FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2464

DATE FILMED 9/9/88 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 6, 1986

**MEMORANDUM**

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (UNREGISTERED)

This is a referral of the American Society of Composers, Authors and Publishers ("ASCAP") for failing to register and report as a political committee. During calendar year 1985, ASCAP made contributions to eleven (11) federal candidate committees totalling $6,900 of which ASCAP was notified. It also appears that ASCAP made these contributions to federal candidates from general treasury funds in apparent violation of 2 U.S.C. §441b(a).

Please note that nine (9) additional contributions totalling $9,600 made by ASCAP to seven (7) federal candidate committees and one (1) federal political committee in 1985 and 1986 were discovered subsequent to sending ASCAP notification of its registration and reporting obligations. These contributions are:

| | | |
|---|---|---|
| Congressman Bart Gordon Committee | 8/01/85 | $ 500 |
| Congressman Bruce Morrison Re-Election Committee | 1/24/86 | $1,000 |
| Leahy for U.S. Senate Committee | 2/05/86 | $1,000 |
| Dingell for Congress Committee | 2/28/86 | $1,000 |
| Congressman Bart Gordon Committee | 3/12/86 | $1,000 |
| Campaign America | 3/21/86 | $2,000 |
| Committee to Re-Elect Jack Brooks | 3/24/86 | $ 600 |

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| | | |
|---|---|---|
| Committee to Re-Elect Jack Brooks | 3/24/86 | $1,000 |
| Gephardt In Congress Committee | 3/24/86 | $1,000 |
| Committee for Tim Wirth, Inc. (S) | 3/26/86 | $ 500 |

For your information, none of the recipient committees meet the threshold for referral to your office.

If you have any questions on this matter, please contact Tamara K. Rollins at 376-2480.

Attachment

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# REPORTS ANALYSIS REFERRAL

# TO

# OFFICE OF GENERAL COUNSEL

DATE: June 6, 1986

ANALYST: Tamara K. Rollins

I. COMMITTEE: American Society of Composers, Authors and Publishers (Unregistered)
Roger M. Witten and
Deborah M. Levy, Counsel
One Lincoln Plaza
New York, NY 10023

II. RELEVANT STATUTE: 2 U.S.C. §§433(a), 434(a) and 441b(a)
11 CFR 102.1(d), 104 and 114.2

III. BACKGROUND:

Failure to Register and Report as a Political Committee Contributions Apparently Made From an Account Containing Impermissible Funds

The American Society of Composers, Authors and Publishers ("ASCAP") contributed a total of $6,900 to eleven (11) federal candidate committees during calendar year 1985 (see Chart and Attachment 1).

Based upon this activity, a notice was sent to ASCAP on March 21, 1986 regarding possible registration and reporting obligations (Attachment 2). The notice also presented the following alternatives to registering and filing reports: ASCAP could obtain full refunds of the amounts contributed or direct the recipient candidate committees to transfer the funds to an account not used to influence federal elections. The notice further advised ASCAP that the latter methods should be followed if the contributions were made from an account containing impermissible funds.

Mr. Roger Witten, counsel for ASCAP, contacted the Reports Analysis Division ("RAD") analyst by phone on March 21, 1986 (Attachment 3). Mr. Witten stated his belief that ASCAP was defined as a "person" under the Act and therefore was legally entitled to contribute $1,000 per candidate, per election without having to register and report as a political committee. The RAD analyst stated that ASCAP appeared to receive money and use that money to contribute to federal candidates, and therefore qualified as a political committee. Mr. Witten then began to discuss partnerships and stated that partnerships are not considered to be political committees. The RAD analyst responded that contributions made by partnerships also count against the contribution limitations of the participating partners.

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Since ASCAP was not a partnership, this area of the Act did not apply. Mr. Witten requested that the RAD analyst send him a copy of the notice that was sent to ASCAP so he would not have to wait for the letter to be forwarded from ASCAP. The RAD analyst sent Mr. Witten a copy of the notice the following week.

On April 2, 1986, Ms. Deborah Levy, counsel for ASCAP, called the RAD analyst and stated that she believed that ASCAP is a "person" under the Act. The RAD analyst read to her the definition of a "political committee" found at 2 U.S.C. §431(4)(A). Ms. Levy stated that this was a misinterpretation of the law because the RAD analyst had not gone further in the Act to read the definition of a "person." Ms. Levy proceeded to explain the nature of ASCAP's organization. She stated that ASCAP is an association for entertainers that collects royalties for performers when their music is played on jukeboxes, radios, etc. She further stated that ASCAP receives millions of dollars from these types of activities. The RAD analyst asked Ms. Levy whether ASCAP's account contained any money from corporate sources. Ms. Levy stated that the royalties that ASCAP received were from corporate entities and that ASCAP contributes from its treasury funds. The RAD analyst advised Ms. Levy to instruct ASCAP to either register and report as a political committee or receive full contribution refunds (Attachment 4).

Later that day, Ms. Levy contacted Ms. Lisa Stolaruk, Chief of the Party/Non-Party Branch (Attachment 5). Ms. Levy reiterated the points raised in the previous phone conversation and again stated her belief that ASCAP did not qualify as a political committee. Ms. Stolaruk recommemded that ASCAP either register and report or request refunds from the candidate committees. She further advised Ms. Levy that ASCAP submit a written response as soon as possible.

ASCAP failed to respond in writing to the March 21, 1986 notice; therefore a Second Notice was mailed on April 10, 1986 (Attachment 6).

On April 16, 1986, the Commission received a response from Ms. Levy, which stated their intention to submit a response no later than May 2, 1986 (Attachment 7).

On April 30, 1986, the Commission received a written response from Ms. Levy and Mr. Witten (Attachment 8), which stated the following:

> "...our view is that ASCAP is not a "political committee" and need not register or file reports as a political committee with the Commission. Rather, as an unincorporated business entity which receives no political contributions, ASCAP is a

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"person" entitled to use its treasury funds to make contributions and expenditures on behalf of federal candidates and political committees."

No further responses have been received by the Commission.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

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## CHART

## CONTRIBUTONS BY ASCAP

| Name of Federal Candidate Committee | Date Received | Amount |
|---|---|---|
| Citizens for Rodino | 3/25/85 | $1,000 |
| Committee to Re-Elect Jack Brooks | 5/24/85 | $ 400 |
| Friends of Ham Fish, Jr. | 7/02/85 | $ 750 |
| Congressman Bruce A. Morrison Re-Election Committee | 7/02/85 | $ 500 |
| Moorhead for Congress Committee | 8/09/85 | $1,000 |
| Henry J. Hyde for Congress Committee | 10/11/85 | $ 250 |
| Don Edwards Congressional Campaign Fund | 11/04/85 | $ 500 |
| Bill Gray for Congress 1986 Campaign | 11/22/85 | $ 500 |
| Berman for Congress | 12/20/85 | $1,000 |
| Rinaldo for Congress Committee | 12/24/85 | $ 500 |
| Committee for Tim Wirth, Inc. (H) | 12/31/85 | $ 500 |

SCHEDULE A

ITEMIZED RECEIPTS



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

Name of Committee (In Full)
CITIZENS FOR RODINO

1985 Mid-Year Report

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. POWELL, GOLDSTEIN, FRAZER & MURPHY<br>Citizens & Southern Nat. Bk. Bldg.<br>Atlanta, Georgia 20006<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 500.00 | 01/23/85 | 500.00 |
| B. O'CONNOR & HANNON<br>1919 Pennsylvania Ave. NW<br>Suite 800<br>Washington, D.C. 20006<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 500.00 | 01/23/85 | 500.00 |
| C. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS<br>One Lincoln Plaza<br>New York, New York 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 1,000.00 | 03/25/85 | 1,000.00 |
| D. Receipt For: ☐ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ | | |
| E. Receipt For: ☐ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ | | |
| F. Receipt For: ☐ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ | | |
| G. Receipt For: ☐ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ | | |
| SUBTOTAL of Receipts This Page (optional) | | | 2,000.00 |
| TOTAL This Period (last page this line number only) | | | 2,000.00 |

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SCHEDULE A

ITEMIZED RECEIPTS

Attachment #1, Page 2 of 11

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

Name of Committee (In Full)
Committee to Re-Elect Jack Brooks

1985 Mid-Year Report

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. William H. Allen<br>13509 Brightfield Lane<br>Herndon, VA 22071<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Parsons, Brinckerhoff, Quade & Douglas, Inc.<br>Occupation: consulting engineer<br>Aggregate Year-to-Date-$400. | 5-15-85 | 400.00 |
| B. American Society of Composers, Authors and Publishers<br>One Lincoln Plaza<br>New York, NY 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | an unincorporated membership organization<br>Occupation:<br>Aggregate Year-to-Date-$400. | 5-24-85 | 400.00 |
| C. Donald W. Banner<br>6800 Fleetwood Road<br>McLean, VA 22101<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Intellectual Property Owners, Inc.<br>Occupation: President<br>Aggregate Year-to-Date-$250. | 5-24-85 | 250.00 |
| D. Thomas Hale Boggs, Jr.<br>2550 M Street, N.W.<br>Washington, D.C. 20037<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Patton, Boggs & Blow<br>Occupation: Attorney/ Partner<br>Aggregate Year-to-Date-$400. | 5-15-85 | 400.00 |
| E. John E. Bouchard<br>2522 S. Arlington Mill Drive<br>Arlington, VA 22206<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Moller Steamship Co Maersk Agency<br>Occupation: General Manager<br>Aggregate Year-to-Date-$400. | 5-15-85 | 400.00 |
| F. Lee C. Bramlette, Jr.<br>1201 S. Courthouse Rd., Apt.810<br>Arlington, VA 22204<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Honeywell<br>Occupation: Gov't Relations Rep<br>Aggregate Year-to-Date-$400. | 5-15-85 | 400.00 |
| G. Thomas C. Cain<br>8921 Burdette Road<br>Bethesda, MD 20034<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | National Computer-graphics Assoc.<br>Occupation: President<br>Aggregate Year-to-Date-$800. | 5-15-85 | 800.00 |
| SUBTOTAL of Receipts This Page (optional) | | | |
| TOTAL This Period (last page this line number only) | | | |

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SCHEDULE A

# ITEMIZED RECEIPTS

Attachment #1, Page 3 of 11

Page 1 of 11 for Schedules A, B
Also complete appropriate total for each category of the Detailed Summary Page

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

Name of Committee (In Full): Friends of Hank Fish Jr.

1985 Year-End Report

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. Arthur F. [illegible] Sherwood Leland Ave Apt 19 St Louis, Mo 63108 | | 7-17-85 | 300.00 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 300 | | |
| B. Full Name, Mailing Address and ZIP Code: Alpha Effective Leg Assn Washington DC | | 8-5-85 | 600 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 600 | | |
| C. Full Name, Mailing Address and ZIP Code: Allstate Ins Co. Inc Allstate Plaza Northbrook, Ill 60062 | | 9-10-85 | 300 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 300 | | |
| D. Full Name, Mailing Address and ZIP Code: American Chiropractic Assn Inc 1916 Wilson Blvd Arlington, Va 22201 | | 7-25-85 | 300 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 300 | | |
| E. Full Name, Mailing Address and ZIP Code: American Security Council Inc Box 8 Boston, Va 22713 | | 7-2-85 | 300 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 300 | | |
| F. Full Name, Mailing Address and ZIP Code: American Society of Composers Authors & Publishers 1 Lincoln Plaza New York 10023 | | 7-2-85 | 750 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 750 | | |
| G. Full Name, Mailing Address and ZIP Code: AMPAC 7535 E. Fulton Rd Ada, Mich 49355 | | 10-21-85 | 750 |
| Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date—$ 750 | | |
| SUBTOTAL of Receipts This Page (optional) | | | 2800 |
| TOTAL This Period (last page this line number only) | | | |

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SCHEDULE A

ITEMIZED RECEIPTS



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Name of Committee (In Full): Cong. Bruce A. Morrison Re-Election Committee

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| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. Freedom Savings & Loan Association, Mr. Louis Fabrizio, One Church Street, New Haven, CT 06510 | 1985 Year-End Report | 7/2/85 | 500.00 |
| Receipt For: ☐ Primary ☐ General 1984 ☐ Other (specify): DEBT RETIREMENT | Aggregate Year-to-Date $ 500.00 | | |
| B. Political Action for Livable Action, Suite 850, 1411 K St NW, Washington DC 20005 | | 12/26/85 | 500.00 |
| Receipt For: ☐ Primary ☐ General ☐ Other (specify): CONVENTION 1986 | Aggregate Year-to-Date $ 500.00 | | |
| C. CAMPAC, INFORMATION REQUESTED | | 6/5/85 | 250.00 |
| Receipt For: ☐ Primary ☐ General 1984 ☐ Other (specify): DEBT RETIREMENT | Aggregate Year-to-Date $ 250.00 | | |
| D. CBT - PAC, One Constitution Plaza, Hartford CT 06115 | | 4/30/85 | 200.00 |
| Receipt For: ☐ Primary ☐ General 1984 ☐ Other (specify): DEBT RETIREMENT | Aggregate Year-to-Date $ 200.00 | | |
| E. General Mills, Inc PAC, P.O. Box 1113, Minneapolis, MN 55440 | | 11/8/85 | 500.00 |
| Receipt For: ☐ Primary ☐ General 1984 ☐ Other (specify): DEBT RETIREMENT | Aggregate Year-to-Date $ 500.00 | | |
| F. ILGWU Campaign Committee, 1710 Broadway, New York, NY 10019 | | 10/9/85 | 250.00 |
| Receipt For: ☐ Primary ☐ General 1984 ☐ Other (specify): DEBT RETIREMENT | Aggregate Year-to-Date $ 250.00 | | |
| G. Merrill Lynch PAC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006 | | 6/3/85 | 250.00 |
| Receipt For: ☐ Primary ☐ General ☐ Other (specify): DEBT RETIREMENT | Aggregate Year-to-Date $ 250.00 | | |
| SUBTOTAL of Receipts This Page (optional) | | | 2450 |
| TOTAL This Period (last page this line number only) | | | |

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SCHEDULE A

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Name of Committee (In Full)
MOORHEAD FOR CONGRESS



| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. EMPLOYERS PED PAC -DUKE POWER<br>P.O. Box 33189<br>Charlotte, N.C. 28242<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | 1985 Year-End Report<br>Aggregate Year-to-Date-$ 250.00 | 8-9-85 | 250.00 |
| B. NACSA PAC<br>5454 Wisconsin Ave.,<br>Chevy Chase, MD 20815<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 8-9-85 | 250.00 |
| C. CHRYSLER POLITICAL SUPPORT COMM.<br>1100 Connecticut Ave., N.W.<br>Washington, D. C.<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 8-9-85 | 250.00 |
| D. AMERICAN SUGAR BEET GROWERS ASSN PAC<br>1156 15th St., N.W., Ste 1020<br>Washington, D. C.<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 8-9-85 | 250.00 |
| E. ACA PAC<br>1916 Wilson Blvd.<br>Arlington, VA 22201<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 8-9-85 | 250.00 |
| F. THE NATIONAL ASSN OF LIFE UNDERWRITERS PAC<br>1922 F St., N.W.<br>Washington, D. C. 20006<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 2,500.00 | 8-9-85 | 2,500.00 |
| G. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS<br>One Lincoln Plaza<br>New York, N.Y. 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 1,000.00 | 8-9-85 | 1,000.00 |
| SUBTOTAL of Receipts This Page (optional) ..... | | | |
| TOTAL This Period (last page this line number only) ..... | | | |

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SCHEDULE A

# ITEMIZED RECEIPTS



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

Name of Committee (in Full): Henry J. Hyde for Congress Committee — 1985 Year-End Report

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. LTV Steel ACC/Act. Citizenship Camp. LTV Steel Company, LTV Steel Building, 25 W. Prospect Avenue, Cleveland, Ohio 44115 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ [illegible] | 10/8/85 | 250.00 |
| B. CH2M Hill PAC, Inc., 1600 S.W. Western Blvd., P.O. Box 428, Corvallis Oregon 97339 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ [illegible] | 10/10/85 | 250.00 |
| C. Allstate Insurance Company PAC, Allstate Plaza, Northbrook, Il. 60062 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ [illegible] | 10/11/85 | 250.00 |
| D. ASCAP-Am. Soc. of Composers, Authors, and Publishers, One Lincoln Plaza, New York, N.Y. 10023 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 10/11/85 | 250.00 |
| E. IMPAC-Mutual of Omaha Co. PAC, Mutual of Omaha Plaza, Omaha, Neb. 68175 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 10/11/85 | 250.00 |
| F. Norfolk Southern Corp. Tax Eligible Good Gov't Fund(a Vol. Emp. Fund), One Commercial Place, Norfolk, Va. 23510 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 10/11/85 | 250.00 |
| G. Professional Ins. Agents Political Action Committee, 400 N. Washington St., Alexandria, Va. 22314 — Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 250.00 | 10/11/85 | 250.00 |
| SUBTOTAL of Receipts This Page (optional) | | | 1750.00 |
| TOTAL This Period (last page this line number only) | | | |

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SCHEDULE A

ITEMIZED RECEIPTS



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Name of Committee (In Full): JIM EDWARDS CONGRESSIONAL CAMPAIGN FUND

1985 Year-End Report

RG

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| American Society of Composers, Authors & Publishers PAC<br>One Lincoln Plaza<br>New York, NY 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 500.00 | 11/4/85 | 500.00 |
| Beet Sugar PAC<br>1156 15th St. N.W.<br>Washington, DC 20005<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 250.00 | 9/27/85 | 250.00 |
| Brotherhood of Locomotive Engineers Legislative League<br>1128 Engineers Bldg.<br>Cleveland, OH 44114<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 250.00 | 9/20/85 | 250.00 |
| Carpenters Legislative Improvement Committee<br>101 Constitution Ave.<br>Washington, DC 20001<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 1,000.00 | 10/1/85 | 1,000.00 |
| Committee on Letter Carriers PAC<br>100 Indiana Ave. N.W.<br>Washington, DC 20001<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 500.00 | 9/23/85 | 500.00 |
| AFL-CIO Committee on Political Education<br>815 16th St. N.W.<br>Washington, DC 20006<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 250.00 | 9/26/85 | 250.00 |
| Dow, Lohnes & Albertson PAC<br>1255 23rd St. N.W.<br>Washington, DC 20037<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date $ 900.00 | 10/1/85<br>12/2/85 | 400.00<br>500.00 |
| SUBTOTAL of Receipts This Page (optional) | | | 3,650.00 |
| TOTAL This Period (last page this line number only) | | | |

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SCHEDULE A

ITEMIZED RECEIPTS



Page 1 of 24 for [illegible]

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Name of Committee (In Full): BILL GRAY FOR CONGRESS CAMPAIGN

1985 Year-End Report

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. James F. Bodine<br>900 Avenue of Arts Bldg.<br>Phila., PA 19107<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | The Wilson Allaire Partnership<br>Phila., PA 19107<br>Occupation: [illegible]<br>Aggregate Year-to-Date—$ 125.00 | 11/[illegible]/85 | 125.00 |
| B. Stuart E. Eizenstat<br>1110 Vermont Ave., NW<br>Washington, DC 20005<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Powell, Goldstein, Frazer & Murphy<br>Washington, DC 20005<br>Occupation: Lawyer<br>Aggregate Year-to-Date—$ 500.00 | 11/13/85 | 500.00 |
| C. A. B. Kurz<br>1420 Locust St.<br>Phila., PA 19102<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Keystone Shipping Co.<br>313 Chestnut St.<br>Phila., PA<br>Occupation: Businessman<br>Aggregate Year-to-Date—$ 250.00 | 11/13/85 | 250.00 |
| D. George Beach<br>Lewis Tower Bldg.<br>Phila., PA 19102<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: self<br>Occupation: Adv. & P.R. Executive<br>Aggregate Year-to-Date—$ 250.00 | 11/13/85 | 250.00 |
| E. Alan J. Davis<br>12th Fl. Packard Bldg.<br>Phila., PA 19102<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Wolf, Block, Schorr, & Solis-Cohen<br>Phila., PA 19102<br>Occupation: Lawyer<br>Aggregate Year-to-Date—$ 250.00 | 11/13/85 | 250.00 |
| F. William H. Ewing<br>510 E. Mt. Pleasant Ave.<br>Phila, PA 19119<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Self-Employed<br>Occupation: Lawyer<br>Aggregate Year-to-Date—$ 250.00 | 11/13/85 | 250.00 |
| G. American Society of Composers, Authors, and Publishers (For: Hal David)<br>One Lincoln Plaza<br>New York, NY 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: ASCAP<br>New York, NY<br>Occupation: President<br>Aggregate Year-to-Date—$ 500.00 | 11/22/85 | 500.00 |
| SUBTOTAL of Receipts This Page (optional) | | | 2,125.00 |
| TOTAL This Period (last page this line number only) | | | |

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SCHEDULE A

# ITEMIZED RECEIPTS



Name of Committee (in Full)

Berman for Congress

1985 Year-End Report

RG

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. American Socity of Composers, Authors & Publishers<br>One Lincoln Plaza<br>New York, N.Y. 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Non Profit Organization<br>Occupation: Non Profit Organization Female<br>Aggregate Year-to-Date $1,000 | 12/20/85 | $1,000 |
| B. California Lexington Group<br>P.O. Box 807<br>Culver City, Ca. 90232<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Partnership Contribution<br>Occupation:<br>Aggregate Year-to-Date $ [illegible] | 12/20/85 | $500 |
| C. Rosenfin & Siegel<br>6151 Van Nuys Blvd.<br>Van Nuys, Ca. 91401<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Partnership Contribution<br>Occupation:<br>Aggregate Year-to-Date $ [illegible] | 12/20/85 | $500 |
| D. Cadoo, Trethowey, McGinn & Serena<br>4560 S. Admiralty Way, #110<br>Marina Del Rey, Ca. 90292<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Partnership Contribution<br>Occupation:<br>Aggregate Year-to-Date $ [illegible] | 12/20/85 | $500 |
| E. Cooksy, Cooksy & Bonar<br>1100 Glendon Ave., #1150<br>Los Angeles, Ca. 90024<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Partnership Contribution<br>Occupation:<br>Aggregate Year-to-Date $ 250 | 12/20/85 | $250 |
| F. The Blaine Group<br>7465 Beverly Blvd.<br>Los Angeles, Ca. 90036<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Partnership Contribution<br>Occupation:<br>Aggregate Year-to-Date $ 250 | 12/20/85 | $250 |
| G. Leonard Weil<br>4501 La Saren Pl.<br>Tarzana, Ca. 91356<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Name of Employer: Mitsui Manufacturers<br>Occupation: Banker<br>Aggregate Year-to-Date $ 1,000 | 12/31/85 | $1,000 |
| SUBTOTAL of Receipts This Page (optional) ..... | | | $4,500 |
| TOTAL This period (last page this line number only) ..... | | | |

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Page 12 of 14 for
Line Number 11A
(Use separate schedule(s) for each category of the Detailed Summary Page)

SCHEDULE A

ITEMIZED RECEIPTS

Attachment #1, Page 10 of 11

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

Name of Committee (in Full)
RINALDO FOR CONGRESS COMMITTEE

1985 Year-End Report

| Full Name, Mailing Address and ZIP Code | Receipt For | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|---|
| A. O'CONNOR & HANNAN (A Partnership) 1919 Pennsylvania Ave., N.W. Washington, D.C. 20006 | ☒ Primary ☐ General ☐ Other (specify): | (see letter attached) / Attorneys At Law / Aggregate Year-to-Date-$ 253.00 | 12/24/85 | $ 253.00 |
| B. ASCAP One Lincoln Plaza New York, N. Y. 10023 | ☒ Primary ☐ General ☐ Other (specify): | considered to be as an individual cont. / Aggregate Year-to-Date-$ 500.00 | 12/24/85 | $ 500.00 |
| C. Ronald H. Posyton 314 Sinclair Pl. Westfield, NJ 07090 | ☒ Primary ☐ General ☐ Other (specify): | Smith Motors / Automobile Dealer / Aggregate Year-to-Date-$ 500.00 | 12/24/85 | $ 500.00 |
| D. Shant S. Hovnanian 520 Navesink River Rd. Middletown, NJ 07701 | ☒ Primary ☐ General ☐ Other (specify): | Hovbilt / Exec. Vice Pres. / Aggregate Year-to-Date-$ 500.00 | 12/24/85 | $ 500.00 |
| E. Albert Blasi 48 Fernhill Rd. Springfield, NJ 07081 | ☒ Primary ☐ General ☐ Other (specify): | Furniture Craft Co. / Partner / Aggregate Year-to-Date-$ 250.00 | 12/24/85 | $ 250.00 |
| F. James D. Hay 102 Jefferson Ave. Westfield, NJ 07090 | ☒ Primary ☐ General ☐ Other (specify): | Thomas & Betts Corp. / Vice Pres. & Gen. Counsel / Aggregate Year-to-Date-$ 500.00 | 12/24/85 | $ 500.00 |
| G. F. Barlan Batrus 1 Lincoln Plaza New York, N. Y. 10023 | ☒ Primary ☐ General ☐ Other (specify): | Lazard, Freres & Co. / General Partner / Aggregate Year-to-Date-$ 250.00 | 7/2/85 | $ 250.00 |
| SUBTOTAL of Receipts This Page (optional) | | | | |
| TOTAL This Period (last page this line number only) | | | | |

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SCHEDULE A

# ITEMIZED RECEIPTS
## (POLITICAL ACTION COMMITTEES)

Page 23 of 26 for Line Number 3(c) (also separately itemized for each category of the Detailed Summary Page)

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

Name of Committee (In Full)
Committee for Tim Wirth, Inc.

Attachment #1, Page 11 of 11 1985 Year-End Report

| Full Name, Mailing Address and ZIP Code | Name of Employer / Occupation | Date (month, day, year) | Amount of Each Receipt This Period |
|---|---|---|---|
| A. Seafarers Political Activity Donation (PAC)<br>5201 Auth Way<br>Camp Springs MD 20746<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 500.00 | 11/13/85 | 500.00 |
| B. Warner Amex Cable Communications Political Action Committee<br>75 Rockefeller Plaza<br>New York NY 10019<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 700.00 | 11/14/85 | 300.00 |
| C. Equitable Life Assurance Society Political Action Committee<br>1285 Avenue of the Americas<br>New York NY 10019<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 500.00 | 11/20/85 | 300.00 |
| D. American Society of Composers, Authors and Publishers Political Action Comm.<br>One Lincoln Plaza<br>New York, NY 10023<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 500.00 | 12/31/85 | 500.00 |
| E. Beneficial Management Corporation Political Action Committee<br>200 Beneficial Center<br>Peapack NJ 07977<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 500.00 | 11/20/85 | 300.00 |
| F. Responsible Citizens League of Railway and Airline Clerks PAC<br>3 Research Place<br>Rockville MD 20850<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 650.00 | 12/24/85 | 250.00 |
| G. O'Melveny and Myers Political Action Committee<br>1800 M Street, N.W. #500 South<br>Washington, D.C. 20036<br>Receipt For: ☒ Primary ☐ General ☐ Other (specify): | Aggregate Year-to-Date-$ 650.00 | 11/25/85 | 250.00 |
| SUBTOTAL of Receipts This Page (optional) | | | |
| TOTAL This Period (last page this line number only) | | | |

RG

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 21 1986

Treasurer
American Society of Composers,
Authors and Publishers
One Lincoln Plaza
New York, NY 10023

Dear Treasurer:

This letter is prompted by the Commission's interest in assisting committees which may be subject to the registration and reporting requirements of the Federal Election Campaign Act (the Act) but are not registered with the Commission.

The Act defines a "political committee" to include any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year (for the purpose of influencing any election for Federal office). 2 U.S.C. §431(4).

A review of the receipts reported by Federal candidates indicates that your organization may have made expenditures in excess of $1,000 during the calendar year 1985 to influence Federal elections. The term "expenditures" includes contributions to Federal candidates and committees supporting Federal candidates. 2 U.S.C. §431(9). This activity may qualify your organization as a "political committee" subject to the registration, reporting and other requirements of the Act. Copies of the receipt schedules which list your contributions are enclosed for your review.

In order to be in compliance with the Act, your organization must either:

1) submit a Statement of Organization and file disclosure reports on FEC Form 3X (relevant informational materials and forms enclosed); or

2) receive a full contribution refund or direct the recipient committee(s) to transfer the funds to an account not used to influence Federal elections.

The second alternative noted above should be followed if your organization does not wish to register and file disclosure reports, or if the contributions or expenditures by your organization were from an account containing corporate or union funds.

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If you believe that your organization is not a political committee, or that the Commission is otherwise in error, please submit documentation which will clarify this matter. Although the Commission may take further legal steps concerning this matter, your prompt action will be taken into consideration.

Please notify the Commission within fifteen (15) days from the date of this letter of your decision on this matter. If you have any questions, please contact me on the agency's toll-free number, (800) 424-9530. My local number is (202) 376-2480.

Sincerely,

Tammy Rollins

Tammy Rollins
Reports Analyst
Reports Analysis Division

Enclosures

88040713690

# TELECON

ANALYST: Tammy Rollins

Attachment #3

CONVERSATION WITH: Mr. Roger Witten, Counsel

COMMITTEE: American Society of Composers, Authors and Publishers ("ASCAP")

DATE: March 21, 1986

SUBJECT(S): Registration and Reporting

Mr. Roger Witten, counsel for ASCAP, called in response to a letter the Commission sent regarding ASCAP's registration and reporting requirements. ASCAP had made contributions to several candidates in 1985 which aggregated in excess of $1,000 yet had not registered.

Mr. Witten stated that ASCAP was defined as a "person" under the Act and therefore was legally entitled to contribute $1,000 per candidate, per election without having to register and report. I stated that ASCAP receives money and uses that money to contribute to federal candidates, and therefore qualifies as a political committee. Mr. Witten then began to discuss partnerships and stated that partnerships are not considered to be political committees. I responded that contributions made by partnerships also count against the contribution limitations of the participating partners. Since ASCAP was not a partnership, this area of the Act did not apply.

Mr. Witten firmly disagreed that ASCAP was a political committee and stated that I was interpreting the law to suit my own purposes. He further recommended that I speak with the Commission's attorneys, because he stated that he consulted with them prior to ASCAP's contributions. He asked that I send him a copy of the letter that we sent to ASCAP and I stated that I would do this early next week. He said that he would prefer to get a copy of the letter directly from me rather than have to wait to have the letter forwarded from ASCAP.

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# TELECON

Attachment #4

**ANALYST:** Tammy Rollins

**CONVERSATION WITH:** Deborah Levy, Counsel

**COMMITTEE:** American Society of Composers, Authors and Publishers ("ASCAP")

**DATE:** April 2, 1986

**SUBJECT(S):** Registration and Reporting

Ms. Levy called to discuss the registration requirements of ASCAP. Ms. Levy stated that she believes that ASCAP is defined as a "person" under the Act. I read to her the definition of a "political committee" found at 2 U.S.C. 431(4)(A). She said that I was misinterpreting the law because I was not going on further in the Act to read the definition of a "person".

Ms. Levy proceeded to explain the nature of ASCAP's organization. She stated that ASCAP is an association for entertainers that collects royalties for performers when their music is played on jukeboxes, radios, etc. She further stated that ASCAP receives millions of dollars from these types of activities. I stated that we have many committees that are similar in nature to ASCAP and are required to register and report with the Commission. Ms. Levy then discussed the possibility of requesting an Advisory Opinion. I stated that ASCAP may request an Advisory Opinion, but for now should either register and report or seek refunds from the candidate committees.

I asked Ms. Levy whether ASCAP's account contained any money from corporate sources. She stated that the royalties that ASCAP received were from corporate entities and that ASCAP contributes from its treasury funds. I responded that this may present a problem in terms of the permissibility of the funds used to contribute to the candidates.

Ms. Levy then asked how the FEC discovered the ASCAP situation. I stated that it was in the course of general review of committee reports. She asked what prompted me to send the letter to ASCAP and I responded that my supervisor instructed me to send it. She asked whether she could speak to my supervisor regarding this matter. I gave her the name and phone number of my supervisor, Lisa Stolaruk.

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Attachment #5

**TELECON**

Conversation between:
Ms. Deborah Levy, Counsel for the American Society of Composers, Authors and Publishers ("ASCAP") 872-6422
and
Lisa Stolaruk, Chief of the Party/Non-Party Branch, FEC

April 2, 1986

Ms. Levy called this afternoon and stated that ASCAP had received a notice from the FEC that advised them to register and report as a political committee. ASCAP had contributed to several candidates.

Ms. Levy stated that ASCAP, as an unincorporated association, falls under the definition of a "person" under the Act and regulations and therefore does not qualify as a political committee. She further stated that ASCAP is primarily a business enterprise that collects and distributes royalties from corporate entities.

I told Ms. Levy that ASCAP is an "organization or group of persons" that contributes to candidates in excess of $1,000 per year and thus qualifies as a political committee subject to the registration and reporting requirements of the Act. Ms. Levy continued to dispute this interpretation and began to discuss the reporting obligations of a partnership. I stated that partnerships were specifically addresssed in the Act and regulations and that contributions by partnerships not only count against the limitations of the partnership itself, but also the individual partners.

It was apparent that there was a significant difference of interpretation, at which point I reiterated the position that ASCAP should either register and report with the Commission or request full refunds from the candidates. I also addressed the concern that corporate monies may have been used to contribute to the candidates, since ASCAP received royalties from corporate entities. Ms. Levy acknowledged this, but asserted that individual contributions drawn on personal checking accounts often contain salary payments from employers who may also be corporate entities.

I advised Ms. Levy that ASCAP submit a written response as soon as possible. She stated that she would begin drafting a response at the conclusion of the phone conversation. In addition, she stated that she may request an Advisory Opinion on behalf of ASCAP. I informed her that, while this option was indeed available, a direct response to our inquiry was necessary as well.

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Attachment #6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 10, 1986

Treasurer
American Society of Composers,
Authors and Publishers
One Lincoln Plaza
New York, NY 10023

Dear Treasurer:

This is to inform you that as of this date, the Commission has not received your response to our letter dated March 21, 1986. Our letter notified you that a review of reports filed with the Commission indicates that your organization may have made expenditures which qualify it as a political committee. Enclosed is a copy of our original letter.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate legal action to ensure compliance with the Act.

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

Sincerely,

John D. Gibson

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

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WILMER, CUTLER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

INTERNATIONAL TELEX: 440 239 WCPI UI
TELEX: 89-2402 WICRING WSH
TELEPHONE 202 872-6000

EUROPEAN OFFICE
4 CARLTON GARDENS
PALL MALL
LONDON, SW1Y 5AA, ENGLAND
TELEPHONE 011-441-839-4466
TELEX: 8813818 WCPLDN
TELCPY: 839 3537
CABLE ADDRESS: WICRING LONDON

DEBORAH M. LEVY
DIRECT LINE (202)
872-6422

April 16, 1986

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**BY HAND**

Mr. John D. Gibson
Assistant Staff Director
Reports Analysis Division
Federal Election Commission
999 E Street, N. W.
Washington, D.C. 20463

Dear Mr. Gibson:

We are acting as counsel to the American Society of Composers, Authors & Publishers ("ASCAP") on certain election law matters. This letter is in response to your letter dated April 10, 1986 addressed to "Treasurer, American Society of Composers, Authors and Publishers." Your letter states that the Commission has not received a response to the Commission's letter dated March 21, 1986, and that if no response is received within 15 days, the Commission may choose to initiate legal action.

The letter that ASCAP received from Ms. Tammy Rollins of your staff bore no date, although your April 10 letter indicates that your files show a date of March 21. In any event, as soon as we received the letter, we called Ms. Tammy Rollins and Ms. Lisa Stolaruk of your office (on April 2, 1986). In those conversations, we discussed our view that ASCAP is not a "political committee" under the Federal Election Campaign Act, and Ms. Stolaruk requested that we submit our written views within a month of that telephone conversation. Accordingly, we are planning to submit a response no later than May 2, 1986.

Finally, delays can be avoided in the future if you address correspondence on this matter to Bernard Korman, Esq., General Counsel, Office of General Counsel, ASCAP, One Lincoln Plaza, New York, New York 10023, with a copy to us.

Should you have any questions, please feel free to call me (872-6422) or Roger Witten (872-6170) of this office.

Sincerely,

Deborah M. Levy

Deborah M. Levy

cc: Ms. Tammy Rollins (FEC)
Ms. Lisa Stolaruk (FEC)
Bernard Korman, Esq. (ASCAP)

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WILMER, CUTLER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

INTERNATIONAL TELEX: 440 [illegible] WCPI UI
TELEX: 89-8402 WICRING WSH
TELEPHONE 202 872-6000
ABA NET ABA 1354
SOURCE WCP001

EUROPEAN OFFICE:
4 CARLTON GARDENS
PALL MALL
LONDON, SW1Y 5AA, ENGLAND
TELEPHONE 011-441-839-4466
TELEX: 8813018 WCPLDN
TELCPY: 839 3537
CABLE ADDRESS: WICRING LONDON

DIETER S. P. LANGE *
EUROPEAN PARTNER

EZEKIEL S. STODDARD
DONALD F. TURNER, P. C.
LESTER MORRIS
COUNSEL

ROBERT S. MCCORMICK
EXECUTIVE DIRECTOR

* NOT ADMITTED IN D. C.

LLOYD N. CUTLER
JOHN H. PICKERING
J. ROGER WOLLENBERG
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
WILLIAM R. PERLIN
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRAUSSMAN, JR.
MAX D. TRUITT, JR.
JOEL ROSENBLOOM
HOWARD P. WILKENS
ROBERT A. HAMMOND, III
ARTHUR Z. GARDINER, JR.
DANIEL R. MAYERS
TIMOTHY D. SYE
DAVID R. ANDERSON
ARTHUR F. MATHEWS
JAMES S. SANDOVAL
DENNIS M. FLANNERY
DANIEL MARCUS
JAMES ROBERTSON
RAYMOND C. SLEVENGER, III
MICHAEL R. KLEIN
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SALLY HAYDEN
F. DAVID LAKE, JR.
PAUL J. HODE, JR.
STEPHEN F. BLACK
RONALD J. GREENE
JAY P. LAPIN
DEANNE C. SIEMER
GARY D. WILSON
C. LORING JETTON, JR.

WILLIAM T. LAKE
THEODORE A. LEVINE
MICHAEL L. SHRADER
MICHAEL S. HELFER
NEIL J. KING
ROBERT S. McCAW
A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLARSKY, JR.
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JOHN ROUNSAVILLE, JR.
ROGER M. WITTEN
ROBERT E. CARBIDO, JR.
JOHN S. GREENWALD *
JOHN H. HARWOOD II
DAVID M. BECKER
MARY CAROLYN ODE
CHRISTOPHER R. LIPSETT
WILLIAM J. PERLSTEIN
ANDREW D. WEISSMAN
ALAN M. SHAVERMAN
LYNN SHOSHAN
JAMES E. COLEMAN, JR.
STEPHEN P. BOYLE
WILLIAM R. RICHARDSON, JR.
RUSSELL J. BRUEHMER
BRUCE E. COOLIDGE
JUANITA A. BROWLEY
JOHN PAYTON
DAVID WESTIN
ANDREA THIRO BALLET
ANDREW H. VOLLMER
THOMAS W. WHITE

PHILIP B. ANKER
BRUCE M. BERMAN
W. SCOTT BLACKMER
ELAINE L. BLOCK
GARY BORN
JOSEPH H. BRENNER
WILLIAM D. BRIGHTON
JANELL M. BYRD
MARWELL O. CHIBUNDU
GERARD B. CITERA
THOMAS F. CONNELL
CHARLES E. DAVIDOW
DAVID P. DONOVAN
PATRICIA D. DOUGLASS
MICHAEL DREEBEN
DANIEL M. DRORY
ROY T. ENGLERT, JR.
FRANCES B. FENDLER
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MURRAY A. INDICK *
DANIEL G. JARCHO
CARL R. JOHNSTON *
ANASTASIA D. KELLY
R. SCOTT KILGORE *
JOSEPH E. KILLORY, JR.
NEAL T. KILMINSTER
KERRY W. KIRCHER

SARAH H. KORN *
RICHARD R. LANNE
TILLMAN L. LAY
MITCHELL LAZARUS
CAROL F. LEE
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CAROL E. MATTEY
SUSAN D. McANDREW
DUANE D. MORSE
THOMAS P. OLSON
ROGER J. PATTERSON
ROBERT M. POSIN
JEFFREY D. ROBINSON
STEVEN M. ROSENTHAL *
DAVID D. ROSKAM
FAITH D. RUDERFER
KATHLEEN M. RUSSO
STEPHEN J. SCHNABLY
STEVEN A. SCHNEIDER
DAVID SEIDMAN
JANE C. SHERBURNE
REED SHULDINER
JAMES SOTTILE, III
MICHAEL J. STEVENSON *
LUCIA D. SWANSON
RENT D. SYVERUD
ALAN S. TENENBAUM
MARGARET L. TOBEY
CARL WILLNER *
JUDITH BARRY WISH

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April 30, 1986

BY HAND

Ms. Tammy Rollins
Reports Analyst
Reports Analysis Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Rollins:

We represent the American Society of Composers, Authors and Publishers ("ASCAP") and are writing in response to your recent letter to ASCAP.1/ That letter suggested that ASCAP appears to be a "political committee" within the meaning of section 431(4)(A) of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431(4)(A). As explained below, our view is that ASCAP is not a "political committee" and need not register or file reports as a political committee with the Commission. Rather, as an unincorporated business entity which receives no political contributions, ASCAP is a "person" entitled to use its treasury funds to make contributions and expenditures on behalf of federal candidates and political committees.

---

1/ The letter (copy attached), which is undated, requested that ASCAP notify the Commission of ASCAP's views within fifteen days from the date of the letter. In conversations we had with Ms. Lisa Stolaruk of your office, on April 2, 1986, she requested that we provide you with our written views within approximately a month of that date.

## FACTS

### 1. Description of ASCAP

ASCAP is the oldest performing rights licensing organization in the United States. It was founded in 1914 so that creators of music would be paid for the public performance of their works, and users of musical works would comply with the federal copyright law. ASCAP is an unincorporated membership association organized under New York's General Associations Law. It currently has some 35,000 members who are composers, authors, and publishers of musical works.

ASCAP members elect a 24-person Board of Directors which is vested with the management of ASCAP's affairs. Twelve of the Directors must be writer members (composers and authors) and twelve must be publisher members. Voting rights of members are allocated according to the number of "performance credits" earned in the preceding fiscal survey year.

ASCAP acts as a clearing house for users who need access to the works of many copyright owners, and for members who wish to license numerous, widely scattered users. Each member enters into an agreement with ASCAP assigning ASCAP the non-exclusive right to license the member's works. Members pay annual dues of $10 for writers and $50 for publishers. ASCAP licenses its members' works and collects fees from its licensees.

The Board of Directors has control and power of disposition over all ASCAP funds, including dues, license fees, and royalties. Members have no rights to the money ASCAP receives until such time as the Board decides to distribute it. Before making distributions, the Board deducts such amounts as it deems necessary to pay for ASCAP's operating and other expenses. Typically, the Board distributes the sum remaining after these deductions to members. Fifty percent is distributed to writer members for apportionment among them, and fifty percent to publisher members.

ASCAP does not receive or hold any funds "for the purpose of influencing any election for Federal office." See 2 U.S.C. § 431(8)(A). Its treasury funds derive solely from the operation of its business, as described above.

### 2. ASCAP's Political Contributions

In early 1984 ASCAP asked this law firm for advice concerning possible participation in the federal electoral process consistent with the FECA. We advised ASCAP that it could

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use its treasury funds[2] to make (a) direct contributions to or expenditures on behalf of federal candidates and political committees up to the caps on the amounts of such contributions and expenditures applicable to "persons," including unincorporated associations, and (b) unlimited independent expenditures in connection with federal elections; and that it did not need to register as a "political committee." Based on this advice, ASCAP used its treasury funds to make contributions during 1984 and 1985 without registering with or otherwise reporting to the Commission.[3] It did not receive any "contributions" as that term is defined in the FECA. See 2 U.S.C. § 431(8)(A).

## DISCUSSION

### 1. Introduction

In general, under the FECA, any "person" may make contributions subject to specified limits, and may also make unlimited "independent expenditures."[4] The term "person" is defined as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons."[5] As an unincorporated membership association, ASCAP is a "person" within the meaning of 2 U.S.C. § 431(11). "Persons" need not register or file reports with the Commission concerning their political contributions and expenditures.[6]

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2/ By "treasury funds," we mean the resources received by ASCAP in the normal course of business from license fees, interest, and dues.

3/ On March 19, 1984, some ASCAP employees filed a Statement of Organization (FEC Form 1) with the Commission for a nonconnected political committee called "The ASCAP Fund For The Arts," which was assigned FEC Identification Number C00179606. On June 20, 1984, the Commission accepted the committee's termination report. See Letter from Doris Gardner, Reports Analyst, to John A. Lofrumento (June 20, 1984). The committee was not ASCAP's "separate segregated fund" (as an unincorporated association, ASCAP presumably cannot form a separate segregated fund as described in 2 U.S.C. § 441b(b)(2)(C)); nor was it part of ASCAP.

4/ 2 U.S.C. § 431(17).

5/ 2 U.S.C. § 431(11); see also 11 C.F.R. § 100.10.

6/ However, every person, other than a political committee, who makes independent expenditures aggregating in

[Footnote continued next page]

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The question raised by your letter is whether ASCAP is not only a "person," but also a "political committee" subject to the FECA's registration, record-keeping, reporting, and other requirements. The FECA defines a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year." 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a). As stated above, ASCAP has not received any "contributions." We therefore understand your view to be that ASCAP may be a "political committee" because it is an "association or other group of persons" and it has made "expenditures aggregating in excess of $1,000 during a calendar year." We respectfully disagree with this interpretation of section 431(4)(A), and submit that it is inconsistent with the overall scheme and related provisions of the FECA, prior Commission practice, and relevant Supreme Court precedents.

2. "Political Committees" in the FECA Scheme

The interpretation of section 431(4)(A) advanced in your letter, if applied consistently, would sweep every "association" and "group of persons" that makes political expenditures exceeding $1,000 during a calendar year into the "political committee" definition. In view of the manner in which the FECA regulates political committees, this cannot be what Congress intended.

The main provisions regulating political committees are meaningful only if the term "political committee" is limited to a committee or other grouping that -- unlike ASCAP -- receives political contributions, or the main purpose of which is to receive contributions and participate in campaign activity.7/ Thus, the election law requires political committees to deposit all "receipts" into designated campaign depositories. See FECA § 432(h)(1), 2 U.S.C. § 432(h)(1). Moreover, "[a]ll funds of a political committee shall be segregated from, and may not be

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[Footnote continued from preceding page]

excess of $250 during a calendar year must file a disclosure statement concerning political contributions received by that person. 2 U.S.C. § 434(c)(1).

7/ The FECA assumes that political committees do receive contributions. See 2 U.S.C. § 441a(a)(1)(C) (limit on amount of contributions political committee may receive from any person).

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commingled with, the personal funds of any individual." FECA § 432(b)(3), 2 U.S.C. § 432(b)(3). The only reasonable interpretation of these provisions is that Congress assumed that political committees, by definition, receive contributions, and adopted the depository and commingling rules to protect committee contributors. If unincorporated business associations such as ASCAP were deemed political committees, their receipts would be covered by the depository requirement prescribed by FECA § 432(h)(1) and their funds subject to the commingling prohibition in FECA § 432(b)(3) -- even though these monies were derived from business transactions, not political contributions, and the protective rationale of the depository and commingling rules were entirely irrelevant. However, neither the statute nor its legislative history contains any hint that Congress intended the FECA to regulate the accounting practices of business associations that do not receive contributions.

The treatment of unincorporated businesses as "political committees" by virtue of their political expenditures alone would lead to absurd results. Every receipt of such a business association could be subject to FECA accounting and segregation rules, even though no contributions are received. The reporting requirements applicable to political committees would be superfluous: there would be no reportable contributions received -- normally the mainstay of committee reports -- and the entity's own contributions to candidates or political committees would be reported by the recipients. Congress could not have intended to entangle bona fide unincorporated businesses that do not receive political contributions in such a mire.

Therefore, the definition of "political committee," when read in conjunction with rules applicable to political committees in section 432, must be construed to require the receipt of contributions where a bona fide business association like ASCAP is involved. To be a "political committee" within the meaning of the statute, a bona fide business "association" must both (a) receive or solicit some contributions <u>and</u> (b) exceed the $1,000 threshold either in the amount of political contributions it receives or in the amount of money it spends as political expenditures.

3. <u>Commission Practice</u>

The Commission does <u>not</u>, in fact, treat every association or group of persons that makes expenditures exceeding $1,000 a year as a "political committee." In particular, the Commission's treatment of partnerships supports the conclusion that a bona fide business organization such as ASCAP is not a political committee. The Commission has ruled that a partnership

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making contributions in its own name is not a political committee, even when it raises the money used for contributions from its partners (which ASCAP does not). See, e.g., Advisory Opinion 1982-13; see also Advisory Opinion 1981-50. Whether an entity is treated as a partnership for election law purposes, rather than as a political committee, is largely determined by state law and by the entity's constitutive document: "[W]here the articles of partnership (or partnership agreement) set forth the type of activity to be engaged in by the partners, such as the practice of law, the Commission has never characterized any partnership as a political committee." Advisory Opinion 1982-13.

There is no reason for the Commission to reach a different conclusion with respect to a bona fide business association such as ASCAP. Partnerships and unincorporated businesses are both "persons" under the FECA. Where, as in ASCAP's case, the association's constitutive documents set forth the nonpolitical business activity to be engaged in by the entity, the entity should not be characterized as a political committee, just as partnerships are not considered political committees in similar circumstances.

This conclusion is also reflected in the Commission's Campaign Guide For Nonconnected Committees. The Guide explains that a nonconnected political committee "may be sponsored by an organization, for example, a partnership or some other incorporated group." Id. at 49 (emphasis added). As explained in the Guide, the sponsoring organization may contribute up to $5,000 to the nonconnected committee, capped by the contribution ceiling in 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 100.1(c). Presumably, if contributions to a nonconnected committee in excess of $1,000 would transform the sponsoring unincorporated group into a political committee itself, the Guide would have said so, and would not have treated sponsor-contributors that are unincorporated groups in the same manner as partnerships.[8]

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8/ Ms. Lisa Stolaruk suggested in a telephone conversation on April 2, 1986 that the Commission's treatment of partnerships as "persons" and not "political committees" might not be extended to ASCAP because a partnership is required to allocate its contributions among the partners. It is true that the Commission's regulations require allocation of a partnership's contributions to each contributing partner, according to each partner's share of partnership profits or otherwise as agreed by the partners. See 11 C.F.R. § 110.1(e); see also Advisory Opinion 1980-132. Partners to whom contributions are allocated

[Footnote continued next page]

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4. Supreme Court Precedent

The conclusion that an unincorporated association engaged in a nonpolitical business is not a "political committee" is also supported by two Supreme Court cases, Buckley v. Valeo, 424 U.S. 1 (1976), and California Medical Association v. FEC, 453 U.S. 182 (1981).

In Buckley, the Court was called upon to interpret the reporting provisions in section 434 of the FECA, 2 U.S.C. § 434. Then, as today, political committees were required to file reports of their expenditures with the Commission. The Court noted that the broad literal sweep of the "political committee" definition could raise constitutional vagueness problems arising out of the reporting requirement. At the time of the Buckley decision, as now, the definition of "political committee" reached any "committee, club, association, or other group of persons" which made expenditures in excess of $1,000 during a calendar year. See 2 U.S.C. § 431(4)(A) (current law); 2 U.S.C. § 431(d) (superseded law, quoted in Buckley, 424 U.S. at 79 n. 105). However, the Court noted with approval that lower courts had construed the words "political committee" narrowly and explained:

> "To fulfill the purposes of the Act they [the words 'political committee'] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and of 'political committees' so construed can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related."

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[Footnote continued from preceding page]

must subtract any allocation from their own contribution limits under the FECA. But the allocation requirement imposed by the Commission on partnerships does not change the underlying principle on which ASCAP has relied: that a partnership is not considered a political committee when it makes expenditures in excess of $1,000. The treatment of partnerships as "persons," but not as "political committees," does not depend on the existence of the allocation regulations. To the contrary, the language and intended scope of the statute are what put business partnerships outside the scope of the "political committee" definition; the Commission's allocation rules were a subsequent addition to the campaign finance scheme.

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424 U.S. at 79 (emphasis added). The Court sustained the constitutionality of the challenged reporting requirements in section 434 subject to its limiting construction. See 424 U.S. at 80-81.

The Supreme Court's decision in California Medical Association v. FEC, 453 U.S. 182 (1981), also supports the conclusion than an unincorporated association with a bona fide business or professional purpose does not become a "political committee" by virtue of making more than $1,000 in expenditures during a calendar year. In that case, the Court upheld the Commission's determination that an unincorporated professional association could not contribute more than $5,000 to a political committee, including administrative expenses. The California Medical Association ("CMA") had argued that it should be able to give unlimited amounts in administrative support to a committee it sponsored, analogous to the unlimited administrative support a corporation may give its "separate segregated fund" under 2 U.S.C. § 441b(b). The Commission's position was that CMA was subject to the $5,000 limit in 2 U.S.C. § 441a(a)(1)(C) applicable to the amount any "person" may give any non-candidate, non-party committee.

The Court upheld the Commission, and said in response to CMA's claim of unfair treatment:

> "[I]ndividuals and unincorporated associations may contribute to candidates, to candidates' committees, to national party committees, and to all other political committees while corporations and unions are absolutely banned from making any such contributions. . . . The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes. . . ."

453 U.S. at 200-201 (emphasis added).

Plainly the Court and the Commission understood that the rules governing expenditures by unincorporated associations are analogous to those governing individuals. It follows that if an association or group of persons acts as an autonomous business entity, and not as a group that receives contributions or that was formed for the purpose of engaging in political activity, then it should be considered a "person," not as a "political committee."

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5. Corporate Funds

Our telephone conversations with you and Ms. Stolaruk indicated that you may also have a concern (not reflected in your letter) about the corporate source of some of some of ASCAP's treasury funds. Under section 441b of the FECA, corporations may not make direct or indirect contributions or expenditures in connection with federal elections. However, a contribution or expenditure by ASCAP plainly is not an "indirect" corporate contribution or expenditure by virtue of the fact that ASCAP's treasury funds include some money from corporate sources -- namely, dues from corporate members and license fees from corporate licensees. Neither the FECA nor the Commission's regulations provide that an otherwise permissible contribution or expenditure from an unincorporated entity's funds is automatically tainted if such funds are somehow derived from a corporate source. Such a taint should be found to exist only where there is reason to believe that the contribution or expenditure is made through the unincorporated entity as a subterfuge to evade the ban on corporate contributions and expenditures.

There can be no concern here that the corporate members of ASCAP have created ASCAP as a subterfuge to allow them to use corporate funds to make contributions and expenditures to federal candidates.[9] ASCAP has been engaged in an independent, bona fide business for decades, operating as an unincorporated association. That form of organization has never been used as a vehicle to channel corporate members' dues for political contributions and expenditures, and would not be an effective vehicle for that purpose in any event. The ASCAP Board of Directors, which makes decisions about distributions and other dipositions of ASCAP's funds, is not controlled by the corporate members.[10] Less than one quarter of ASCAP's members are

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9/ This is not a situation where an unincorporated entity which was formed to engage in political, not commercial, activity derives its treasury funds from selling political items (advertisements, fundraising tickets) to corporations. Compare Advisory Opinion 1977-65.

10/ ASCAP members have no rights to ASCAP's funds before the Board makes a distribution, and thus any notion that the corporate members would be "agreeing" to a reduction in their distributions is mistaken. As noted above, ASCAP may use its general treasury funds for any bona fide operating expenses, and members receive only those remaining amounts that the Board decides to distribute.

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corporations, and their dues constitute only a tiny percentage of ASCAP's general treasury funds. Thus, for example, ASCAP's contributions in 1984 and 1985 represent only an infinitesimal fraction of ASCAP's general treasury funds, and the amount even arguably allocable to corporate dues would be even more minute.

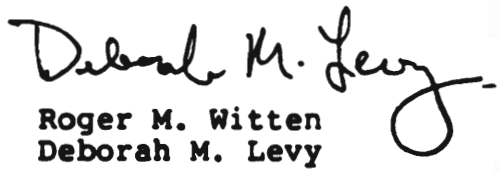
There also can be no concern that ASCAP could be used as a vehicle for illegal campaign contributions by its corporate licensees, whose license fees are fixed by agreement or otherwise. These arrangements and the amounts of the license fees are established by commercial considerations, and there is plainly no agreement, understanding, or expectation that the fees will be used by ASCAP for contributions and expenditures.

As the foregoing demonstrates, ASCAP is an independent business organization with a Board that exercises independent control over its treasury funds, and is not controlled by corporate interests. As such, ASCAP is not a channel for corporate contributions and expenditures. Moreover, ASCAP's own contributions and expenditures do not take on a corporate character by virtue of the fact that some (less than a majority) of its Board members represent corporate members. As explained above, no corporation or group of corporations exercises decision-making power over ASCAP. In these circumstances, the statutory ban on "indirect" corporate contributions and expenditures is not applicable.

* * *

We hope the foregoing has cleared up any questions you may have had about ASCAP's activities. We would be happy to discuss your letter, and the matters discussed above, with you or others at the Commission at your convenience.

Sincerely,



Roger M. Witten
Deborah M. Levy

Enclosure

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SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL TO THE COMMISSION _____

RAD Referral 86L-6
Staff Member John Drury

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENT'S NAME: American Society of Composers, Authors and Publishers ("ASCAP")

RELEVANT STATUTES: 2 U.S.C. §§ 431(4), 431(9), 431(11), 2 U.S.C. §§ 433, 434(a), 2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

RECEIVED
OFFICE OF THE SECRETARY
87 MAY 7 P4:35

GENERATION OF MATTER

This matter was referred to the Office of the General Counsel by the Reports Analysis Division.

SUMMARY OF ALLEGATIONS

The RAD referral indicates that in 1985, ASCAP contributed $6,900 to eleven federal candidate committees, and that as a result ASCAP may qualify as a political committee. If it does qualify as a political committee, then by failing to register and report as a political committee it has apparently violated 2 U.S.C. §§ 433 and 434(a). Moreover, because there is evidence that some of the funds which ASCAP forwarded to candidates came from corporations, it is possible that ASCAP has violated the prohibition against corporate contributions in 2 U.S.C. § 441b(a) as well.

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## FACTUAL AND LEGAL ANALYSIS

### A. ASCAP Has Violated 2 U.S.C. §§ 433 and 434.

#### 1. Factual Background

ASCAP is an unincorporated membership association organized under the laws of New York state. It is composed of approximately 35,000 members who are composers, authors and publishers of musical works. A Board of Directors, composed of twelve writer and twelve publisher members, controls the disposition of funds collected by ASCAP through annual dues of members and fees paid by licensees making commercial use of the musical works. Members receive money obtained by ASCAP only at such times as the Board of Directors decides to distribute it. Distributions to members occur only after deductions are made by the Board for operating and other expenses (including political contributions). (Attachment II, page 27.)

#### 2. Discussion of Legal Principles

In 1985, ASCAP contributed a total of $6,900 to eleven federal candidate committees. (See Attachment II, page 1.) This activity seems to place ASCAP squarely within the confines of a "political committee" as defined at Section 431(4)(A). That section provides the following: "The term 'political committee' means ... any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures

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aggregating in excess of $1,000 during a calendar year...." The direct contributions made by ASCAP appear to fit within the definition of expenditure as a "gift" or "advance" of "money" in Section 431(9)(A)(i). If ASCAP's activity qualifies it as a political committee, then it is required by Sections 433 and 434 of the Act to register and report as a political committee -- which it has not done.

ASCAP argues that it is an "unincorporated business entity which receives no political contributions" and that "[t]he main provisions regulating political committees are meaningful only if the term 'political committee' is limited to a committee or other grouping that -- unlike ASCAP -- receives political contributions, or the main purpose of which is to receive contributions and participate in campaign activity." (Attachment II, pp. 26, 29-30.)

In other words, ASCAP would read Section 431(4)(A) to mean that an entity is a political committee only if it both receives over $1,000 in contributions <u>and</u> makes expenditures in excess of $1,000, or if the organization's primary purpose is to receive such contributions and influence elections. This narrow interpretation is at odds with the plain language of the section, providing for political committee status if <u>either</u> contributions

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or expenditures exceed $1,000. 1/ Furthermore, the recent Supreme Court opinion in FEC v. Massachusetts Citizens for Life, Inc. 107 S. Ct. 616 (1986) ("MCFL"), has refocused the inquiry of whether an organization is a political committee to the broader question of whether a major purpose of the organization can be "regarded as campaign activity." FEC v. MCFL, 107 S. Ct. at 625, 630.

While the Court in MCFL did not spell out the criteria the Commission should consider in reaching a determination of whether the activity at issue is sufficiently campaign-related so as to incur registration and reporting obligations as a political committee under the Act, several factors may be examined. For example, the total amount of money contributed by ASCAP to federal candidate committees is clearly relevant to the determination. Likewise, the questions whether ASCAP is a "regular player" in the political process, whether the making of contributions is an integral part of ASCAP's operation, whether ASCAP's political activity is the responsibility of a specific person during each election period, and whether there is a formal and regular procedure for making contributions are all relevant to the determination of whether a major purpose of the organization is involvement in campaign activity. Also important is whether ASCAP is making direct contributions to candidates or whether its campaign related activity is limited to making

1/ The Reports Analysis Division has calculated that ASCAP's total known contributions for the 1985-1986 election cycle now exceed $34,000.

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independent expenditures. 2/ Looking outside the facts of this particular case, the Commission could logically consider how ASCAP's total contributions or contribution pattern compare to those of acknowledged political committees. Finally, the Commission could look to other campaign related activities in which ASCAP may be involved to reach a judgment on the significance of its overall political activity in comparison with acknowledged political committees.

Applying these factors to the available evidence, it appears that ASCAP's total contributions for the 1985-86 election cycle will exceed $34,000. Compared to the average election cycle contribution of about $37,000 for political committees across the board (1983-1984 election cycle), $34,000 is a significant level of activity. On the other hand, ASCAP is a multimillion dollar business and $34,000 in contributions cannot be considered to be a large fraction of the total amount of its business. As to the other factors listed above that may be relevant to this determination, the Office of General Counsel has little information at this juncture. We are proposing to seek this information from the respondent in the investigation of this matter.

2/ The Supreme Court reiterated in MCFL the principle set forth in Buckley v. Valeo, 424 U.S. 1 (1976) and California Medical Assn. v. FEC, 453 U.S. 182, 194, 196-197 (1981) ("CMA"), that restrictions on contributions require a less compelling justification for government restriction than do independent expenditures. Here, ASCAP makes no claim that it is involved in anything other than direct contributions of money to candidates -- the activity with the greatest potential for corruption or the appearance of corruption. MCFL v. FEC, 107 S. Ct. at 629.

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3. Commission Precedents

The Commission followed the approach suggested by the above discussion in Advisory Opinion 1978-51 where it concluded that if an entity representing a community of Indians contributed more than $1000 in a calendar year, it would be deemed to be a political committee. In that instance, a federal candidate's campaign committee wished to know whether it could lawfully accept a contribution from an American Indian tribe, the Ak-Chin Indian Community ("the Community"). The Community was described as a non-corporate entity. The Community's Articles of Association, filed with the U.S. Secretary of the Interior, vested in the Community's Council the right "to assess fees on Community members for public purposes, or to finance any project or enterprise which it deems beneficial to the interests of the Community as a whole."

The Commission determined that for purposes of the Act, the Community would be considered a person and could lawfully contribute, provided that the Community's general fund did not contain monies from entities that could not make contributions directly under the Act. The Commission further determined that if the Community's total contributions to all candidates for federal office and political committees exceeded $1,000 in a calendar year, the Community would itself become a political committee subject to the registration and reporting requirements of the Act. See also Advisory Opinion 1980-106. 3/

3/ But see Advisory Opinion 1982-13, where the Commission determined that a partnership making contributions is not a political committee provided that the articles of partnership set forth the type of business to be engaged in by the partners.

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Also consistent with the interpretation of the plain language of Section 431(4)(A) suggested above was the Commission's determination in MUR 1980 (Gerald Carlson). In that matter, where an organization made expenditures in excess of $1,000 for campaign advertising, it qualified as a political committee, even though the Commission had no knowledge of the organization's receipt of any contributions. Although there was no substantial question in MUR 1980 as to whether a major purpose of the organization was participation in federal elections, the Commission's action in MUR 1980 nevertheless runs counter to the respondent's insistence on reading Section 431(4)(A) as requiring evidence of both receiving of contributions and making of expenditures to incur political committee registration and reporting obligations.

4. Other Points Raised

ASCAP raises several other points in support of its view that it is not properly classified as a political committee.

First, it cites 2 U.S.C. § 432(h)(i) - which obligates political committees to designate a campaign depository - and Section 432(b)(3) - which prohibits the commingling of political committee and personal funds - as evidence that Congress originally assumed that all political committees receive contributions. From this premise, ASCAP argues that Congress never intended organizations like the respondent to be treated as political committees.

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However, the existence of certain minor subsections of Section 432 concerning deposit of receipts cannot be deemed to control the important legal question of whether an entity is a political committee for purposes of the Act. Rather, it would appear that this issue is decided by the definition of a political committee at Section 431 and the legal precedents interpreting this section.

Second, ASCAP states that if it is classified as a political committee, all of its receipts would be subject to the requirements of the Act.

ASCAP complains that with millions of dollars annually flowing into its general treasury fund, ASCAP would be shouldered with an onerous burden in itemizing each and every receipt to comply with Section 434. ASCAP argues that "Congress could not have intended to tangle bona fide unincorporated businesses that do not receive political contributions in such a mire." (Attachment II, page 30.) ASCAP is correct in assuming that it would be a significant burden to report all of its money receipts and disbursements through Section 434. Furthermore, since its corporate members submit dues and fees to ASCAP, and since political committees are clearly prohibited from accepting monies from corporations and labor unions, requiring ASCAP to report as a political committee would preclude lawful acceptance of these dues and fees. The answer to the dilemma posed by ASCAP's argument, however, is to refrain from making contributions in

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federal elections and thus to avoid becoming a political committee for purposes of the Act. The FECA clearly does not contemplate, nor does it make provision for a multimillion-dollar business enterprise acting as a political committee influencing federal elections.

Third, ASCAP asserts that the Commission's treatment of partnership business entities is inconsistent with determining that ASCAP is a political committee. (See Attachment II, pp. 30-31.) ASCAP argues that since the Commission permits partnerships to make contributions from the individuals comprising it without becoming a political committees, the same should hold true for respondent, also a bona fide business organization.

As an unimcorporated association, ASCAP does share a basic characteristic with partnerships. Like a partnership, ASCAP is a single entity made up of a group of persons. However, partnerships are recognized throughout the law as being sui generis, as evidenced by the fact that there is a separate body of partnership law, as well as the fact that there is special provision made for partnerships in various other areas of the law treating partnerships differently from other legal entities, such as individuals and corporations. Thus in the application of legal principles, it is not necessarily correct that the proper rule for partnerships is the proper rule for ASCAP. One distinction that is immediately apparent is that ASCAP is composed of a great many more members than the typical business partnership. Also, a large number of ASCAP's members are

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corporations. In light of the Act's broad prohibition against the entry of corporate funds into the political process evidenced at Section 441b, this distinction is especially significant.

Fourth, ASCAP cites the Commission to the Supreme Court's discussion of differing treatment in the FECA of individuals and unincorporated associations on the one hand, and unions and corporations on the other in CMA. ASCAP concludes from its reading of this case with Buckley that a business entity not formed for the purpose of influencing elections, that does not receive contributions, is considered a person -- not a political committee. (See Attachment II, page 33.) CMA, however, is readily distinguishable from the matter before the Commission.

In CMA, the Court drew a general distinction between the restrictions applying to individuals and unincorporated associations, and those applying to labor unions and corporations. The Court's analysis was made in response to a challenge under the Equal Protection Clause of the Fifth Amendment to the constitutionality of 2 U.S.C. § 441a(a)(1)(C). Specifically, CMA alleged that corporations and labor unions are afforded unconstitutionally disparate treatment inasmuch as the Act permits them to give money without limit to pay for administrative support for their separate segregated funds, whereas an unincorporated association such as California Medical Association or an individual can give no more than $5,000 to a political committee which it has created. FEC v. CMA, 453 U.S. at 200.

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The Court reasoned in its opinion that while corporations and labor unions may not face restrictions in providing administrative support for their separate segregated funds, they are absolutely precluded from making direct contributions to federal candidates. In light of this prohibition, the Court found CMA's equal protection challenge to be without merit. Id. at 201.

The issue before the Commission in this matter was not before the Court in CMA. The question of whether a unincorporated business entity that made direct contributions exceeding $1,000, meets the expenditure requirements for qualification as a political committee pursuant to Section 431(4)(A), was not raised in CMA. Thus, the language from the Court's opinion quoted by respondents is not controlling outside of the equal protection issue decided in the case.

B. ASCAP and the Issue of Corporate Contributions

The respondent's practice of using funds, some of which are derived from corporations, to contribute to federal candidates also suggests that ASCAP has violated the prohibition against the making or accepting of corporate contributions in 2 U.S.C. § 441b.

1. Factual Background

Corporate funds flow into ASCAP from at least two sources. First, there are the payments which corporations make to ASCAP in the form of membership dues. At Attachment II, page 27, the

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respondent states that ASCAP is comprised of "some 35,000 members who are composers, authors, and publishers of musical works." ASCAP claims that "[l]ess than one quarter of [its] members are corporations ...." (Attachment II, pp. 34-35.) Assuming for the sake of this discussion that one fourth of the members are incorporated, then ASCAP may annually be receiving as much as or more than $400,000 from corporations in membership dues alone. 4/

ASCAP receives an even greater amount of corporate money in the form of licensing fees and royalties. The respondent states that it "licenses its members' works and collects fees from its licensees." (Attachment II, page 27.) It appears from ASCAP's statements that a large number of these licensees are corporations, and that the amount of corporate money received by the respondent is substantial. In response to a Request For Additional Information from the Reports Analysis Division, ASCAP characterized itself as primarily a business enterprise that collects and distributes millions of dollars in royalties and that most of these royalties are collected from corporations. (Attachment II, pp. 21-22.)

ASCAP directs this flow of corporate receipts into its general treasury fund. Significantly, it is out of this fund that ASCAP makes contributions to federal candidates. (Attachment II, page 28.) Therefore, it appears that ASCAP forwards what may be a substantial amount of money received from corporate sources to federal candidates.

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4/ ASCAP states that membership dues for publishers are $50. (Attachment II, page 27).

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2. Discussion of Legal Principles

Pursuant to 2 U.S.C. § 441b, it is unlawful for any corporation to make a contribution in connection with a federal election. The respondent asserts that there can be no violation of Section 441b through its business activities or contributions to federal candidates, since the corporate funds involved enter ASCAP through purely commercial transactions in amounts set by ASCAP. ASCAP appears to be arguing that since the corporate membership of its Board of Directors is less than a majority, there is no corporate control over any of the ASCAP funds (derived from corporations or otherwise), and thus there can be no direct or indirect corporate contribution. ASCAP maintains that only if the Commission finds a "subterfuge to evade the ban on corporate contributions and expenditures" should ASCAP's contributions to candidates be determined to be "tainted" by the inclusion of corporate funds in the monies made available to federal candidates through its contribution program. (Attachment II, page 34.) Section 441b of the Act, however, contains no additional requirement that indirect corporate contributions are prohibited only when the Commission is able to establish that there is an intent to circumvent the prohibition of that section. ASCAP treasury funds include money derived from corporate sources. A portion of these funds is finding its way into the campaigns of federal candidates. ASCAP does not deny this fact. Rather, ASCAP asks that the Commission engraft a new exception

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into Section 441b that permits such indirect corporate contributions unless the Commission finds that there is a deliberate attempt to circumvent the Act. This interpretation is without basis and should be rejected by the Commission. 5/

ASCAP's practice of making contributions to federal candidates out of a general treasury fund that contains a substantial amount of money from corporations appears to be a violation of the prohibition in Section 441b against the use of corporate money in connection with federal elections. For this reason, the General Counsel recommends that the Commission find reason to believe that ASCAP has violated 2 U.S.C. § 441b(a).

**RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that the American Society of Composers, Authors and Publishers violated 2 U.S.C. §§ 433, 434(a), and 441b(a).
3. Approve the attached factual and legal analysis.
4. Approve and send the attached letter with proposed questions.

5/7/87
Date

Lawrence M. Noble
Acting General Counsel

Attachments
I. Proposed Letter with Questions (1)
II. Referral Materials
III. Factual and Legal Analysis

5/ In the 1947 legislative history of the predecessor statute to Section 441b Senator Taft stated that one of the purposes of the provision was to preclude an organization which derives part of its funds from corporations from converting these into political contributions or expenditures. 93 Cong. Rec. 6437 (1947), 1947, Legis. Hist. at 1531.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

87 MAY 28 All : 27

**MEMORANDUM**

May 28 1987

TO: The Commission

FROM: Lawrence M. Noble
Acting General Counsel

SUBJECT: RAD Referral 86L-6

On May 19, 1987, the Commission decided to return the May 7, 1987 report on the above-captioned matter to the Office of the General Counsel for revisions to the factual and legal analysis and the interrogatories, directing this Office to recirculate the report with revisions on a tally vote basis. Accordingly, attached is the report of May 7, 1987 featuring the requested revisions of the above-mentioned documents.

This Office recommends that the Commission open a MUR; find reason to believe that the American Society of Composers, Authors and Publishers violated 2 U.S.C. §§ 433, 434(a), and 441b(a); approve the proposed factual and legal analysis; and approve and send the attached letter with proposed questions.

**Recommendations**

1. Open a MUR.

2. Find reason to believe that the American Society of Composers, Authors and Publishers violated 2 U.S.C. §§ 433, 434(a), and 441b(a).

3. Approve the attached factual and legal analysis.

4. Approve and send the attached letter with proposed questions.

Attachment
Report of May 7, 1987 with Revised Factual and Legal Analysis and Questions

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /JOSHUA MCFADDEN

DATE: JUNE 2, 1987

SUBJECT: OBJECTIONS TO RAD Ref. 86L-6: FIRST G.C. REPORT DATED MAY 28, 1987

The above-captioned document was circulated to the Commission on Thursday, May 28, 1987 at 4:00 P.M.

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

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

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

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 | ) | |
| | ) | RAD Referral 86L-6 (MUR 2464) |
| American Society of Composers, | ) | |
| Authors and Publishers ("ASCAP") | ) | |

## CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session on June 9, 1987, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in RAD Referral 86L-6:

1. Open a Matter Under Review (MUR).
2. Find reason to believe that the American Society of Composers, Authors and Publishers violated 2 U.S.C. §§ 433, 434(a), and 441b(a).
3. Approve the factual and legal analysis, as amended, attached to the first General Counsel's report dated May 7, 1987.
4. Approve and send the letter with proposed questions attached to the first General Counsel's report dated May 7, 1987.

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

Attest:

6-10-87
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 18, 1987

Morton Gould, President
American Society of Composers,
Authors and Publishers
1 Lincoln Plaza
New York, NY 10023

RE: MUR 2464
American Society of Composers,
Authors and Publishers

Dear Mr. Gould:

On June 9, 1987, the Federal Election Commission determined that there is reason to believe the American Society of Composers, Authors and Publishers ("ASCAP") violated 2 U.S.C. §§ 433, 434 and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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

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

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

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

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

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

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

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Questions
Procedures
Designation of Counsel Statement

cc: Roger M. Witten, Esquire
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006

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GCC#3720

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**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR** 2464

**NAME OF COUNSEL:** Roger M. Witten, Deborah M. Levy

**ADDRESS:** Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D. C. 20037-1420

**TELEPHONE:** 202-663-6170

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

June 25, 1987
Date

Signature

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RECEIVED
GENERAL COUNSEL

**RESPONDENT'S NAME:** ASCAP

**ADDRESS:** One Lincoln Plaza
New York, New York 10023

**HOME PHONE:**

**BUSINESS PHONE:** 212-595-3050

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BCC 3703

# WILMER, CUTLER & PICKERING

2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420

INTERNATIONAL TELEX: 440 239 WCPI UI
TELEX: 89-2402 WICRING WSH
TELCPY: 293-0074
TELEPHONE 202 663-6000
ABA NET ABA 1354
SOURCE WCP001

EUROPEAN OFFICE
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LLOYD N. CUTLER
JOHN H. PICKERING
J. ROGER WOLLENBERG
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
WILLIAM R. PERLIN
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX O. TRUITT, JR.
JOEL ROSENBLOOM
HOWARD P. WILLENS
ROBERT A. HAMMOND, III
ARTHUR Z. GARDINER, JR.
DANIEL K. MAYERS
STEPHEN M. SACHS *
TIMOTHY B. DYK
DAVID R. ANDERSON
ARTHUR F. MATHEWS
JAMES B. CAMPBELL
DENNIS M. FLANNERY
DANIEL MARCUS
JAMES ROBERTSON
RAYMOND C. CLEVENGER, III
MICHAEL R. KLEIN
TIMOTHY N. BLACK
SALLY KATZEN
F. DAVID LAKE, JR.
PAUL J. MODE, JR.
STEPHEN F. BLACK
RONALD J. GREENE
JAY F. LAPIN
DEANNE C. SIEMER
GARY D. WILSON
C. LORING JETTON, JR.
WILLIAM T. LAKE
THEODORE A. LEVINE

MICHAEL L. BURACK
MICHAEL B. HELFER
NEIL J. KING
ROBERT B. McCAW
A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLASKY, JR.
A. STEPHEN HUT, JR.
DAVID R. JOHNSON
JOHN ROUNSAVILLE, JR.
ROGER M. WITTEN
ROBERT C. CASSIDY, JR.
JOHN D. GREENWALD *
JOHN H. HARWOOD II
DAVID M. BECKER
MARY CAROLYN COX
CHRISTOPHER R. LIPSETT
WILLIAM J. PERLSTEIN
ANDREW S. WEISSMAN
ALAN H. BRAVERMAN
LYNN BREGMAN
JAMES E. COLEMAN, JR.
STEPHEN P. DOYLE
WILLIAM R. RICHARDSON, JR.
RUSSELL J. BRUEMMER
BRUCE E. COOLIDGE
JUANITA A. CROWLEY
JOHN PAYTON
DAVID WEBTIN
ANDREA ANN TINKO
ANDREW H. VOLLMER
THOMAS W. WHITE
BRUCE M. BERMAN
THOMAS F. CONNELL
CHARLES E. DAWDOW
TERRILL HYDE HUNTINGTON
DUANE D. MORSE

DIETER G. F. LANGE *
EUROPEAN PARTNER

EZEKIEL G. STODDARD
DONALD F. TURNER, P. C.
LESTER HURICK
LEONARD M. SHAMSON
COUNSEL

ROBERT S. McCORMICK
EXECUTIVE DIRECTOR

* NOT ADMITTED IN D. C.

PHILIP D. ANKER
TERESA D. BAER *
ANN D. BENLEN
W. SCOTT BLACKMER
ELAINE L. BLOCK
JOSEPH R. BRENNER
JANELL M. BYRD
JEANNIE A. CARMEDELLE *
PATRICK J. CARONE
SHEILA C. CHESTON
MAXWELL O. CHIBUNDU
GERARD S. CITERA
DAVID P. DONOVAN
PATRICIA D. DOUGLASS
MICHAEL GREEBEN
WENDY H. DUONG *
JAMES A. FELDMAN
CAROL M. FISHMAN
BRUCE S. FRIEDMAN *
GAY GELLHORN
KAREN A. GETMAN *
SCOTT D. GOODSHALL *
ALLEN H. HARRISON, JR.
MARK S. HERSH
SCOTT HOING *
HOWARD S. HOMONOFF *
MURRAY A. INDICK *
DANIEL G. JARCHO
CARL R. JOHNSTON
ANASTASIA D. KELLY
R. SCOTT KILGORE *
JOSEPH E. KILLORY, JR.
NEAL T. KILMINSTER
KERRY W. KIRCHER
SARAH H. KORN

RICHARD K. LAHNE
TILLMAN L. LAY
MITCHELL LAZARUS
CAROL P. LEE
MARK J. LEIMKUHLER *
DEBORAH M. LEVY
ROBERT C. LONGSTRETH *
ADRIENNE S. MASTERS
CAROL E. MATTEY
SUSAN D. McANDREW
MICHAEL A. MELLO *
LINDA J. MILLER *
ANDREW J. MUNRO *
LON E. MUSSLEWHITE
POLLY J. NELSON
JUDITH SAPIR NOVICK *
THOMAS P. OLSON
ROGER J. PATTERSON
STEPHEN W. PRESTON
ADRIAN H. ROE
STEVEN M. ROSENTHAL
DAVID D. ROSSKAM
JOHN BYRON SANDAGE
STEPHEN J. SCHNABLY
STEVEN A. SCHNEIDER
JANE C. SHERBURNE
JAMES SOTTILE, IV
BARRY A. SPERGEL
MICHAEL J. STEVENSON
LUCIA D. SWANSON
KENT D. SYVERUD
ALAN S. TENENBAUM
MARGARET L. TOBEY
MICHAEL C. VAN WALT *
PETER A. VON MEHREN *
CARL WILLNER *

June 25, 1987

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**BY HAND**

John K. Drury, Esq.
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C. 20463

Re: MUR 2464

As you know, we are representing the American Society of Composers, Authors and Publishers ("ASCAP") in the above-captioned MUR. ASCAP received the Commission's notification of its "reason to believe" determination on June 22, 1987. We are now writing to request a 20 day extension, beyond the 15 days routinely allowed for responses, to respond to the MUR notice and the accompanying Factual and Legal Analysis. If this is agreeable to you, we will file a response no later than July 27, 1987.

Please let us know whether this request is granted.

Sincerely,

Roger M. Witten

Roger M. Witten
Deborah M. Levy

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1987

Roger M. Witten, Esquire
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 2464
American Society of
Composers, Authors
and Publishers

Dear Mr. Witten:

This is in response to your letter dated June 25, 1987, which we received on June 29, 1987, requesting an extension of 20 days until July 27 to respond to the Commission's notification of its finding of reason to believe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by close of business on July 27, 1987.

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

Sincerely,

Lawrence M. Noble
Acting General Counsel

By: Lois G. Lerner
Associate General Counsel

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GCC 4035

WILMER, CUTLER & PICKERING
2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420

INTERNATIONAL TELEX: 440 238 WCPI UI
TELEX: 89-2402 WICRING WSH
TELEPHONE 202 663-6000

EUROPEAN OFFICE
4 CARLTON GARDENS
PALL MALL
LONDON, SW1Y 5AA, ENGLAND
TELEPHONE 011-441-839-4466
TELEX: 8813916 WCPLDN
TELCPY: 839-3537
CABLE ADDRESS: WICRING LONDON

ROGER M. WITTEN
DIRECT LINE (202)
663-6170

July 27, 1987

87 JUL 27 P 3: 08

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Joseph K. Drury, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C. 20463

RE: MUR 2464

Pursuant to my telephone call with Larry Noble on July 16, we request on behalf of our client the American Society of Composers, Authors and Publishers ("ASCAP") the opportunity to engage in pre-probable cause conciliation to resolve MUR 2464. We would like to meet with you and your colleagues at your convenience to discuss this. In the event that our efforts to conciliate this matter in the pre-probable cause stage do not succeed, we reserve the right to submit a brief addressing the allegations set forth in the "Factual and Legal Analysis" that the Commission sent to ASCAP with Chairman Thomas' letter of June 18.

We are enclosing herewith ASCAP's responses to the "Questions and Requests for Documents" sent to ASCAP on June 18. The answers reflect confidential business information. We trust the Commission will not release it. We request that you advise us in advance and await a response from us if the Commission considers any publication of this data or if any third party requests it.

Thank you very much for your anticipated cooperation.

Very truly yours,

Roger M. Witten

Roger M. Witten

Enclosure

cc: Mr. Noble

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## ASCAP'S RESPONSE TO QUESTIONS AND REQUESTS FOR DOCUMENTS

1 a. What was the name, title, address and telephone number of the person or persons responsible for making recommendations to the Board of Directors of ASCAP for the determination of the recipient, size and timing of each contribution?

Answer

April 1986-June 1987: Hal David
Member of Board of Directors
15 West 53 Street
New York, N.Y. 10019
(212)664-0124

June 1984-March 1986: Hal David, President

(Prior to June 1984, ASCAP made no contributions to federal candidates.)

b. If no person has been designated by the Board of Directors of ASCAP to carry out the duties described in part a. above, how did the Board of Directors make its determinations to contribute to federal candidates?

Answer

Not applicable.

c. Please submit copies of minutes of all meetings of the Board of Directors where contributions to federal candidates have been considered by the Board.

Answer

See Exhibit A.

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d. What was the number and size of all contributions to federal candidates made during the period of time in question.

Answer

See Exhibit B.

e. Was there any provision in ASCAP's bylaws or other guidelines for operation governing or pertaining to the making of contributions to federal candidates? If so, please provide copies of the same.

Answer

No.

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c. In 1985, and also in 1986, how many members of ASCAP were corporations?

Answer

ASCAP estimates that it had approximately 2720 corporate members in 1985 and approximately 2537 in 1986.[2]

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c. In 1987, how many members of ASCAP are corporations?

[2] ASCAP had a total of 37,805 members in 1985 and 36,161 in 1986.

Answer

As of July 1987, ASCAP has 2645 corporate members.

4 a. What percentage of those entities paying licensing fees to ASCAP are corporations?

Answer

ASCAP does not maintain records indicating the percentage or number of entities paying license fees to ASCAP that are corporations, however, most of ASCAP's 80,000 licensees are corporations.

b. How many corporations pay licensing fees to ASCAP?

Answer

See answer to 4 a. above.

c. What kinds of corporations pay fees to ASCAP (e.g. record companies, music publishing companies, etc.)?

Answer

ASCAP receives license fees from corporations which operate businesses that perform music publicly. ASCAP's corporate licensees include the owners of the major television and radio networks, independent radio and television stations, hotels and motels, background music services, shopping malls, nightclubs, restaurants, dancing schools, amusement parks, retail stores and others.

5 a. Has ASCAP informed any of the corporations which pay licensing or other fees that ASCAP makes contributions to federal candidates out of ASCAP's general treasury fund containing corporate receipts?

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Answer

No.

b. To what extent and in what manner do any of these corporations exert influence on the selection of recipient candidates and the size of ASCAP's contribution to any federal candidate.

Answer

None.

c. Please list those corporations, if any, which exert influence on the selection of recipient candidates or the size of ASCAP's contribution to any federal candidate.

Answer

Not applicable.

6 a. Describe the process by which ASCAP selects candidates who are to receive contributions from ASCAP.

Answer

Candidates who receive contributions are selected on the basis of recommendations of consultants retained for that purpose, among others.

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Exhibit A

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[REDACTED]

# MINUTES OF REGULAR MEETING OF BOARD OF DIRECTORS
of the
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
held in Nashville
JUNE 18, 1986

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The Board of Directors ratified certain political contributions made since April, 1986, with the approval of the Chairman of the Legislative Committee.

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Exhibit B

## POLITICAL CONTRIBUTIONS AND EXPENSES
## 1 9 8 4
**********

| | | |
|---|---|---|
| | Cong. Joseph Adabbo | |
| 09/13/84 | The Committee for Cong. Joseph Adabbo | $1,000.00 |
| | Sen. Max Baucus | |
| 06/07/84 | Friends of Max Baucus | 1,000.00 |
| | Cong. Howard Berman | |
| 06/07/84 | Berman for Congress | 1,000.00 |
| | Sen. Joseph Biden | |
| 09/13/84 | Citizens for Biden | 1,000.00 |
| | Cong. Jack Brooks | |
| 06/07/84 | Committee to Re-elect Jack Brooks | 1,000.00 |
| | Sen. Alan Cranston | |
| 06/07/84 | Cranston for President Committee | 1,000.00 |
| | Sen. Alfonse D'Amato | |
| 12/11/84 | Friends of Senator D'Amato | 1,000.00 |
| | Sen. Robert Dole | |
| 06/07/84 | Dole for Senator | 1,000.00 |
| | Sen. Pete Domenici | |
| 09/13/84 | People for Pete Campaign | 500.00 |
| | Cong. Tom Downey* | |
| 06/07/84 | Citizens for Downey | 1,000.00 |
| 09/13/84 | Citizens for Downey | 1,000.00 |
| | Cong. Don Edwards | |
| 09/13/84 | Edwards Congressional Campaign Fund | 500.00 |
| | Cong. Hamilton Fish, Jr. | |
| 06/07/84 | Friends of Ham Fish, Jr. | 1,000.00 |
| 09/13/84 | Friends of Ham Fish, Jr. | 1,000.00 |

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* Annual contributions of $2,000 to a candidate are comprised of $1,000 each for the primary and general elections.

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| | | |
|---|---|---|
| | Cong. Barney Frank | |
| 06/07/84 | B. Frank for Congress | 1,000.00 |
| 09/13/84 | B. Frank for Congress | 1,000.00 |
| | Cong. Richard Gephardt | |
| 09/13/84 | Gephardt in Congress | 500.00 |
| | Cong. Dan Glickman | |
| 06/07/84 | Glickman for Congress | 500.00 |
| | Cong. Bart Gordon | |
| 09/13/84 | Bart Gordon for Congress | 500.00 |
| | Sen. Al Gore | |
| 06/07/84 | Friends of Al Gore | 1,000.00 |
| | Sen. Howell Heflin | |
| 06/07/84 | Friends of Howell Heflin | 1,000.00 |
| 09/13/84 | Friends of Howell Heflin | 500.00 |
| | Sen. Walt Huddleston | |
| 09/13/84 | Committee to Re-elect Senator Huddleston | 500.00 |
| | Cong. Jim Jeffords | |
| 06/07/84 | Jeffords for Congress | 1,000.00 |
| | Cong. Gillis Long | |
| 06/07/84 | Friends of Gillis Long | 500.00 |
| | Cong. Romano Mazzoli | |
| 06/07/84 | Romano Mazzoli Campaign Fund | 1,000.00 |
| | Sen. Jim McClure | |
| 09/13/84 | McClure for U.S. Senator | 500 |
| | Cong. Carlos Moorhead | |
| 06/07/84 | Moorhead for Congress | 1,000.00 |
| | Cong. Bruce Morrison | |
| 06/07/84 | Committee to Re-elect Bruce Morrison | 1,000.00 |
| 09/13/84 | Committee to Re-elect Bruce Morrison | 500.00 |
| 12/84 | Committee to Re-elect Bruce Morrison | 500.00 |
| | Cong. Thomas P. O'Neill | |
| 06/07/84 | Committee to Re-elect Thomas P. O'Neill | 1,000.00 |
| | Governor Jay Rockefeller | |
| 06/07/84 | Jay Rockefeller for Senator | 1,000.00 |

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| | | |
|---|---|---|
| | Cong. Peter Rodino | |
| 06/07/84 | Citizens for Rodino | 1,000.00 |
| 09/13/84 | Citizens for Rodino | 1,000.00 |
| | Cong. Patricia Schroeder | |
| 06/07/84 | Schroeder for Congress | 1,000.00 |
| | Cong. Chuck Schumer | |
| 06/07/84 | Committee to Re-elect Schumer | 1,000.00 |
| 09/13/84 | Committee to Re-elect Schumer | 1,000.00 |
| | Cong. Henry Waxman | |
| 06/07/84 | Waxman Re-elect Committee | 1,000.00 |
| | Cong. Ted Weiss | |
| 06/07/84 | Weiss for Congress | 500.00 |
| 09/13/84 | Weiss for Congress | 500.00 |
| | TOTAL | $34,500.00 |

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POLITICAL CONTRIBUTIONS AND EXPENSES
1 9 8 5
**********

| | | |
|---|---|---|
| 10/24/85 | Cong. Howard Berman<br>Berman for Congress | $1,000.00 |
| 12/16/85 | Sen. Jeff Bingaman<br>Bingaman for U.S. Senate | 500.00 |
| 04/25/85 | Cong. Jack Brooks<br>Committee to Re-elect Jack Brooks | 400.00 |
| 05/24/85 | Sen. Alan Cranston | 1,000.00 |
| 11/04/85 | Cranston for Senate '86 | 1,000.00 |
| 10/18/85 | Sen. Alfonse D'Amato<br>Friends of Senator D'Amato | 1,000.00 |
| 02/21/85 | Sen. Robert Dole<br>Dole for Senate | 1,000.00 |
| 11/04/85 | Cong. Don Edwards<br>Edwards Congressional Campaign Committee | 500.00 |
| 06/07/85 | Cong. Hamilton Fish, Jr.<br>Friends of Ham Fish, Jr. | 750.00 |
| 11/04/85 | Cong. Barney Frank<br>B. Frank for Congress | 1,000.00 |
| 11/04/85 | Cong. Richard Gephardt<br>Effective Gov't Committee | 1,000.00 |
| 04/25/85 | Cong. Dan Glickman<br>Glickman for Congress | 500.00 |
| 07/22/85 | Cong. Bart Gordon<br>Bart Gordon for Congress | 500.00 |
| 04/25/85 | Sen. Al Gore<br>Friends of Al Gore | 500.00 |
| 11/04/85 | Cong. Bill Gray<br>B. Gray for Congress | 500.00 |

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|---|---|---|
| 09/16/85 | Sen. Paula Hawkins<br>Re-elect Hawkins U. S. Senator | 500.00 |
| 12/09/85 | Cong. Bill Hughes<br>Hughes for Congress | 500.00 |
| 08/16/85 | Cong. Henry Hyde<br>Hyde for Congress | 250.00 |
| 04/25/85 | Sen. Pat Leahy<br>Leahy for U.S. Senator | 1,000.00 |
| 12/09/85 | Sen. Pat Leahy<br>Leahy for U.S. Senator | 1,000.00 |
| 11/04/85 | Cong. Mel Levine<br>Mel Levine for Congress | 500.00 |
| 11/04/85 | Cong. Romano Mazzoli<br>Romano Mazzoli Campaign Fund | 1,000.00 |
| 06/21/85 | Cong. Carlos Moorhead<br>Moorhead for Congress | 1,000.00 |
| 12/09/85 | Sen. Patrick Moynihan<br>The Moynihan Committee | 1,000.00 |
| 12/16/85 | Cong. Matthew Rinaldo<br>Rinaldo for Congress | 500.00 |
| 02/21/85 | Cong. Peter Rodino<br>Citizens for Rodino | 1,000.00 |
| 11/04/85 | Sen. Jim Sasser<br>Friends of Jim Sasser | 1,000.00 |
| 06/07/85 | Cong. Patricia Schroeder<br>Schroeder for Congress | 500.00 |
| | Sen. Paul Simon | |
| 02/26/85 | Simon for Senate | 500.00 |
| 12/09/85 | Simon for Senate | 1,000.00 |
| 02/06/85 | Sen. Arlen Spector<br>Birthday Breakfast | 1,000.00 |
| 07/22/85 | Cong. Henry Waxman<br>Waxman Campaign Committee | 500.00 |
| 11/04/85 | Cong. Alan Wheat<br>Wheat for Congress | 500.00 |

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|---|---|---|
| 12/16/85 | Cong. Tim Wirth<br>Committee for Tim Wirth | 500.00 |
| 09/16/85 | Cong. Jim Wright<br>Wright Appreciation Fund | 1,000.00 |
| | TOTAL | $25,900.00 |

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POLITICAL CONTRIBUTIONS AND EXPENSES
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|---|---|---|
| 08/06/86 | Friends of Les Aucoin Committee | $500.00 |
| 06/13/86 | Barnes for Senate | 250.00 |
| 03/27/86 | Berman for Congress | 1,000.00 |
| 03/12/86 | Committee to Re-elect Cong. Biaggi | 500.00 |
| 03/12/86 | Bingaman Debt Retirement Committee | 500.00 |
| 08/05/86 | Lindy Boggs Campaign Committee | 500.00 |
| 06/09/86 | Re-elect Congressman Bill Boner | 750.00 |
| 08/05/86 | Re-elect Congressman Bill Boner | 250.00 |
| 10/01/86 | Re-elect Congressman Bill Boner | 1,000.00 |
| 01/27/86 | Committee to Re-elect Jack Brooks | 600.00 |
| 03/12/86 | Committee to Re-elect Jack Brooks | 1,000.00 |
| 01/27/86 | John Bryant Campaign Fund | $1,000.00 |
| 07/18/86 | John Bryant Campaign Fund | 1,000.00 |
| 10/01/86 | Sala Burton for Congress Campaign Committee | 500.00 |
| 06/09/86 | Chapman for Congress Committee | 250.00 |
| 03/27/86 | Coble for Congress | 1,000.00 |
| 07/18/86 | Coble for Congress | 1,000.00 |
| 03/12/86 | Coelho for Congress | 1,000.00 |
| 08/05/86 | A Lot of People Supporting Tom Daschle | 1,000.00 |
| 04/03/86 | Dennis de Concini | 2,000.00 |
| 03/12/86 | Jeremiah Denton For Senate | 1,000.00 |
| 03/31/86 | Jeremiah Denton for Senate | 1,000.00 |

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|---|---|---|
| 03/27/86 | Mike DeWine for Re-election Committee | 1,000.00 |
| 10/01/86 | Michael DeWine for Re-election Committee | 1,000.00 |
| 01/27/86 | John Dingell for Congress Committee | 1,000.00 |
| 03/12/86 | Alan J. Dixon for Senate Committee | 1,000.00 |
| 10/01/86 | Alan J. Dixon for Senate Committee | 1,000.00 |
| 10/01/86 | Julian Dixon Democrat for Congress | 600.00 |
| 05/02/86 | Chris Dodd for Senate | 500.00 |
| 10/01/86 | Chris Dodd for Senate | 500.00 |
| 03/12/86 | Citizens for Downey | 1,000.00 |
| 08/05/86 | Citizens for Downey | 1,000.00 |
| 05/02/86 | Eckart for Congress | 300.00 |
| 10/01/86 | Don Edwards Congressional Campaign Fund | 600.00 |
| 06/13/86 | Fazio for Congress | 350.00 |
| 05/02/86 | Feighan for Congress | 1,000.00 |
| 06/09/86 | Friends of Hamilton Fish | 1,000.00 |
| 10/01/86 | Friends of Hamilton Fish | 250.00 |
| 05/02/86 | Florio Re-election Committee 86 | 500.00 |
| 07/30/86 | Thomas S. Foley Committee | 500.00 |
| 10/01/86 | Garvey for Senate | 1,000.00 |
| 07/18/86 | Senator John Glenn Committee | 1,000.00 |
| 03/05/86 | Gephardt in Congress | 1,000.00 |
| 03/31/86 | The Gephardt in Congress | 1,000.00 |
| 03/12/86 | Committee for Congressman Bill Green | 500.00 |
| 10/01/86 | Committee for Congressman Bill Green | 500.00 |

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|---|---|---|
| 03/05/86 | Glickman for Congress Committee | 1,000.00 |
| 06/09/86 | Glickman for Congress Committee | 500.00 |
| 03/12/86 | Bart Gordon for Congress | 1,000.00 |
| 05/02/86 | Grassley Committee Inc. | 1,000.00 |
| 05/02/86 | Bill Gray for Congress Committee | 500.00 |
| 07/18/86 | James R. Jones Election Committee | 750.00 |
| 10/01/86 | James R. Jones Election Committee | 750.00 |
| 08/05/86 | Citizens for Hollings | 1,000.00 |
| 10/01/86 | Citizens for Hollings | 1,000.00 |
| 10/01/86 | Hughes for Congress Committee | 500.00 |
| 04/25/86 | Keep Kastenmeier in Congress | 1,000.00 |
| 09/19/86 | Keep Kastenmeier in Congress | 1,000.00 |
| 05/02/86 | The William Lehman Campaign Fund | 500.00 |
| 10/01/86 | Citizens for Connie Mack | 500.00 |
| 05/02/86 | Ed Markey For Congress Committee | 500.00 |
| 10/01/86 | Romano L. Mazzoli Campaign Fund | 1,000.00 |
| 08/04/86 | McConnell Senate Committee | 2,000.00 |
| 06/13/86 | Mikulski for Senate | 250.00 |
| 06/09/86 | Friends of Congressman George Miller | 300.00 |
| 06/09/86 | Moorhead for Congress | 1,000.00 |
| 10/01/86 | Moorhead for Congress | 1,000.00 |
| 03/05/86 | Morrison Re-election Committee | 1,000.00 |
| 07/18/86 | Bruce Morrison Re-election Committee | 1,000.00 |
| 08/05/86 | The Moynihan Committee | 1,000.00 |
| 10/01/86 | Oakar for Congressman Committee | 600.00 |
| 06/09/86 | Committee to Re-elect Charles Rangel | 1,000.00 |

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|---|---|---|
| 05/02/86 | New Mexicans for Bill Richardson | 250.00 |
| 12/29/86 | Riegle for Senate | 1,000.00 |
| 06/09/86 | Rinaldo for Congress | 500.00 |
| 10/01/86 | Citizens for Rodino | 1,000.00 |
| 12/22/86 | Terry Sanford Committee | 1,000.00 |
| 08/06/86 | Friends of Jim Sasser | 1,000.00 |
| 03/12/86 | Scheuer for Congress | 500.00 |
| 05/02/86 | Schroeder for Congress Committee | 500.00 |
| 08/05/86 | Schroeder for Congress Committee | 500.00 |
| 07/18/86 | Schroeder for Congress | 1,000.00 |
| 06/13/86 | Re-elect Congressman Schumer Committee | 750.00 |
| 12/29/86 | Shelby for U.S. Senate | 1,000.00 |
| 03/12/86 | Larry Smith for Congress | 1,000.00 |
| 06/09/86 | Larry Smith for Congress | 500.00 |
| 10/01/86 | Larry Smith for Congress | 500.00 |
| 05/02/86 | Solarz for Congress 1986 | 500.00 |
| 03/27/86 | Citizens for Arlen Spector | 1,000.00 |
| 03/27/86 | Swindall for Congress | 1,000.00 |
| 05/02/86 | Synar for Congress Committee | 500.00 |
| 06/09/86 | Friends of Bob Torricelli | 250.00 |
| 11/06/86 | Friends of Bill Wachob | 500.00 |
| 05/02/86 | Doug Walgren for Congress | 250.00 |
| 03/12/86 | Wheat for Congress | 500.00 |
| 10/01/86 | Wheat for Congress | 500.00 |

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|---|---|---|
| 03/05/86 | Ted Weiss for Congress | 1,000.00 |
| 10/01/86 | The William Campaign Fund | 500.00 |
| 03/12/86 | Committee for Tim Wirth | 1,000.00 |
| 10/01/86 | Committee for Tim Wirth | 500.00 |
| | TOTAL | $76,350.00 |

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POLITICAL CONTRIBUTIONS AND EXPENSES
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|---|---|---|
| 02/10/87 | Brock Adams for U.S. Senate | $1,000.00 |
| 04/21/87 | Congressman Beryl Anthony<br>Anthony for Congress Campaign Committee | 500.00 |
| 05/11/87 | Max Baucus<br>Friends of Max Baucus | 500.00 |
| 05/28/87 | Jim Bates (for Congress) | 600.00 |
| 04/21/87 | Congressman Jack Brooks<br>The Committee to Re-elect Jack Brooks | 1,000.00 |
| 05/28/87 | John Bryant (Campaign Fund) | 1,000.00 |
| 06/18/87 | Friends of Robert Byrd | 1,000.00 |
| 03/16/87 | Cable for 1988 | 1,000.00 |
| 05/11/87 | Friends of Bob Carr Committee | 1,000.00 |
| 03/16/87 | Friends of Congressman John Conyers | 600.00 |
| 05/28/87 | Tom Downey (Citizens for Downey) | 1,000.00 |
| 05/28/87 | Vic Fazio (Campaign Committee) | 700.00 |
| 05/28/87 | Ed Feighan (for Congress) | 1,000.00 |
| 06/08/87 | Friends of Ham Fish, Jr. | 1,000.00 |
| 03/16/87 | Barney Frank for Congress Committee | 500.00 |
| 03/02/87 | Glickman for Congress | 500.00 |
| 03/02/87 | Bill Gray for Congress | 500.00 |
| 05/28/87 | Orrin Hatch (Election Committee) | 1,000.00 |
| 04/21/87 | Congressman Henry Hyde<br>The Hyde for Congress Committee | 500.00 |

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|---|---|---|
| 04/21/87 | Congressman George Hockbrueckner<br>Friends of George Hockbrueckner | 250.00 |
| 05/07/87 | Jeffords for Vermont Committee | 1,000.00 |
| 05/28/87 | Marcy Kaptur (for Congress Committee) | 300.00 |
| 06/18/87 | Committee to Re-elect Senator Kennedy | 1,000.00 |
| 03/31/87 | Lautenberg Committee - Contribution | 1,000.00 |
| 03/02/87 | William Lehman Campaign Fund | 500.00 |
| 05/28/87 | Mel Levine (for Congress) | 1,000.00 |
| 04/21/87 | Congressman Thomas Manton<br>Manton for Congress, Inc. | 250.00 |
| 05/28/87 | Ed Markey (for Congress Committee) | 1,000.00 |
| 04/21/87 | Senator Howard Metzenbaum<br>Metzenbaum for Senate Committee | 1,000.00 |
| 02/10/87 | Mitchell for U.S. Senate | 1,000.00 |
| 05/28/87 | Carlos Moorhead (for Congress Committee) | 1,000.00 |
| 01/12/87 | Pressler for Senate Committee<br>One ticket for Fundraiser | $500.00 |
| 04/21/87 | Senator Terry Sanford<br>Terry Sanford Committee | 1,000.00 |
| 05/28/87 | E. Clay Shaw (Friends of) | 700.00 |
| 05/11/87 | Committee to Re-elect Slaughter | 500.00 |
| 04/21/87 | Congressman Larry Smith<br>Larry Smith for Congress | 1,000.00 |
| 05/28/87 | Pat Swindall (for Congress) | 500.00 |
| 05/28/87 | Robert Toricelli (Friends of) | 500.00 |
| 04/21/87 | Congressman Ed Towns<br>Committee to Re-elect Ed Towns | 600.00 |
| | TOTAL | $29,500.00 |

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EXECUTIVE SESSION
SENSITIVE
OCT 06 1987
87 SEP 24 AM 8:52
RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| American Society of Composers, Authors and Publishers | ) | MUR 2464 |
| | ) | |

GENERAL COUNSEL'S REPORT

## I. BACKGROUND

On June 9, 1987, the Commission found reason to believe the American Society of Composers, Authors and Publishers ("ASCAP") violated 2 U.S.C. §§ 433, 434, and 441b(a). By letter dated June 18, 1987, the Commission informed ASCAP of its finding and requested that it answer the questions enclosed with that letter. On July 27, 1987, this Office received a letter from counsel for the respondent, in which ASCAP requests that the Commission enter into pre-probable cause conciliation with it. Accompanying the July 27, 1987 letter are ASCAP's replies to the Commission's questions. (See Attachment I).

## II. ANALYSIS

The ASCAP responses confirm that it has made extensive contributions to federal candidates on a continuing basis in recent years. In 1984, ASCAP contributed a total of $34,500 to federal candidates' committees, while in 1985, its contributions equalled $25,900. ASCAP contributed $76,350 to federal candidates in 1986. To date ASCAP's 1987 contributions total $29,500.

Through the making of contributions exceeding $1,000, ASCAP has met the statutory definition of political committee. 2 U.S.C. § 431(4)(A). Pursuant to 2 U.S.C. § 433, all political

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committees other than authorized campaign committees shall register as such by filing a Statement of Organization within 10 days of becoming a political committee. ASCAP first contributed to federal candidates in 1984. As noted, the respondent organization made $34,500 in contributions to federal candidates in that year. Thus, under 2 U.S.C. § 437 ASCAP would have been required to file a Statement of Organization in 1984.

Pursuant to 2 U.S.C. § 434(a)(4), all political committees other than authorized committees of a candidate shall file reports of receipts and disbursements disclosing political contributions. ASCAP has not filed any such reports with the Commission.

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any political committee knowingly to receive any contribution prohibited by Section 441b, including any payment made by a corporation or labor organization. In 1985 and 1986, ASCAP received payments in the form of licensing fees totalling $209,473,962 and $207,652,546 respectively. ASCAP estimates that in 1987, it will receive $224,883,100 in licensing fees. According to ASCAP, "a substantial proportion of the total licensing fees received each year is from corporations." */ ASCAP took

*/ ASCAP states, however, that it has not informed any of the corporations, who make payments to ASCAP in the form of licensing fees and membership dues, that contributions to federal candidates are made out of ASCAP's general treasury fund. (Attachment I, pages 4-5.)

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in an additional $106,730 in 1985 and $106,535 in 1986 in membership dues from corporations. As of June 30, 1987, ASCAP received approximately $81,297 in dues from corporations for the 1987 calendar year. (Attachment I). ASCAP's receipt of these corporate funds presents additional difficulties in resolving the registration and reporting issues raised here. These corporate receipts are prohibited by Section 441b if ASCAP is treated as a political committee.

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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## IV. RECOMMENDATIONS

1. Enter into conciliation with the American Society of Composers, Authors and Publishers prior to a finding of probable cause to believe.

2. Approve the attached proposed conciliation agreement and letter.

Date 9/23/87

Lawrence M. Noble
Acting General Counsel

Attachments
1. Request for conciliation
2. Proposed Conciliation Agreement and Letter

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/SUSAN GREENLEE S.G

DATE: SEPTEMBER 25, 1987

SUBJECT: OBJECTION TO MUR 2464: General Counsel's Report signed September 23, 1987

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The above-captioned document was circulated to the Commission on Thursday, September 24, 1987 at 4:00 P.M.

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

Commissioner Aikens _____

Commissioner Elliott X

Commissioner Josefiak _____

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Thomas _____

This matter will be placed on the Executive Session agenda for October 6, 1987.

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/SUSAN GREENLEE 5:6

DATE: SEPTEMBER 28, 1987

SUBJECT: OBJECTION TO MUR 2464: General Counsel's Report signed September 23, 1987

The above-captioned document was circulated to the Commission on Thursday, September 24, 1987 at 4:00 P.M.

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

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

This matter will be placed on the Executive Session agenda for October 6, 1987.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| American Society of Composers, Authors and Publishers | ) | MUR 2464 |
| | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of October 6, 1987, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 2464:

1. Enter into conciliation with the American Society of Composers, Authors and Publishers prior to a finding of probable cause to believe.

2. Approve the proposed conciliation agreement and letter attached to the General Counsel's report dated September 23, 1987.

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

Attest:

10-7-87
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 8, 1987

Roger M. Witten, Esquire
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 2464

Dear Mr. Witten:

On June 9, 1987, the Federal Election Commission found reason to believe that the American Society of Composers, Authors and Publishers violated 2 U.S.C. §§ 433, 434, and 441b(a). At your request, on October 6, 1987, the Commission determined to enter in negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

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

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| American Society of Composers, Authors and Publishers | ) | MUR 2464 |
| | ) | |

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement that has been signed by Roger M. Witten, counsel for respondent American Society of Composers, Authors and Publishers ("ASCAP").

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the American Society of Composers, Authors and Publishers.

2. Close the file.

3. Approve the attached letter.

6/27/88
Date

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation Agreement
2. Proposed letter

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/KAREN E. TRACH
COMMISSION SECRETARY

DATE: JUNE 29, 1988

SUBJECT: MUR 2464 - GENERAL COUNSEL'S REPORT
SIGNED JUNE 27, 1988

Attached is a copy of Commissioner Elliott vote sheet with comments regarding the above-captioned matter.

Attachment:
Copy of Vote Sheet

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BALLOT

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME TRANSMITTED: TUESDAY, JUNE 28, 1988, at 4:00

COMMISSIONER: AIKENS, [redacted] JOSEFIAK, McDONALD, McGARRY, THOMAS

RETURN TO COMMISSION SECRETARY BY WEDNESDAY, JUNE 30, 1988, at 4:00

SUBJECT: MUR 2464 - GENERAL COUNSEL'S REPORT
SIGNED JUNE 27, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN 29 AM 10:42

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( ) I approve the recommendation

(X) I object to the recommendation

COMMENTS: For the record

DATE: 6-29-88 SIGNATURE Lee Ann Elliott

A DEFINITE VOTE IS REQUIRED. ALL BALLOTS MUST BE SIGNED AND DATED.

PLEASE RETURN ONLY THE BALLOT TO THE COMMISSION SECRETARY.

PLEASE RETURN BALLOT NO LATER THAN DATE AND TIME SHOWN ABOVE.

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| American Society of Composers, Authors, and Publishers | ) | MUR 2464 |
| | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 30, 1988, the Commission decided by a vote of 5-1 to take the following actions in MUR 2464:

1. Accept the conciliation agreement with the American Society of Composers, Authors, and Publishers, as recommended in the General Counsel's Report signed June 27, 1988.

2. Close the file.

3. Approve the letter, as recommended in the General Counsel's Report signed June 27, 1988.

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

Attest:

7-1-88
Date

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

Received in the Office of the Commission Secretary: Tues., 6-28-88, 9:44
Circulated on a 48-hour tally basis: Tues., 6-28-88, 4:00
Deadline for vote: Thurs., 6-30-88, 4:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1988

Roger M. Witten, Esquire
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 2464
American Society of
Composers, Authors
and Publishers

Dear Mr. Witten:

On June 30, 1988, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your client, the American Society of Composers, Authors and Publishers, in settlement of violations of 2 U.S.C. §§ 433, 434 and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended. 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 respondent 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 R. Lee Andersen, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| American Society of Composers, Authors and Publishers | ) | MUR 2464 |
| | ) | |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the American Society of Composers, Authors and Publishers ("Respondent") violated 2 U.S.C. §§ 433, 434, and 441b(a).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

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

IV. ASCAP is an unincorporated association. ASCAP has approximately 35,000 members who are composers, lyricists, and publishers of musical works; about 2,500 are corporations. ASCAP licenses its members' musical works to a broad array of users. ASCAP collects and distributes to its members license fees from those users. Members pay ASCAP nominal annual dues -- $10 from

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writers, $50 from publishers. ASCAP has operated in this fashion for 75 years. Beginning in 1984, ASCAP has made contributions to federal candidates. ASCAP contends that it did so in good faith reliance on the advice of counsel. ASCAP contributed $34,500 to federal candidates in 1984, $25,900 in 1985, and $76,350 in 1986.

V. 2 U.S.C. § 431(4)(A) provides that a political committee is, inter alia, "any . . . association . . . which makes expenditures aggregating in excess of $1,000 during a calendar year. . . ." 2 U.S.C. §§ 433 and 434 respectively provide that all political committees must register and file reports of receipts and disbursements. 2 U.S.C. § 441b(a) provides that it is unlawful for a political committee to accept contributions from corporations.

VI. The Commission has concluded that Respondent violated 2 U.S.C. §§ 433, 434, and 441b(a). Respondent, solely for purposes of settling this matter, no longer contests that conclusion.

VII. Respondent has agreed as follows:

A. Respondent shall cease making contributions to federal candidates. Respondent remains free to sponsor a non-connected political committee which can make contributions and expenditures to federal candidates and receive contributions as allowed by law. Respondent may make contributions of up to $5,000 per calendar year to such a political committee.

B. Respondent shall file a written statement with the Commission setting forth the recipients, dates, and amounts of each of its past contributions to federal candidates.

C. Respondent will pay a civil penalty to the Federal Election Commission in the amount of One Thousand dollars

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($1,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

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

XI. 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

7/15/88
Date

FOR THE RESPONDENTS:

R. M. Witten
Roger M. Witten, Esquire
Counsel for the Respondent

June 21, 1988
Date

8804071 3767

ACC#199

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88 AUG 22 AM 9:16

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2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420

INTERNATIONAL TELEX: 440 239 WCPI UI
TELEX: 89-2402 WICRING WSH
TELEPHONE 202 663-6000

ROGER M. WITTEN
DIRECT LINE (202)
663-6170

EUROPEAN OFFICE
4 CARLTON GARDENS
PALL MALL
LONDON, SW1Y 5AA, ENGLAND
TELEPHONE 011-441-839-4466
TELEX: 8813918 WCPLDN
TELCPY: 839-3537
CABLE ADDRESS: WICRING LONDON

August 18, 1988

MUR 2464

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

Dear Lee:

Pursuant to your request, I enclose copies of letters we wrote to the offices of Senator Specter and Representative Schroeder requesting refunds of contributions made on behalf of ASCAP to them that appeared inadvertently to have exceeded the applicable contribution limits.

Very truly yours,

Roger

Roger M. Witten

Enclosures

88040713768

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88 AUG 22 PM 4:49

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TELEX: 89-2402 WICRING WSH
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CABLE ADDRESS WICRING LONDON

August 15, 1988

Mr. Neal Manne
Administrative Assistant
Office of Senator Specter
303 Senate Hart Office Building
Washington, D.C. 20510-3802

Dear Neal:

I hope the Hill is treating you well. Did I hear that you are moving back to Texas?

I am writing on behalf of our client, the American Society of Composers, Authors and Publishers (ASCAP). According to ASCAP's records, it made several contributions to Senator Specter's campaign committee, Arlen Specter for U.S. Senate, in 1985 and 1986. A contribution of $1,000 was made in February, 1985, a second contribution of $250 was made in January 1986, and a third contribution of $1,000 was made in April 1986. It appears that these contributions totaling $2,250 were made in connection with the 1986 primary and general elections. Thus, it appears that these contributions inadvertently exceeded the donation limit of $1,000 per election by $250.

Accordingly, I must request a refund of $250 from the Arlen Specter for U.S. Senate Committee. We wish to avoid even inadvertent violations of the federal election laws, as we are sure you do. We would, therefore, appreciate your prompt attention to this matter.

Sincerely,

Roger

Roger M. Witten

88040713769

WILMER, CUTLER & PICKERING
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293-6928, 429-4930, 429-6893
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SOURCE WCP001

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LONDON SW1Y 5AA, ENGLAND
TELEPHONE 011 (441) 839-4466
FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LDN

EZEKIEL G. STOODARD
LESTER HURICK
LEONARD M. SHANSON
COUNSEL

CAROL H. FISHMAN
SPECIAL COUNSEL

HENRY T. RATHBUN
OF COUNSEL

ROBERT S. MCCORMICK
EXECUTIVE DIRECTOR

*NOT ADMITTED IN D.C.

LLOYD N. CUTLER
JOHN H. PICKERING
J. ROGER WOLLENBERG
MARSHALL HORNBLOWER
REUBEN CLARK
WILLIAM R. PERLIS
ARNOLD H. LERMAN
ROBERT P. STRANAHAN, JR.
NAN D. TRUITT, JR.
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ARTHUR E. GARDINER, JR.
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MICHAEL S. HELFER
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A. DOUGLAS MELAMED
RICHARD W. CASS
WILLIAM J. KOLASKY, JR.
A. STEPHEN HUT, JR.
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BRUCE M. SERMAN
THOMAS P. CONNELL
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TERRILL A. HYDE
DUANE D. MORSE

DIETER G. F. LANGE*
EUROPEAN PARTNER

WILLIAM F. ADKINSON, JR.
HELENE BERSTA ALEXANDER*
PHILIP D. ANKER
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RICHARD G. LANNE
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MARK J. LEIMKUHLER*
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LON E. MUSSLEWHITE
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CARL WILLNER
ROGER W. YOERGES*
STEPHEN S. ZIMMERMANN*

August 15, 1988

Mr. Daniel J. Buck
Administrative Assistant
Office of Representative Schroeder
2208 Rayburn House Office Building
Washington, D.C. 20505-0601

Dear Mr. Buck:

I am writing on behalf of our client, the American Society of Composers, Authors and Publishers (ASCAP). According to ASCAP's records, it made several contributions to Representative Schroeder's campaign committee, the Schroeder for Congress Committee, in 1985 and 1986. A contribution of $500 was made in December 1985, a second contribution of $500 was made in May 1986, a contribution of $1,000 was made in July 1986, and another $500 contribution was made in August 1986. It appears that these contributions totaling $2,500 were made in connection with the 1986 primary and general elections. Thus, it appears that these contributions inadvertently exceeded the donation limit of $1,000 per election limit by $500.

Accordingly, we must request a refund of $500 from the Schroeder for Congress Committee. We wish to avoid even inadvertent violations of the federal election laws, as we are sure you do. We would, therefore, appreciate your prompt attention to this matter.

Sincerely,

Roger M. Witten

Roger M. Witten
Mindy H. Recht

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2464

DATE FILMED 9/9/88 CAMERA NO. 2

CAMERAMAN K.A.U.

8804071371

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE FILE IN

MUR 2464

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293-5939, 429-4930, 429-9603
TELEX 440239 WCPI UI,
892402 WICRING WSH
ABA NET ABA1354
SOURCE WCP001

EUROPEAN OFFICE
4 CARLTON GARDENS
PALL MALL
LONDON SW1Y 5AA, ENGLAND
TELEPHONE 011 (441) 839-4466
FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LDN

ROGER M. WITTEN
DIRECT LINE (202)
663-6170

November 10, 1988

R. Lee Anderson, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2464 -- American Society of Composers, Authors and Publishers

Dear Lee:

I enclose on behalf of ASCAP a supplement to its written statement of August 15, 1988 additional recipients, date and amounts of its contributions to federal candidates as required by Paragraph VII(B) of the Conciliation Agreement of July 15, 1988.

Sincerely,

Roger M. Witten

Roger M Witten by P.E.
Counsel for the Respondent

Enclosure

cc: Bernard Korman, Esq.

88 NOV 14 PM 4:43
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BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| American Society of Composers, Authors and Publishers | ) | MUR 2464 |
| | ) | |

Pursuant to the Conciliation Agreement entered into by the Federal Election Commission and the American Society of Composers, Authors and Publishers ("ASCAP") on July 15, 1988, ASCAP supplements its written statement setting forth, to the best of its current knowledge, additional recipients, date and amounts of its contributions to federal candidates as required by Paragraph VII(B) of that Agreement.

Respectfully submitted,

Roger M. Witten

Roger M. Witten
Counsel for the Respondent

November 5, 1988

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**ASCAP**

**Contributions to Federal Candidates**
**1 9 8 5**

| | | |
|---|---|---|
| 12/11/85 | Paul Simon for Senate | $ 1,000.00 |
| **Delete** 12/09/85 | Leahy for U.S. Senator | 1,000.00 |
| | Revised Total | $24,150.00 |

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**ASCAP**

Contributions to Federal Candidates
1 9 8 6

| | | |
|---|---|---|
| 01/24/86 | Leahy for U.S. Senate | $ 1,000.00 |
| 02/26/86 | John Dingell for Congress Committee | 1,000.00 |
| | Revised Total | $78,600.00 |

8 9 0 4 0 7 2 5 2 4 9