FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2534

DATE FILMED 6/15/89 CAMERA NO. 4

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AR-87-43

RL87/082887

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1987

**MEMORANDUM**

TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA RJC for RJC 8/28/87
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REFERRAL OF KENNEDY FOR CONGRESS (A87-7)

On August 28, 1987, the Commission approved the Interim Audit Report of the Audit Division on Kennedy for Congress. Attached at Exhibit A is the matter noted in the Interim Audit Report which the Commission also voted to refer to your office for review and consideration in connection with MUR 2412.

Should you have any questions regarding this matter, please contact Dexter Curry or Joe Stoltz at 376-5320.

Attachment as stated

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KENNEDY FOR CONGRESS

Loan Received in Excess of the Limitation

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1000.

Section 431(8)(A)(i) of Title 2 of the United States Code states that the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

The term "loan" is addressed at 11 C.F.R. § 100.7(a)(1)(i)(B) which states that a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 C.F.R. Section 110. A loan, to the extent it is repaid, is no longer a contribution.

The Audit staff's review of documentation made available by the Committee relative to the receipt of loans indicates that an excessive contribution in the amount of $9,000 was received from an individual. The loan was effected in a series of transactions. First, on September 29, 1986 the Committee's bank account was credited $10,000 as a result of a deposit of a $10,000 check from this individual apparently drawn on an account for which she was the sole holder. Also, on September 29, 1986, the Committee's bank account was credited again for $10,000, which represented a deposit of two checks ($6,000 and $4,000), both of which were dated September 26, 1986. The $6,000 check was drawn on the same account as the $10,000 check mentioned above, however, the $4,000 check was drawn on a joint account, according to the information on the photocopy of the check made available to the Audit staff. The candidate and this individual were identified as holders on this account, but only the individual signed the $4,000 check.[1/]

Then, on October 7, 1986, the Committee's bank account was debited $10,000, the purpose of which was to reverse the $10,000 check deposit of September 29, 1986. The debit advice

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1/ Committee disclosure reports listed a $10,000 loan as having been received from this individual. It is unclear at this point whether any portion of the $4,000 check drawn on the joint account of this individual and the candidate represents a loan from the candidate.

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indicated that a stop payment order was issued (no date shown) on the $10,000 check.

During the exit conference, the candidate explained that the account against which the $10,000 check was drawn did not contain sufficient funds to cover the entire amount of the check. A stop payment order was issued, and new checks were drawn equal to the amount of the original loan check. The candidate also stated that he was not aware at the time of the $10,000 loan that the definition of contribution also included a loan received from an individual. As of the close of fieldwork, the entire amount of this loan was still outstanding.

Recommendation

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

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# FIRST GENERAL COUNSEL'S REPORT

Date and Time of Transmittal by OGC to the Commission _____

MUR # 2534
Staff Member: Voegeli

RESPONDENTS' NAMES: Kennedy for Congress Committee (the "Committee"), Jackie Gilligan, Brian T. Kennedy, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)

## GENERATION OF MATTER

The Audit Division ("Audit") referred the Kennedy for Congress Committee, Jackie Gilligan and Brian T. Kennedy, as treasurer (the "Respondents"), to the Office of the General Counsel on September 2, 1987. The basis of the attached referral is an excessive contribution made in the form of a loan.

## FACTUAL AND LEGAL ANALYSIS

The facts and issues that are the subject of this RAD referral are already being handled in MUR 2412.

The Audit staff's review of documents made available by the Committee indicates that Ms. Jackie Gilligan loaned $10,000 to the Committee on or about September 29, 1987, in violation of 2 U.S.C. § 441a(a)(1)(A) which limits contributions, in the aggregate, to $1,000. Under 2 U.S.C. § 431(8)(A)(i) the term "contribution" includes loans. Therefore, this loan resulted in an excessive contribution of $9,000.

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Pursuant to 2 U.S.C. § 441a(f) no political committee may accept a contribution which violates 2 U.S.C. § 441a. Therefore, the Committee violated this section by accepting the loan.

Arising out the events and transactions described above, the Commission found on July 21, 1987, reason to believe in MUR 2412 that Ms. Gilligan violated 2 U.S.C. § 441a(a)(1)(A) and the Committee violated 2 U.S.C. § 441a(f). The Commission elected not to find reason to believe against the candidate in this matter. To date both Ms. Gilligan and the Committee have requested pre-probable cause to believe conciliation.

Because the events giving rise to this referral are already being handled in MUR 2412, the Office of the General Counsel recommends that the Commission take no action and close the file in this matter. 1/

**RECOMMENDATION**

The Office of General Counsel recommends that the Commission take no action and close the file in this matter.

10/14/87
Date

Lawrence M. Noble
General Counsel

Attachments
1. Audit Referral

1/ The Office of the General Counsel is withholding the customary no RTB letters to the Respondents pending the outcome of MUR 2412 which is based upon the same events and transactions.

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BEFORE THE FEDERAL ELECTION COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 2534 |
| Kennedy for Congress Committee | ) | |
| (the "Committee") | ) | |
| Jackie Gilligan, | ) | |
| Brian T. Kennedy, as treasurer | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 19, 1987, the Commission decided by a vote of 5-0 to take no action and close the file in this matter, as recommended in the First General Counsel's report signed October 14, 1987.

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

Attest:

10-19-87
Date

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

Received in the Office of Commission Secretary: Wed., 10-14-87, 1:34
Circulated on 48 hour tally basis: Thurs., 10-15-87, 11:00
Deadline for vote: Mon., 10-19-87, 11:00
jm

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2534

DATE FILMED 6/15/89 CAMERA NO. 4

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