 General Election Committee, and Reagan-Bush '84 Compliance Fund. Scott B. Mackenzie replaces me as the Treasurer of these three committees.

Please address any questions concerning this matter to John J. Duffy, Esq., Piper & Marbury, 1200 19th Street, N.W., Washington, D.C. 20036 (202) 861-3938.

Sincerely,

Angela M. Buchanan

Angela M. Buchanan

cc: Anne Weissenborn, Esq.

00049785321

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 AUG 16 PM 3:44

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 2415 |
| Reagan-Bush '84 (General | ) | |
| Election Committee) | ) | |
| Scott B. Mackenzie, as treasurer | ) | |

SENSITIVE

EXECUTIVE SESSION

AUG 22 1989

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 5, 1989, the Commission found probable cause to believe that Reagan-Bush '84 (General Election Committee) and its treasurer had violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5(c).

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## III. EXTENSION OF CONCILIATION PERIOD

## RECOMMENDATION TO AUTHORIZE FILING OF CIVIL ACTION

The ninety-day period of time permitted for reaching a conciliation agreement following a finding of probable cause to believe has expired. Because there is yet a possibility that an agreement can be reached, this Office recommends that the Commission extend conciliation for a period of fifteen days

Because there is also a strong liklihood that an agreement will not be reached within that time frame, this Office also recommends that the Commission authorize this Office to file a civil suit in United States District Court if an agreement is not reached in the time allotted.

## IV. RECOMMENDATIONS

1

2. Extend the conciliation period in this matter for fifteen days

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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 Reagan-Bush '84 and Scott B. Mackenzie, as treasurer, in the event conciliation is not achieved within the time frame set out in Recommendation 2.

4. Approved attached letter.

8/16/89
Date

Lawrence M. Noble
General Counsel

Attachments
1. Letter from John J. Duffy dated July 7, 1989
2. Proposed letter

Staff Assigned: Anne A. Weissenborn

00407853325

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| Scott B. Mackenzie, as treasurer | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of August 22, 1989, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2415:

1.

2. Extend the conciliation period in this matter for thirty days

3.

(continued)

00004076532

4. Take no action at this time with respect to the General Counsel's recommendation to authorize the filing of a civil suit in this matter.

5. Direct the Office of General Counsel to send an appropriate letter pursuant to the actions noted above and the discussion held in the meeting.

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

Attest:

8-23-89
Date

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

00407653227

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1989

John J. Duffy, Esquire
Piper & Marbury
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan-Bush '84
(General Election Committee)
Scott B. Mackenzie,
as treasurer

Dear Mr. Duffy:

The Commission is still hopeful that this matter can be settled through a conciliation agreement. In light, however, of the statute's mandatory 90 day limit on conciliation, the Commission has determined to extend the conciliation period for a maximum of 30 days after your receipt of this letter.

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

Sincerely,

Lawrence M. Noble
General Counsel

90040765328

OGC 4210

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

89 OCT -6 AM 10:39

PIPER & MARBURY
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-861-3900
TELECOPIER 202-223-2085
CABLE PIPERMAR WSH
TELEX 904246

1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301-539-2530

WRITER'S DIRECT NUMBER

861-3974

October 5, 1989

MUR 2415

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

89 OCT -6 PM 1:38

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

Dear Mr. Noble:

Pursuant to my conversation last week with Anne Weissenborn, I am writing this letter to formally notify you that John J. Duffy is in the hospital. It is anticipated that Mr. Duffy will be in the hospital at least two more weeks and will then be at home for a month. Please keep this in mind in the proceedings which concern Mr. Duffy.

If you have any questions, please call me at 861-3974.

Sincerely,

Jennifer L. Lewis

Jennifer L. Lewis
Legal Assistant to
John J. Duffy

JLL:sf

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

EXECUTIVE SESSION
APR 3 1990

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| Scott B. Mackenzie, as treasurer | ) | |

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 4, 1989, the Commission found probable cause to believe that Reagan-Bush '84 and Angela M. Buchanan Jackson, as treasurer, violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5.

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## II. RECOMMENDATIONS

1.

2.

3. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against Reagan-Bush '84 and Scott B. Mackenzie, as treasurer, if respondents do not sign the proposed conciliation agreement within five days of receipt.

4. Approve attached letter and conciliation agreement.

3/22/90
Date

Lawrence M. Noble
General Counsel

Attachment
1.
2.
3. Letter to counsel
4.

Staff Member: Anne Weissenborn

90040785337

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 2415 |
| Reagan-Bush '84 (General Election Committee) and Scott B. Mackenzie, as treasurer | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 3, 1990, do hereby certify that the Commission decided by a vote of 6-0 to reject the recommendations contained in the General Counsel's March 22, 1990 report, and instead take the following actions in MUR 2415:

1.

2. Direct the General Counsel to send an appropriate letter pursuant to the foregoing action.

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

Attest:

4-5-90
Date

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

00040765336

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 10, 1990

John G. Duffy, Esquire
Piper & Marbury
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan Bush '84 (General Election Committee)
Scott B. Mackenzie, as treasurer

Dear Mr. Duffy:

Enclosed is the agreement approved by the Commission. We ask that this agreement be signed and returned to this Office within five days of receipt. If the signed agreement is not received within that period, this Office will make further recommendations to the Commission.

If you have any questions, please contact Anne A. Weissenborn, the Assistant General Counsel assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

00040765339

OGC 5949

RECEIVED
FEDERAL ELECTION COMMISSION

90 APR 17 AM 10: 11

PIPER & MARBURY
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-861-3900
TELECOPIER 202-223-2085
CABLE PIPERMAR WSH
TELEX 904246

HAND DELIVERED

1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301-539-2530

JOHN J. DUFFY
DIRECT DIAL NUMBER
202-861-3938

April 16, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 APR 17 PM 3: 39

**BY HAND**

Anne Weissenborn, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Dear Anne:

As promised, I enclose the signed original Conciliation Agreement in MUR 2415.

Sincerely,

John J. Duffy

JJD:sf
Enclosure

00040785340

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 APR 19 PM 4:34

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| | ) | |
| Scott B. Mackenzie, as treasurer | ) | |

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Scott B. Mackenzie, the treasurer of Reagan-Bush '84 (General Election Committee).

The attached agreement contains no changes from the agreement approved by the Commission on April 3, 1990. A check for the civil penalty has not been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Reagan-Bush '84 (General Election Committee) and Scott B. Mackenzie, as treasurer.

2. Close the file.

3. Approve the attached letter.

4/19/90
Date

Lawrence M. Noble
General Counsel

Attachments

1. Conciliation Agreement
2. Letter to counsel

Staff Assigned: Anne Weissenborn

9004076534 1

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Reagan-Bush '84 (General Election Committee) | ) | MUR 2415 |
| | ) | |
| Scott B. Mackenzie, as treasurer | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 24, 1990, the Commission decided by a vote of 4-0 to take the following actions in MUR 2415:

1. Accept the conciliation agreement with Reagan-Bush '84 (General Election Committee) and Scott B. Mackenzie, as treasurer, as recommended in the General Counsel's Report dated April 19, 1990.

2. Close the file.

3. Approve the letter, as recommended in the General Counsel's Report dated April 19, 1990.

Commissioners Elliott, Josefiak, McGarry and Thomas voted affirmatively for the decision; Commissioners Aikens and McDonald did not cast votes.

Attest:

April 24, 1990
Date

Hilda Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., April 19, 1990 4:34 p.m.
Circulated to the Commission: Fri., April 20, 1990 12:00 p.m.
Deadline for vote: Tues., April 24, 1990 4:00 p.m.

9004076534 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 1990

CLOSED

John J. Duffy, Esquire
Piper & Marbury
1200 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: MUR 2415
Reagan-Bush '84 (General Election Committee)
Scott B. Mackenzie, as treasurer

Dear Mr. Duffy:

On April 24, 1990, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of a violation of 11 C.F.R. § 9003.5(c). Accordingly, the file has been closed in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Anne A. Weissenborn, the assistant general counsel assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

9004076534 3

**BEFORE THE FEDERAL ELECTION COMMISSION**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 2415 |
| Reagan-Bush '84 (General | ) | |
| Election Committee) | ) | |
| Scott B. Mackenzie, as treasurer | ) | |

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that Reagan-Bush '84 (General Election Committee) and its treasurer ("Respondents") violated 26 U.S.C. § 9003(a) and 11 C.F.R. § 9003.5.

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

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

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

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

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

1. Reagan-Bush '84 (General Election Committee) is a political committee within the meaning of 2 U.S.C. § 431(4).

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2. Reagan-Bush '84 (General Election Committee) was the principal campaign committee of Ronald Reagan and George Bush during the 1984 presidential election campaign.

3. Scott B. Mackenzie is the treasurer of Reagan-Bush '84 (General Election Committee).

4. In 1984 Reagan-Bush '84 (General Election Committee) entered into contracts for voter identification and get-out-the-vote services with thirty-nine vendors in twenty-seven States. Some of these vendors were commercial organizations; some were State or local party committees. Certain of the contracts provided that the cost of the voter identification and get-out-the-vote services would be shared with Senatorial and/or Congressional candidate committees, and/or with State party committees or the Republican National Committee.

5. 26 U.S.C. § 9002(11)(A)(ii) defines "qualified campaign expenses" to include expenses incurred by the authorized committee of the candidate of a political party for the Office of President or Vice-President to further the election of either or both such candidates to such offices.

6. 11 C.F.R. § 9003.5(a) places on each candidate the burden of proving that disbursements are qualified campaign expenses.

7. 26 U.S.C. § 9002(11) provides that, if the authorized committee of a candidate also incurs expenses to further the election of one or more other individuals to Federal, State or local office, such expenses which do not specifically further the

election of another individual shall be considered to further the election of the candidates for President and Vice-President in proportions to be determined by the Commission's regulations.

8. During the 1983-84 election cycle, 11 C.F.R. § 9002(11)(b)(3) provided that any expenditure incurred by a candidate or an authorized committee of the candidate to further the election of any other individual to a Federal, State or local office would be a qualified campaign expense to the extent that such expenditure was to further the candidate's own campaign for election. Expenditures incurred specifically to further the election of other individuals were not to be considered qualified campaign expenses.

9. 11 C.F.R. § 106.1(a) provides that expenditures made on behalf of more than one candidate are to be attributed to each candidate in proportion "to the benefit reasonably expected to be derived."

10. 11 C.F.R. § 9003.5(c) requires candidates to retain records with respect to each disbursement and receipt for a period of three years and to present such records to the Commission upon request.

11. 26 U.S.C. § 9007(a) requires the Commission to conduct "a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice-President."

12. The Commission conducted an examination and audit of the books and records of Reagan-Bush '84 (General Election Committee) pursuant to 26 U.S.C. § 9007.

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13. Part of the examination and audit involved confirmation that the costs of the voter identification and get-out-the-vote programs shared with other committees had been properly allocated. For this purpose, the Interim Audit Report recommended that the Committee furnish additional documentation which would verify that these programs' allocated costs were qualified campaign expenses.

14. The Committee did not furnish the additional documentation with regard to the allocation of the costs of the voter identification and get-out-the-vote programs.

V. By failing to retain and furnish some of the additional documentation requested, Reagan-Bush '84 (General Election Committee) and Scott B. Mackenzie, as treasurer, violated 11 C.F.R. § 9003.5(c).

VI. Reagan-Bush '84 will pay a civil penalty to the Federal Election Commission in the amount of Two Thousand Five Hundred Dollars ($2,500.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

IX. Reagan-Bush '84 shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

Date 4/26/90

FOR THE RESPONDENTS:

Scott B. Mackenzie
Treasurer

Date 4/12/90

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2415

DATE FILMED 6/1/90 CAMERA NO. 4

CAMERAMAN AS

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 2415.

90040791332

OGC 6336

PIPER & MARBURY
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-861-3900
TELECOPIER 202-223-2085
CABLE PIPERMAR WSH
TELEX 904246

CLOSED

JOHN J. DUFFY
DIRECT DIAL NUMBER
202-861-3938

1100 CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
301-539-2530

May 25, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 25 PM 4:14

9004079133 5

Hand Delivered

Anne Weissenborn, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: MUR 2415
Reagan-Bush '84 (General Election Committee)
and Scott B. Mackenzie, as treasurer

Dear Anne:

I enclose, on behalf of Reagan-Bush '84 (General Election Committee) and Scott B. Mackenzie, as treasurer, this firm's check in the amount of $2,500 as payment of the civil penalty in the above-referenced MUR.

Sincerely,

John J. Duffy

JJD:dp
Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 25, 1990

**TWO WAY MEMORANDUM**

**TO:** Fabrae Brunson
OGC, Docket

**FROM:** Richard Pullen RP
Accounting Officer

**SUBJECt:** Account Determination for Funds Received

We recently received a check from Bigger & Marbury, check number 5938, dated May 25 1990, and in the amount of $2,500.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

==========

TO: Richard Pullen
Accounting Officer

FROM: Fabrae Brunson
OGC, Docket

In reference to the above check in the amount of $2500, the MUR number is 3415 and in the name of Reagan-Bush '84. The account into which it should be deposited is indicated below:

__ Budget Clearing Account (OGC), 95F3875.16

/ Civil Penalties Account, 95-1099.160

__ Other: _____

Fabrae Brunson
Signature

5/25/90
Date

00040791334

PIPER & MARBURY 8-87
1200 19TH STREET N.W.
WASHINGTON, DC 20036
(202) 861-3900

PALMER NATIONAL BANK
1667 K ST., NW.
WASHINGTON, DC 20006
15-155/540 01

5938

DATE
5/25/90

AMOUNT
$2,500.00

PAY TO THE ORDER OF: Two Thousand Five Hundred and 00/100 Dollars

Federal Election Commission

MUR 2415

⑈005938⑈ ⑆054001550⑆ 02013339⑈

Carol A. Potter