FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2679

DATE FILMED 7/26/91 CAMERA NO. 2

CAMERAMAN AS

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6CC#28

# MARTIN J. GLEASON

July 19, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 AUG -5 PM 5:19

RECEIVED
FEDERAL ELECTION COMMISSION
88 AUG -5 PM 5:19

RECEIVED
FEDERAL ELECTION COMMISSION
88 AUG -8 AM 11:18

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

Dear Mr. Josefiak:

During the 1986, 4th Illinois Congressional District campaign for Congress, I believe Jack Davis, the Republican candidate and Robert Tezak, the Will County Coroner, who is also Davis' foremost financial backer, violated Federal Election Law.

I am asking the F.E.C. to conduct a thorough investigation.

On Sunday, November 2, 1986, some 48 hours prior to the election, the Joliet Herald News (page 5), published an advertisement in support of Davis which cost in excess of $1800.00. It was signed by Robert Tezak-identified as "Chairman of International Games". In very fine print at the bottom of the full page ad was the statement, "Paid for by Mark Robert Tezak. Not authorized by the Davis for Congress committee".

I believe the disclaimer failed to reflect the truth and was an attempt to mislead the public and the Federal Election Commission.

In my opinion, the ad represented an unlawful expenditure of funds to influence the outcome of a Congressional election.

It is against Federal Election Law to accept corporate funds for a Congressional campaign. The F.E.C. should determine if corporate funds were so used.

It is also against Federal Election Law for any individual to contribute more than $1000.00 to a Congressional campaign. Robert Tezak, his spouse, and several officers, directors, shareholders, suppliers and employees of International Games, had all made the maximum $1000.00 contribution to the Davis compaign committee. In my estimation, well over half of Davis' NON-PAC contributions came from Tezak-affiliated family, business and politically connected sources.

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600 Cornelia Street • Joliet, Illinois 60435

In all reports filed to date with the Federal Election Commission, Davis has failed to account for these in-kind contributions to his campaign. I believe this represents a violation by Davis of Federal Election Law. I believe it also represents a further violation of Federal Election Law by Robert Tezak.

To accept as fact the statement "Not authorized by the Davis for Congress committee", would ignore the unusually long, close personal and political relationship of Tezak and Davis. In 1986, Davis was the Will County Republican Central Committee Chairman. Robert Tezak during that same period headed "The Eagles", the $1000.00 per member fund-raising affiliate of the very same Will County Republican group. Only the very naive could, under these circumstances, accept as fact, that the ad was "not authorized by the Davis for Congress committee".

If the Federal Election Code is to mean anything, I trust the Commission will conduct a complete investigation and convene a hearing on this matter.

Very truly yours,

Martin J. Gleason

MJG/lt

91040352149

# LET'S CLEAR THE AIR, MR. COLLINS.

## *An open letter to Shaun Collins*

I resent your false allegations about me.

I resent your using me to make false allegations about State Representative Jack Davis, one of Illinois' finest state legislators. Will County voters must know the truth before Tuesday's election.

Here are your allegations and my rebuttals.

**Allegation:**
You have questioned Rep. Davis' integrity time and again. You have questioned whether he has earned the trust of the voters of the Fourth Congressional District.

**Truth:**
You have done *nothing* to earn the trust of the voters of this district. In fact, voters might well be wary of your record and your associates. You moved into the district eight months ago; your advisors are former aides to Chicago Mayor Harold Washington.

Jack Davis has lived and worked here for over 25 years. As a State Representative and Illinois House Leader, he brought tens of millions of dollars and tens of thousands of job opportunities to Will County. He has been endorsed by the *Chicago Tribune* as the best candidate for the job.

**Allegation:**
You have accused Rep. Davis of cronyism in the move of state offices to the former J.C. Penney building being developed by John Bays and myself. You have implied that Davis is working for the good of his friends, not for the revitalization of downtown Joliet.

**Truth:**
Rep. Davis and a bipartisan group of community leaders supported the move of state offices into a rehabbed downtown office building—and, in fact, the leases were in place for the J.C. Penney building—long before Mr. Bays and I replaced the previous developers who were unable to complete the project. Neither Mr. Bays nor I had any connection with the state's initial decision to move the offices.

Rep. Davis is my friend, as are Senator Alan Dixon, Governor James Thompson, Secretary of State Jim Edgar, Congressman Ed Madigan and Harris Fahwell, President Reagan's son Michael Reagan, and many other office holders, both Democratic and Republican. And the late Congressman George O'Brien was a close personal friend.

Are you suggesting that people should not have friends and supporters?

Perhaps, Mr. Collins, you should look to your own Democratic Party county chairman, reportedly under an investigation, for a better example of self-interest on the part of a public official.

**Allegation:**
You have linked my respect and support for Rep. Davis with the Private Industry Council's move to the former Moose Building, stating that "the apparent agent for the building....is widely believed to be owned or controlled" by me.

**Truth:**
I am not connected with the building. Its owner, John Bays, is a courageous man who is assuming the risk of renovating a dilapidated building as a much needed step in the revitalization of downtown Joliet.

Now, Mr. Collins, I'd like to present a few statements and questions of my own:

- You can make no real accusations against the integrity or experience of Rep. Davis. You are, therefore, using the last resort of a desperate political challenger: "THE BIG LIE." By saying preposterous things about a man of honor and proven ability, you hope to keep him busy refuting those charges and keep the voters confused. This is the same technique used by followers of Lyndon LaRouche. It's not working for them and it won't work for you.
- You have no positive program for the residents of the Fourth Congressional District. You are running on a campaign of negativism and innuendo. In contrast, Rep. Davis stands on his excellent record in Springfield and has a specific program to benefit this district and the country as a whole. I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability.
- Your own political career does little to inspire voter confidence. Why did you leave your position on the Democratic staff investigating cost overruns in the McCormick Place annex construction? Were you allegedly fired because you purportedly were caught leaking confidential information? Why hire ex-aides to Mayor Washington as your advisors and fund-raisers if you don't have a close connection to Chicago politics? Do Will County voters want Mayor Washington/Chicago influence here? What have you ever accomplished to earn the trust of the residents of the Fourth District?

In conclusion, I'd like to counter the charges you have levelled personally against me. You have accused me of contributing heavily to the Illinois Republican Party in exchange for favors. *My political contributions are made on the basis of my convictions, without regard to personal gain. Furthermore, those contributions are far surpassed by my contributions to the people of Joliet and Will County.*

As founder, chairman, and chief executive officer of International Games, a leader in the toy industry, I could have located my business anywhere in the country. But I chose to remain in Joliet, where I was born and where my family has been in business for three generations. Not only does International Games bring tax dollars and employment to Will County, but we have contributed close to *one million dollars* to local charities such as MS, Cystic Fibrosis, Toys for Tots, Big Brothers/Big Sisters, College of St. Francis, and numerous churches and schools. I have made personal investments in numerous projects in Joliet/Will County which have led to jobs and a broader tax base.

Yes, I'm a successful businessman, but that's what this country is all about. We all have the freedom to succeed or fail. We also have free speech, which is why an out-of-towner, an eight-month resident of Will County such as yourself, can make unsubstantiated charges against an outstanding legislator such as Jack Davis.

The voters will decide on Tuesday, Mr. Collins. I predict their decision will be the right one, especially at a time when government needs positive, not negative people.

Sincerely,

Robert J. Tezak
Chairman and Chief Executive Officer
International Games, Inc.

Paid for by Mary Pulver Teak. Not authorized by any Party

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 17, 1988

Mr. Martin J. Gleason
500 Cornelia Street
Joliet, IL 60435

Dear Mr. Gleason:

We have received your letter on August 8, 1988, regarding the possibility of a violation of the Federal Election Campaign Act of 1971, as amended ("the Act").

The 1976 amendments to the Act and Federal Election Commission regulations require that a complaint meet certain specific requirements. Your letter does not meet these requirements. Consequently, the Commission can take no action at this time to investigate this matter.

However, if you desire the Commission to look into the matter discussed in your letter to determine if the Act has been violated, a formal complaint as described in 2 U.S.C. 437g(a)(1) must be filed. Requirements of this section of the law and Commission regulations at 11 C.F.R. 111.4 which are a prerequisite to Commission action are detailed below:

(1) A complaint must be in writing. (2 U.S.C. 437g(a)(1))

(2) Its contents must be <u>sworn to</u> and signed in the presence of a notary public and shall be <u>notarized</u>. (2 U.S.C. 437g(a)(1))

(3) A formal complaint must contain the full name and address of the person making the complaint. (11 C.F.R. 111.4)

(4) A formal complaint should clearly identify as a respondent each person or entity who is alleged to have committed a violation. (11 C.F.R. 111.4)

(5) A formal complaint should clearly identify the source of information upon which the complaint is based. (11 C.F.R. 111.4)

(6) A formal complaint should contain a clear and concise recitation of the facts describing the violation of a

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statute or law over which the Commission has jurisdiction. (11 C.F.R. 111.4)

(7) A formal complaint should be accompanied by supporting documentation if known and available to the person making the complaint. (11 C.F.R. 111.4)

Finally, please include your telephone number, as well as the full names and addresses of all respondents.

Enclosed is a copy of Commission regulations, and your attention is directed to 11 C.F.R. 111.4 through 111.10 that deal with preliminary enforcement procedures. Also, enclosed is a compilation of Federal Election Campaign laws on which these regulations are promulgated. I trust these materials will be helpful to you should you wish to file a legally sufficient complaint with the Commission. The file regarding this correspondence will remain confidential for a 15 day time period during which you may file an amended complaint as specified above.

If we can be of any further assistance, please do not hesitate to contact me at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Excerpts
Procedures

cc: respondents

91040852152

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

August 17, 1988

Arthur J. Dreyer, Treasurer
Jack Davis For Congress
Committee
PO Box 411
South Holland, IL 60473

Dear Mr. Dreyer:

On August 8, 1988, the Federal Election Commission received letter alleging that the Jack Davis For Congress Committee and you, as treasurer, violated sections of the Federal Election Campaign Act of 1971, as amended. However, as indicated from the copy of the enclosed letter to the complainant, those allegations do not meet certain specified requirements for the proper filing of a complaint. Thus, no action will be taken on this matter unless the allegations are refiled meeting the requirements for a properly filed complaint. If the matter is refiled, you will be notified at that time.

This matter will remain confidential for 15 days to allow for the correction of the defects. If the defects are not cured and the allegations are not refiled, no additional notification will be provided and the file closed.

If you have any questions, please do not hesitate to call me at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Complaint
Copy of Letter to Complainant

91040352153

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

August 17, 1988

Robert J. Tezak
Chairman and Chief Executive
Officer
International Games, Inc.
1 Uno Circle
Joliet, IL 60435

Dear Mr. Tezak:

On August 8, 1988, the Federal Election Commission received letter alleging that you violated sections of the Federal Election Campaign Act of 1971, as amended. However, as indicated from the copy of the enclosed letter to the complainant, those allegations do not meet certain specified requirements for the proper filing of a complaint. Thus, no action will be taken on this matter unless the allegations are refiled meeting the requirements for a properly filed complaint. If the matter is refiled, you will be notified at that time.

This matter will remain confidential for 15 days to allow for the correction of the defects. If the defects are not cured and the allegations are not refiled, no additional notification will be provided and the file closed.

If you have any questions, please do not hesitate to call me at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Complaint
Copy of Letter to Complainant

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@CC#226
MUR 2679

# MARTIN J. GLEASON

August 23, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 AUG 25 PM 4:44

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

Dear Mr. Josefiak:

During the 1986, 4th Illinois Congressional District campaign for Congress, I believe Jack Davis, the Republican candidate and Robert Tezak, the Will County Coroner, who is also Davis' foremost financial backer, violated Federal Election Law.

I am asking the F.E.C. to conduct a thorough investigation.

On Sunday, November 2, 1986, some 48 hours prior to the election, the Joliet Herald News (page 5), published an advertisement in support of Davis which cost in excess of $1800.00. It was signed by Robert Tezak-identified as "Chairman of International Games". In very fine print at the bottom of the full page ad was the statement, "Paid for by Mark Robert Tezak. Not authorized by the Davis for Congress committee". (copy is attached)

I believe the disclaimer failed to reflect the truth and was an attempt to mislead the public and the Federal Election Commission.

In my opinion, the ad represented an unlawful expenditure of funds to influence the outcome of a Congressional election.

It is against Federal Election Law to accept corporate funds for a Congressional campaign. The F.E.C. should determine if corporate funds were so used.

It is also against Federal Election Law for any individual to contribute more than $1000.00 to a Congressional campaign. Robert Tezak, his spouse, and several officers, directors, shareholders, suppliers and employees of International Games, had all made the maximum $1000.00 contribution to the Davis campaign committee. In my estimation, well over half of Davis' NON-PAC contributions came from Tezak-affiliated family, business and politically connected sources.

600 Cornelia Street • Joliet, Illinois 60435

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In all reports filed to date with the Federal Election Commission, Davis has failed to account for these in-kind contributions to his campaign. I believe this represents a violation by Davis of Federal Election Law. I believe it also represents a further violation of Federal Election Law by Robert Tezak.

To accept as fact the statement "Not authorized by the Davis for Congress committee", would ignore the unusually long, close personal and political relationship of Tezak and Davis. In 1986, Davis was the Will County Republican Central Committee Chairman. Robert Tezak during that same period headed "The Eagles", the $1000.00 per member fund-raising affiliate of the very same Will County Republican group. Only the very naive could, under these circumstances, accept as fact, that the ad was "not authorized by the Davis for Congress committee".

I am not a lawyer, but it appears to me that violations of Federal Election Law are as follows:

1) Jack Davis didn't report the $1800.00 expenditure on his F.E.C. reports as an "in-kind" contribution;

2) Robert J. Tezak may have paid for this advertisement with Corporate funds;

3) Mark Robert Tezak and/or Robert J. Tezak didn't report any expenditures to the F.E.C. which would be a violation since the Tezaks appear to be maintaining that the money spent for the advertisement was to be classed as an independent expenditure which they then failed to report as such.

In support of the facts of this complaint, please be referred to The Herald News, 300 Caterpillar Drive, Joliet, IL 60436, (815) 729-6161. Mr. Larry Kambic (815) 729-6137, declined to reveal the source of the funds or make available a copy of the check used to pay for the ad. Mr. Kambic is an executive in the Advertising Department of The Herald News.

One of the points to investigate would be to determine whether or not the space was sold at a discount due to previous advertising lineage purchased politically by the Davis for Congress Committee, or corporately by International Games or another of Robert Tezak's corporate business entities. This would lead to other violations of the Federal Election Laws as I understand them.

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My name is Marty Gleason, 600 Cornelia St., Joliet, Illinois 60435, (815) 722-4888; or 3401 South Cicero Ave., Chicago, Illinois 60650 (312 242-3820.

The violations alleged concern:

Jack Davis (Davis for Congress Committee)
Member of Congress
101 North Joliet St.
Joliet, Illinois
(815) 740-2040

Robert J. Tezak, Chairman of The Board
International Games
1 Uno Circle
Joliet, Illinois 60436
(815) 741-4000
Note: Robert Tezak is also Will County Coroner
14 West Jefferson St.
Joliet, Illinois 60435 (815) 727-8455

Mark Robert Tezak
(Son of aforementioned Robert J. Tezak)
Moose Island
Channahon, Illinois 60410
Telephone number not available

If the Federal Election Code is to mean anything, I trust the Commission will conduct a complete investigation and convene a hearing on this matter.

Very truly yours,

Martin J. Gleason

MJG/lt
Encl.

9104035215 7

STATE OF ILLINOIS )
)
COUNTY OF COOK )

Before me personally appeared Martin J. Gleason who by me being duly sworn upon oath, says that the statements set forth above are true and correct, to the best of his knowledge.

Subscribed and sworn to before me this 23rd day of August, 1988.

E. L. Rizzo
Notary Public

91-40852158

# LET'S CLEAR THE AIR, MR. COLLINS.

## *An open letter to Shawn Collins*

I resent your false allegations about me.

I resent your using me to make false allegations about State Representative Jack Davis, one of Illinois' finest state legislators. Will County voters must know the truth before Tuesday's election.

Here are your allegations and my rebuttals.

**Allegation:**
You have questioned Rep. Davis' integrity time and again. You have questioned whether he has earned the trust of the voters of the Fourth Congressional District.

**Truth:**
You have done *nothing* to earn the trust of the voters of this district. In fact, voters might well be wary of your record and your associates. You moved into the district eight months ago; your advisors are former aides to Chicago Mayor Harold Washington.

Jack Davis has lived and worked here for over 25 years. As a State Representative and Illinois House Leader, he brought tens of millions of dollars and tens of thousands of job opportunities to Will County. He has been endorsed by the *Chicago Tribune* as the best candidate for the job.

**Allegation:**
You have accused Rep. Davis of cronyism in the move of state offices to the former J.C. Penney building being developed by John Bays and myself. You have implied that Davis is working for the good of his friends, not for the revitalization of downtown Joliet.

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Rep. Davis is my friend, as are Senator Alan Dixon, Governor James Thompson, Secretary of State Jim Edgar, Congressmen Ed Madigan and Harris Fawell, President Reagan's son Michael Reagan, and many other office holders, both Democratic and Republican. And the late Congressman George O'Brien was a close personal friend.

Are you suggesting that people should not have friends and supporters?

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**Truth:**
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- Your own political career does little to inspire voter confidence. Why did you leave your position on the Democratic staff investigating cost overruns in the McCormick Place annex construction? Were you allegedly fired because you purportedly were caught leaking confidential information? Why hire ex-aides to Mayor Washington as your advisors and fund-raisers if you don't have a close connection to Chicago politics? Do Will County voters want Mayor Washington/Chicago influence here? What have you ever accomplished to earn the trust of the residents of the Fourth District?

In conclusion, I'd like to counter the charges you have levelled personally against me. You have accused me of contributing heavily to the Illinois Republican Party in exchange for favors. *My political contributions are made on the basis of my convictions, without regard to personal gain. Furthermore, those contributions are far surpassed by my contributions to the people of Joliet and Will County.*

As founder, chairman, and chief executive officer of International Games, a leader in the toy industry, I could have located my business anywhere in the country. But I chose to remain in Joliet, where I was born and where my family has been in business for three generations. Not only does International Games bring tax dollars and employment to Will County, but we have contributed close to *one million dollars* to local charities such as MS, Cystic Fibrosis, Toys for Tots, Big Brothers/Big Sisters, College of St. Francis, and numerous churches and schools. I have made personal investments in numerous projects in Joliet/Will County which have led to jobs and a broader tax base.

Yes, I'm a successful businessman, but that's what this country is all about. We all have the freedom to succeed or fail. We also have free speech, which is why an out-of-towner, an eight-month resident of Will County such as yourself, can make unsubstantiated charges against an outstanding legislator such as Jack Davis.

The voters will decide on Tuesday, Mr. Collins. I predict their decision will be the right one, especially at a time when government needs positive, not negative people.

Sincerely,

Robert J. Tezak

Robert J. Tezak
Chairman and Chief Executive Officer
International Games, Inc.

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

September 6, 1988

Mr. Martin J. Gleason
800 Cornelia Street
Joliet, IL 60435

RE: MUR 2679

Dear Mr. Gleason:

This letter acknowledges receipt of your complaint, received on August 25, 1988, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Honorable Jack Davis, Davis For Congress and Arthur J. Dreyer, as treasurer, Robert J. Tezak, and Mark R. Tezak. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 2679. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

21040352160

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

September 6, 1988

Arthur J. Dreyer, Treasurer
Davis For Congress
17075 S. Park
South Holland, IL 60473

RE: MUR 2679
Davis For Congress and
Arthur J. Dreyer, as
treasurer

Dear Mr. Dreyer:

The Federal Election Commission received a complaint which alleges that Davis For Congress and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2679. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and Davis For Congress in in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

91040852162

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

September 6, 1988

The Honorable Jack Davis
101 N. Joliet Street
Joliet, IL 60431

RE: MUR 2679
Honorable Jack Davis

Dear Mr. Davis:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2679. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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21040352163

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

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9104035216 4

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

September 6, 1988

Robert J. Tezak, President
International Games, Inc.
1 Uno Circle
Joliet, IL 60436

RE: MUR 2679
Robert J. Tezak

Dear Mr. Tezak:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2679. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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21040852165

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Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

21040852166

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

September 6, 1988

Mr. Mark R. Tezak
Moose Island
Channahon, IL 60410

RE: MUR 2679
Mark R. Tezak

Dear Mr. Tezak:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2679. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

21040352167

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

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

91040352168

@CCF 38

JACK DAVIS
4TH DISTRICT, ILLINOIS
ARMED SERVICES COMMITTEE
VETERANS AFFAIRS COMMITTEE
CONGRESSIONAL STEEL CAUCUS
WASHINGTON OFFICE:
1234 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3635

# Congress of the United States
## House of Representatives
## Washington, DC 20515

DISTRICT OFFICES:
101 NORTH JOLIET STREET
JOLIET, IL 60431
(815) 740-2040
100 FIRST NATIONAL PLAZA
17TH AND HALSTED, SUITE 415
CHICAGO HEIGHTS, IL 60411
(312) 754-4111
AURORA NATIONAL BANK BUILDING
105 EAST GALENA BOULEVARD, #702
AURORA, IL 60506
(312) 844-3444
TOLL FREE NUMBER
(800) 892-9371

September 12, 1988

Mr. Lawrence M. Nobel
General Counsel
F.E.C.
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
88 SEP 14 AM 11:11

Re: F.E.C. Letter
MUR 2679
9-6-88

Dear Mr. Nobel:

In response to your above referenced letter, I want to go on record immediately stating that complaints made by a "Sangmeister for Congress' operative, Martin Gleason are politically motivated and destined for and already have been used in the 1988 4th District of Illinois Congressional campaign.

Mr. Gleason allowed himself to be used in the 1986 4th District Congressional campaign and himself apparently violated F.E.C. law then and now by performing thousands of dollars worth of travel, phone, xerox and research activity without any disclosures then or now on the Collins for Congress 1986 F.E.C. reports or the 1988 Sangmeister for Congress F.E.C. reports.

RECEIVED
FEDERAL ELECTION COMMISSION
88 SEP 14 PM 2:00

Mr. Gleason is an admitted perjurer having been registered in two election jurisdictions in Illinois (DuPage County and Will County) while having sworn an oath to the contrary and all of his political paranoia and prattlings are at best suspect! In addition, Mr. Gleason has a long term vendetta against Robert Tezak.

Now to his allegations.

The letter published by Mr. Tezak was absolutely <u>unauthorized by me or anyone connected with my campaign</u> in 1986.

Indeed on its publication, I registered a very loud and angry complaint to Mr. Tezak in that my judgment was that after reading the letter in the newspaper that it did not seem to me to be beneficial to my campaign and on the contrary two days before the election may have even created some damage to my election potential!

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During my angry complaint directly to Mr. Tezak he (Tezak) informed me that with his disclaimer on the advertisement his counsel, former U.S. Northern District Attorney Daniel Webb, had advised him he was in compliance with F.E.C. law.

I saw no reason subsequently to view that letter as anything but what it appeared to be, a personal attack on Mr. Collins unsolicited by me or my campaign.

I acted in good faith then as I do now.

One wonders that two years later when this issue is raised by Mr. Gleason and that I have filed a cross complaint against Mr. Gleason's current activities on behalf of the Sangmeister campaign why the F.E.C. is not vigorously pursuing a prosecution of Mr. Gleason's transgressions?

However, if a violation of F.E.C. law was made, it was not by me or my campaign and I am ready to appear whenever and wherever you say under oath to affirm the contents of this letter.

If you choose to make this letter public, you have my consent to do so.

Sincerely,

Jack Davis
Member of Congress

P.S. In your "Description of Preliminary Procedures" sent with your letter, the first paragraph appears to mandate notification of complaint within 5 days of receipt of complaint by the Commission, plus a copy of the complaint.

No such notification was afforded me at my home of record or to the best of my knowledge, elsewhere. I learned of the complaint and its nature from the 4th District media!

The letters from Mr. Gleason were dated July 19, 1988 and August 23, 1988 and were received in my office in Joliet on 9-8-88.

JD:mw

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 SEP 26 AM 11:47

Michael E. Lavelle & Assoc., P.C.
Fisher Suite, 2nd. Floor
743 Circle Avenue
Forest Park, Illinois 60130

OGC
467

RECEIVED
FEDERAL ELECTION COMMISSION

88 SEP 26 AM 11:10

Michael E. Lavelle
Attorney at Law

September 23, 1988

Office: 312/287-1513
Telex: ITT 497-3176
Fax: 312/366-5044

Celia Jacoby, Esq.
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2679

Dear Ms. Jacoby:

I have reviewed the allegations contained in the complaint against Robert J. Tezak concerning an open letter that was published prior to the 1986 general election and I have some observations I would like considered for the report of the Office of the General Counsel.

About the only salient fact submitted by Martin J. Gleason in his complaint to your office is that Mr. Tezak authored a letter published in the Joliet Herald News on November 2, 1986. Almost all the other "points" made by Gleason relate to his "belief," "opinion" and his "thoughts" on the matter, including his recommendations on how the FEC should investigate. In short, his unsupported speculations concerning the letter.

It would appear however, that the first obligation of the FEC is a determination of jurisdiction in the matter. And its jurisdiction for this purpose can only be found in the Federal Election Campaign Laws.

On its face, the letter is an independent statement by Tezak. (Nothing has been shown by Gleason to indicate otherwise except speculation which I would hope will be ignored.) It is apparent the letter is a response to public attacks made by Collins against both Tezak and then State Representative Jack Davis jointly. As an independent statement it might have been termed an "independent expenditure" except for the fact the statement is not "expressly advocating the election or defeat of a...candidate...." Not only does the letter not solicit support or opposition to any candidate, it does not even mention any office that is being sought nor does it say who any candidate is.

Another observation I have is that the term "expenditure," as defined in Sec. 431 of the act, does not include:

(i) any ...commentary...distributed through the facilities of any...newspaper... unless such facilities are owned or controlled by any political party, political committee, or candidate.

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Michael E. Lavelle & Assoc., P.C.

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 SEP 26 AM 11:10



The letter is a commentary by its author distributed through a newspaper and would seem therefore to fall within this exclusion. Gleason does not allege that any political party, committee or candidate owns or controls the newspaper.

Since the act does not apply to an independent expenditure which does <u>not</u> expressly advocate the election or defeat of a candidate nor does the act apply to commentary distributed through a newspaper, there can be no jurisdiction in the FEC. Without jurisdiction the FEC must decline any further action in this matter.

Very truly yours,

Michael E. Lavelle

Michael E. Lavelle

:cm

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OGC# 441

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 SEP 23 PM 1:38

**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR** 2679

**NAME OF COUNSEL:** Michael E. Lavelle

**ADDRESS:** Fisher Suite, 2nd. Floor
743 Circle Avenue
Forest Park, IL 60130

**TELEPHONE:** 312/287-1513

RECEIVED
FEDERAL ELECTION COMMISSION
OGC

88 SEP 23 AM 3:59

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.

September 21, 1988
Date

Signature

**RESPONDENT'S NAME:** Robert J. Tezak

**ADDRESS:** International Games
1 Uno Circle
Joliet, IL 60436

**HOME PHONE:**

**BUSINESS PHONE:** 815/741-4000

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EXECUTIVE SESSION
RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
88 NOV 21 AM 9:23
DEC 01 1988

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 2679
Date Complaint Received by OGC:
August 25, 1988
Date of Notification to Respondents:
September 6, 1988
Staff Member: C. L. Jacoby

COMPLAINANT: Martin J. Gleason

RESPONDENTS: Robert J. Tezak
Mark R. Tezak
Jack Davis
Davis for Congress and Arthur J. Dreyer, as treasurer
International Games, Inc.

RELEVANT STATUTES: 2 U.S.C. §§ 431(4), (9) and (17)
2 U.S.C. § 434
2 U.S.C. §§ 441a(a)(1)(A) and (a)(7)(B)(i)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b
2 U.S.C. § 441d(a)
11 C.F.R. § 100.8(b)(2)
11 C.F.R. § 109.1

INTERNAL REPORTS CHECKED: Reports of Receipts and Disbursements
Advisory Opinions
Closed MURs

FEDERAL AGENCIES CHECKED: None

## I. GENERATION OF MATTER

This matter originated from a signed, sworn complaint. The complainant, Martin J. Gleason, asserts that violations occurred during the 1986 4th Illinois Congressional District Election campaign. The alleged violations arose from the publication of an "open letter" signed by Robert Tezak and "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis." This advertisement was published on November 2, 1986, two days prior to the election.

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## II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires expenditures to influence federal elections be disclosed. The complainant alleges that the open letter was published in violation of the Act. The statutory provisions which the complainant asserts were violated are:

1. Section 441d(a) which requires certain disclaimers,

2. Section 441b(a) which prohibits the making and receipt of corporate contributions,

3. Section 441a(a)(1)(A) which limits individual contributions to $1000,

4. Section 441a(f) which prohibits a political committee's receipt of excessive contributions,

5. Section 434(c) which requires certain expenditures to be reported within 24 hours, and this section generally concerning the reporting of receipts in excess of $200.

The independence of the expenditure has also been challenged.

The complainant believes that the disclaimer failed to reflect the truth, and that the advertisement was an unlawful expenditure of funds. The complainant asks that the Commission determine whether corporate funds were utilized as Robert Tezak was identified in the advertisement as "Chairman and Chief Executive Officer, International Games, Inc." The complainant further alleges that Mr. Davis failed to report the cost of this advertisement as an in-kind contribution, and that the Tezaks failed to report any expenditure to the Commission. The complainant also asks that the Commission investigate the possibility that the advertising space was sold at a discount.

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The complainant asserts that the "unusually long, close personal and political relationship of Tezak and Davis" warrants disbelief that the advertisement was not authorized by Jack Davis or his authorized committee, Davis for Congress (the "Davis Committee"). He also asserts that during 1986, Mr. Davis chaired the Will County Republican Committee while Robert Tezak headed "The Eagles," a fundraising affiliate of that committee. According to the complainant, Mark Tezak is the son of Robert Tezak. No evidence, other than these assertions, is provided to support the allegations raised by the complainant. Responses to this complaint were only received from Robert Tezak and Jack Davis.

Counsel for Robert Tezak responded to this complaint on September 26, 1988. Counsel argues that the Commission should dismiss this complaint for lack of jurisdiction. Counsel's arguments focus on two issues: was there advocacy expressed in the open letter to characterize that letter as an independent expenditure under Section 431(17), and was the publication of the open letter an expenditure under Section 431(9)? Counsel states that these propositions must be answered in the negative because:

a. the complainant has raised only unsupported speculations;

b. the open letter is not an independent expenditure under the Act as it does not advocate the election or defeat of a candidate, does not solicit support or opposition to any candidate, does not mention any office being sought and does not say who any candidate is; and,

c. the open letter is not an expenditure under Section 431 as the open letter is a "commentary by its author distributed through a newspaper" which is not owned or controlled by a candidate, political party or committee.

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Some of the supposed violations, and assessment of counsel's arguments, will turn on a determination that the "open letter" constituted an expenditure under the Act, that is, whether it was a communication that expressly advocated the election or defeat of a clearly identified candidate. 2 U.S.C. § 431(17); 2 U.S.C. § 441d(a). However, to the extent that the expenditure was made for the "purpose of influencing" a federal election, or was made "in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate or his committee," the expenditure must be disclosed, even absent a determination of express advocacy. Such expenditures are contributions under the Act. 2 U.S.C. § 431(9)(A), § 434 and § 441a(a)(7)(B)(i).

**1. Did the Open Letter Expressly Advocate the Election or Defeat of a Federal Candidate?**

Under the Act a political communication which "expressly advocates" either the election or defeat of a candidate for federal office must be reported. The Commission's regulations at Section 109.1(b)(2) state that express advocacy means "any communication containing a message advocating election or defeat," but such message is not limited to any particular words or phrases. Unless the challenged communication rises to express advocacy, the Act may not be implicated. See Buckley v. Valeo, 424 U.S. 1, 80 (1976). The features of express advocacy were enumerated in FEC v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 108 S.Ct. 151 (1987). These features are:

1. Speech is express if its message is unmistakable and unambiguous, suggestive of only one plausible meaning.

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2. Speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act.

3. It must be clear what action is advocated.

The Furgatch court emphasized that if any reasonable alternative reading of the speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. But the statement of advocacy need not be presented in the clearest, most explicit language.

The published advertisement which is the basis of this complaint is titled an "open letter" addressed to Shawn Collins, the apparent Democratic candidate for the Fourth Illinois Congressional District. Mr. Collins is not specifically identified as a candidate in that race; his candidacy is, however, evident from various phrases in the advertisement. 1/ The premise for the letter is to respond to "false allegations." The letter apparently rebuts various charges made by Mr. Collins that are unflattering to Robert Tezak and Jack Davis. To each "allegation" evidently made by Mr. Collins, Robert Tezak

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1/ Some of these elliptical references are: "You have done nothing to earn the trust of the voters of this district. In fact, voters might well be wary of your record ..." "You are, therefore, using the last resort of a desperate political challenger." "You have no positive program for the residents of the Fourth Congressional District. You are running a campaign of negativism and innuendo." "Your political career does little to inspire voter confidence."

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responded with his views of the "truth." From the tenor of the statements about Jack Davis, ostensibly the Republican candidate for the same election, the author's allegiance to Mr. Davis is evident. 2/

Each "truth" response implies that the candidate, Mr. Collins, is untruthful. Further, the writer challenges Mr. Collin's qualifications for office. The author then states that "Will County voters must know the truth before Tuesday's election..." and "[t]he voters will decide on Tuesday, Mr. Collins, I predict their decision will be the right one... ."

Taken as a whole, the open letter calls on the reader to consider the alleged untruthfulness and qualifications of candidates for the U.S. House of Representatives. The timing of this letter (the Sunday prior to election day), the naming of persons who are known to be involved in a particular political contest (although not explicitly so identified), statements on those persons' qualifications to hold office, and references to the voters' decision on Tuesday (election day) make the relationship of this open letter to a particular electoral campaign unmistakable. The clear implications drawn from this

2/ Among the references to Mr. Davis' candidacy are: "You make no real accusations against the integrity and experience of Rep. Davis. ... a man of proven honor and ability ... you hope to ... keep the voters confused." "In contrast, Rep. Davis ... has a specific program to benefit this district and the country as a whole." "I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability."

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advertisement are the promotion of Mr. Davis' candidacy and opposition to Mr. Collins'. The only reasonable interpretation of this message is that one should not vote for Mr. Collins. Therefore, within the guidelines of Furgatch, the message is express advocacy subject to the requirements of the Act.

**2. Was the Publication of the Open Letter an Expenditure Under the Act?**

The term "expenditure" includes any purchase, payment ... or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). An exemption, commonly denoted the "press or media exemption," provides that "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication ..." is not included within the definition of expenditure. 2 U.S.C. § 431(9)(B)(i). This exemption is elaborated upon by the Commission's regulations at 11 C.F.R. § 100.8(b)(2). That regulation states that any "cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by any political party, political committee or candidate ... ." That regulation clarifies that the exemption extends to those expenses incurred by the institutional press in covering and commenting on election campaigns. That interpretation is consistent with the purpose of the exemption carved out by Congress.

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The press exemption was a 1974 amendment to the Act designed to "make it plain that it is not the intent of the Congress ... to limit or burden in any way the first amendment freedoms of the press and of association." H.R. Rep. No. 98-943, 93 Cong., 2d Sess. 4, reprinted in FEC, LEGISLATIVE HISTORY OF FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 at 638 (1977). Courts have also consistently interpreted the media exemption in its application to the corporate press. In cases challenging the jurisdiction of the Commission on grounds that the media exemption applies to certain activities, courts have first sought to determine whether the press entity was acting as a press entity with respect to the conduct in question. See e.g., FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981); FEC v. Readers Digest Association, Inc., 509 F. Supp. 1210 (S.D.N.Y. 1981). The Commission has also consistently held that the media exemption is available only to press entities engaged in legitimate press functions. See MURs 2289 and 1809; AO 1987-8 (n.1). Therefore, Mr. Tezak, an individual purchaser of advertising space, is not a person or entity that can qualify for the exemption under Section 431(9)(B)(i).

The open letter represents an expenditure, the purpose of which was evidently to influence a federal election. Such expenditure is a contribution within the meaning and application of the Act.

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Accordingly, several violations may be made out under the alleged facts. 3/

**A. Alleged In-Kind and Excessive Contribution**

The complainant alleges that the expenditure was not independent, and therefore, constituted an in-kind contribution in excess of the statutory limitation. The open letter, according to the complainant, cost approximately $1800 to publish. Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person may contribute more than $1000 in the aggregate to a federal candidate and his authorized committee. In addition no political committee may knowingly accept any contribution which violates Section 441a. 2 U.S.C. § 441a(f). Mark Tezak was identified in the open letter as the expending party.

The costs to publish the open letter is an expenditure apparently made for the purpose of influencing an election for federal office. 2 U.S.C. § 431(9)(A). The author of the open letter states that voters "must know the truth" before the

3/ There is some inconsistency in the information presently available. The open letter was apparently written by Robert Tezak, although Mark Tezak is identified as the expending party. The complainant alleges that both Mark and Robert Tezak made excessive contributions and failed to properly report this expenditure. However, no evidence has been presented to contradict the statement on the open letter that Mark Robert Tezak paid for the communication. Accordingly, the discussion and recommendations to the Commission reflect the disclaimer statement that Mark Robert Tezak expended the funds in question. The roles and involvement of both Messrs. Tezak will be explored during the investigation. Should the investigation disclose that the disclaimer did not reflect the source of funds, other appropriate recommendations will be made.

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election. As depicted by the author, that "truth" would affect the voters' decisions, i.e., influence a federal election. Such expenditures, if not independent, are deemed in-kind contributions subject to the limitation on contributions. 2 U.S.C. § 441a(a)(7)(B)(i) and 11 C.F.R. § 109.1(c).

To be considered independent, the expenditure must be made without cooperation or consultation with a candidate, authorized committee or agent of such candidate. These criteria are enumerated in 2 U.S.C. § 431(17). Section 109.1 of the Commission's regulations clarifies the meaning of an independent expenditure. Under that regulation, an expenditure will be presumed to have been made in consultation and cooperation with a candidate or an authorized committee when it is:

> (A) Based on information about the candidate's plans, projects, or needs provided to the expending party by the candidate, or by the candidate's agents, with a view toward having the expenditure made;
>
> 11 C.F.R. § 109.1(b)(4)(i)

The complainant argues that to believe that Mr. Davis was not involved in this communication is naive because Mr. Davis and Robert Tezak (i) are members of the same political party and (ii) have had an "unusually long, close personal and political relationship." No other circumstances are alleged to negate the independency of the expenditure.

However, the subject matter of the open letter addresses derogatory statements concerning both Messrs. Davis and Robert Tezak. The refutation of such statements may have been an objective of the Davis Committee as well as an objective of Robert

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Tezak in writing the open letter. Further, during 1986, Mr. Davis was chairman of the Will County Republican Committee, while Robert Tezak chaired a fundraising affiliate, in addition to their personal relationship. 4/ In view of the possible congruent objectives, the gentlemen's involvement and probable interaction during the 1986 election cycle, the possibility that the "plans, projects or needs" of the candidate were known to, made available to or acted upon by the expending party should be reviewed.

In response Mr. Davis wrote that neither he nor his committee authorized the publication of the Tezak open letter. However, authorization is not the only factor which may jeopardize the independence of an expenditure. In view of the relationship expressed and other circumstances, this expenditure may not have been independent. Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that Mark R. Tezak, as the expending party, violated 2 U.S.C. § 441a(a)(1)(A) and that the Davis Committee and its treasurer violated 2 U.S.C. § 441a(f), and ask questions regarding the issue of coordination. Although there is presently no evidence that Robert Tezak paid any of the costs associated with the open letter, the investigation may disclose that he paid for or otherwise participated in the publication of the open letter. Therefore, this Office makes no recommendations at this time against Robert J. Tezak, pending responses to the investigation.

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4/ In the open letter, Robert Tezak describes Rep. Davis as his friend.

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**B. Failure to Report An Independent Expenditure or An In-Kind Contribution**

If the advertisement is subject to the Act, the costs expended to publish the advertisement must be disclosed. Any purchase or payment made by any person for the purpose of influencing any election to federal office is an expenditure under the Act. 2 U.S.C. § 431(9)(A). Accordingly, these costs would be either an independent expenditure or an in-kind contribution. Facially the advertisement is an independent expenditure as evidenced by the disclaimer, "Paid for by Mark Robert Tezak/Not Authorized by Jack Davis." According to the complainant, approximately $1800 was spent to publish this advertisement.

Under the Act every person who makes an independent expenditure in excess of $250 must file a statement concerning that expenditure. Further, any independent expenditure aggregating $1000 made within 20 days prior to, but more than 24 hours before, an election, must be reported within 24 hours. 2 U.S.C. § 434(c).

According to the complainant, this advertisement appeared on the Sunday prior to the 1986 November election. Since the expenditure assertedly exceeded $1000 and was made within 20 days, but more than 24 hours, before an election, filing the appropriate statement was required. However, a review of the public records did not reveal such filing. Consequently, this Office recommends that the Commission find reason to believe that Mark R. Tezak violated 2 U.S.C. § 434(c). Because there is no present evidence

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that Robert J. Tezak expended the funds in question, this Office makes no recommendations at this time against Robert J. Tezak, pending receipt of responses to the invesigation.

If this expenditure was not independent within the meaning of the Act, the reporting requirement under Section 434(c) would not be imposed. As indicated in Section A supra, this expenditure may have constituted an in-kind contribution to the Davis Committee. Under Section 434(b)(2)(A), a political committee must disclose the receipt of contributions from persons other than political committees. A review of filed reports of receipts and disbursements did not reveal the disclosure of this in-kind contribution. Therefore, to the extent that this expenditure was an in-kind contribution, the Davis Committee was obligated to report the receipt and disbursement of that sum. See 11 C.F.R. § 109.1(c). Since the filed reports do not make the requisite disclosure, a violation of Section 434 by the Davis Committee may have occurred. 5/

5/ The reporting requirements under Section 434 go to a political committee, not an individual. As indicated in footnote 3, the roles of Mark and Robert Tezak are not clearly defined. According to the disclaimer notice, only Mark Tezak expended any funds to publish this communication. Nor does it appear that either gentleman's activities extended beyond this one expenditure. To the extent that payment for the advertisement derived from personal funds and actions were undertaken as individuals, not on behalf of a group, compliance with registration and reporting obligations applicable to political committees would not be required. See 2 U.S.C. § 431(4)(A) and 434; AO 1986-38. However, if it is determined that both gentlemen expended funds to publish the open letter or otherwise acted in concert, the possibility arises that the Tezaks were a political committee. In that event (footnote continued)

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Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that Davis for Congress and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. § 434.

C. Alleged Corporate Contribution

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any federal candidate or political committee to knowingly accept or receive any contribution from a corporation.

Corporations are prohibited from making a contribution or expenditure, defined to included "anything of value," in connection with federal elections. It is also unlawful for any officer or director to consent to a corporate contribution or expenditure in connection with a federal campaign. 2 U.S.C. §§ 441b(a), (b)(2).

The complainant intimates that corporate funds may have financed the open letter. This allegation is ostensibly based on the identification of the author, Robert Tezak, as chairman and chief executive officer of International Games, Inc. in both the text and signature of the open letter. Contributions by this company to local organizations are also mentioned in the text. However, this Office believes that this unsubstantiated speculation does not warrant a finding at this time that a corporate contribution occurred. The investigation will seek information to confirm or refute this speculation regarding

5/ (footnote continued)
the registration and reporting requirements for a political committee would not have been met. Should the investigation determine that such obligations are applicable, further appropriate recommendations will be make to the Commission.

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a possible corporate contribution. This Office, therefore, makes no recommendations at this time on this ground. 6/

D. Alleged Improper Disclaimer

The complainant alleges that the disclaimer which appeared on the open letter misrepresented the source of payment and authorization. The disclaimer stated that the open letter was "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis."

Pursuant to 2 U.S.C. § 441d(a), whenever a person finances a communication to advocate the election or defeat of a clearly identified candidate, a statement disclosing the source of the funds expended and the authorization (or lack) by a federal candidate or committee must be made. The disclosure statement on the open letter ostensibly fulfills these requirements.

However, there is some question as to the veracity or completeness of that statement. The complainant suggests that corporate funds, not those of Mark Tezak, may have financed the communication. The complainant further suggests that the expenditure may have been coordinated with and authorized by a federal candidate or committee. Should either of these allegations be confirmed, then the disclaimer failed to provide the required information. Mr. Davis has declared that neither he nor anyone connected with his campaign in 1986 authorized this advertisement. But should coordination have occurred, an implicit

6/ Presently there is no allegation that Mark R. Tezak was a corporate officer or director. Accordingly, no recommendation on this ground has been made as to Mark R. Tezak at this time.

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authorization would have been given. Therefore, this Office recommends that the Commission find reason to believe that Mark R. Tezak violated 2 U.S.C. § 441d(a).

**E. Allegations Against the Candidate**

At this time no specific evidence has been presented concerning any violations of the Act by Jack Davis. Mr. Davis maintains that no violation of the Act by him or his committee occurred under the alleged circumstances. Accordingly, this Office recommends that the Commission find no reason to believe at this time that Jack Davis violated the Act.

**III. RECOMMENDATIONS**

1. Find reason to believe that Davis for Congress and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f).

2. Find reason to believe that Mark R. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A) and 441d(a).

3. Find no reason to believe at this time that Jack Davis violated the Federal Election Campaign Act of 1971, as amended, or the Commission's Regulations.

4. Approve the attached letters, Factual and Legal Analyses and Questions.

Lawrence M. Noble
General Counsel

11-17-88
Date

BY: Lois G. Lerner
Lois G. Lerner
Associate General Counsel

Attachments
1. Responses to Complaint
2. Proposed Letters (4)
3. Proposed Factual and Legal Analyses (2)
4. Questions

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: NOVEMBER 23, 1988

SUBJECT: OBJECTION TO MUR 2679 - FIRST G. C. REPORT SIGNED NOVEMBER 17, 1988

The above-captioned document was circulated to the Commission on Monday, November 21, 1988 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

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

This matter will be placed on the meeting agenda for December 1, 1988.

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

21040852190

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Robert J. Tezak | ) | |
| Mark R. Tezak | ) | |
| Jack Davis | ) | MUR 2679 |
| Davis for Congress and Arthur | ) | |
| J. Dreyer, as treasurer | ) | |
| International Games, Inc. | ) | |

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CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of January 10, 1989, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2679:

1. Find reason to believe that Davis for Congress and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f).

2. Find reason to believe that Mark R. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A) and 441d(a).

3. Find no reason to believe at this time that Jack Davis violated the Federal Election Campaign Act of 1971, as amended, or the Commission's Regulations.

(continued)

4. Approve the Factual and Legal Analyses attached to the General Counsel's report dated November 17, 1988, subject to revision as agreed during the meeting.

5. Approve the letters and Questions attached to the General Counsel's report dated November 17, 1988, subject to revision of the Questions as agreed during the meeting discussion.

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

Attest:

Jan. 13, 1989
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 27, 1989

Mark R. Tezak
Moose Island
Channahon, Illinois 60410

RE: MUR 2679
Mark R. Tezak

Dear Mr. Tezak:

On September 6, 1988, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on January 10 , 1989, found that there is reason to believe that you violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A) and 441d(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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

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

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

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

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

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

If you have any questions, please contact Celia L. Jacoby, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Questions
Designation of Counsel Form

21040521974

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mark R. Tezak MUR 2679

This matter originated from a signed, sworn complaint. The complainant, Martin J. Gleason, asserts that violations occurred during the 1986 4th Illinois Congressional District Election campaign. The alleged violations arose from the publication of an "open letter" signed by Robert Tezak and "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis." This advertisement was published on November 2, 1986, two days prior to the election.

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires expenditures to influence federal elections be disclosed. The complainant alleges that the open letter was published in violation of the Act. The statutory provisions which the complainant asserts were violated are:

1. Section 441d(a) which requires certain disclaimers,

2. Section 441b(a) which prohibits the making and receipt of corporate contributions,

3. Section 441a(a)(1)(A) which limits individual contributions to $1000,

4. Section 441a(f) which prohibits a political committee's receipt of excessive contributions,

5. Section 434(c) which requires certain expenditures to be reported within 24 hours, and this section generally concerning the reporting of receipts in excess of $200.

The independence of the expenditure has also been challenged.

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The complainant believes that the disclaimer failed to reflect the truth, and that the advertisement was an unlawful expenditure of funds. The complainant asks that the Commission determine whether corporate funds were utilized as Robert Tezak was identified in the advertisement as "Chairman and Chief Executive Officer, International Games, Inc." The complainant further alleges that Mr. Davis failed to report the cost of this advertisement as an in-kind contribution, and that the Tezaks failed to report any expenditure to the Commission. The complainant also asks that the Commission investigate the possibility that the advertising space was sold at a discount.

The complainant asserts that the "unusually long, close personal and political relationship of Tezak and Davis" warrants disbelief that the advertisement was not authorized by Jack Davis or his authorized committee, Davis for Congress (the "Davis Committee"). He also asserts that during 1986, Mr. Davis chaired the Will County Republican Committee while Robert Tezak headed "The Eagles," a fundraising affiliate of that committee. The complainant further alleges that Robert Tezak may have raised funds for the Davis Committee. According to the complainant, Mark Tezak is the son of Robert Tezak. No evidence, other that these allegations, was provided to sustain support the allegations raised by the complainant.

Some of the supposed violations will turn on a determination that the "open letter" constituted an independent expenditure under the Act, that is, whether it was a communication that expressly

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advocated the election or defeat of a clearly identified candidate. 2 U.S.C. § 431(17); 2 U.S.C. § 441d(a). However, to the extent that the expenditure was made for the "purpose of influencing" a federal election, and was made "in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate or his committee," the expenditure must be disclosed, even absent a determination of express advocacy. Such expenditures are contributions under the Act. 2 U.S.C. § 431(9)(A), § 434 and § 441a(a)(7)(B)(i).

**1. Did the Open Letter Expressly Advocate the Election or Defeat of a Federal Candidate?**

Under the Act a political communication which "expressly advocates" either the election or defeat of a candidate for federal office must be reported. The Commission's regulations at Section 109.1(b)(2) state that express advocacy means "any communication containing a message advocating election or defeat," but such message is not limited to any particular words or phrases. Unless the challenged communication rises to express advocacy, the Act may not be implicated. See Buckley v. Valeo, 424 U.S. 1, 80 (1976). The features of express advocacy were enumerated in FEC v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 108 S.Ct. 151 (1987). These features are:

1. Speech is express if its message is unmistakable and unambiguous, suggestive of only one plausible meaning.

2. Speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act.

3. It must be clear what action is advocated.

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The Furgatch court emphasized that if any reasonable alternative reading of the speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. But the statement of advocacy need not be presented in the clearest, most explicit language.

The published advertisement which is the basis of this complaint is titled an "open letter" addressed to Shawn Collins, the apparent Democratic candidate for the Fourth Illinois Congressional District. Mr. Collins is not specifically identified as a candidate in that race; his candidacy is, however, evident from various phrases in the advertisement. 1/ The premise for the letter is to respond to "false allegations." The letter apparently rebuts various charges made by Mr. Collins that are unflattering to Robert Tezak and Jack Davis. To each "allegation" evidently made by Mr. Collins, Robert Tezak responded with his views of the "truth." From the tenor of the statements about Jack Davis, ostensibly the Republican candidate for the same election, the author's allegiance to Mr. Davis

1/ Some of these elliptical references are: "You have done nothing to earn the trust of the voters of this district. In fact, voters might well be wary of your record ..." "You are, therefore, using the last resort of a desperate political challenger." "You have no positive program for the residents of the Fourth Congressional District. You are running a campaign of negativism and innuendo." "Your political career does little to inspire voter confidence."

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is evident. 2/

Each "truth" response implies that the candidate, Mr. Collins, is untruthful. Further, the writer challenges Mr. Collin's qualifications for office. The author then writes "Will County voters must know the truth before Tuesday's election..." and "[t]he voters will decide on Tuesday, Mr. Collins, I predict their decision will be the right one... ."

Taken as a whole, the open letter calls on the reader to consider the alleged untruthfulness and qualifications of candidates for the U.S. House of Representatives. The timing of this letter (the Sunday prior to election day), the naming of persons who are known to be involved in a particular political contest (although not explicitly so identified), statements on those persons' qualifications to hold office, and references to the voters' decision on Tuesday (election day) make the relationship of this open letter to a particular electoral campaign unmistakable. The clear implications drawn from this advertisement are the promotion of Mr. Davis'=candidacy and opposition to Mr. Collins'. The only reasonable interpretation of this message is that one should not vote for Mr. Collins.

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2/ Among the references to Mr. Davis' candidacy are: "You make no real accusations against the integrity and experience of Rep. Davis. ... a man of proven honor and ability ... you hope to ... keep the voters confused." "In contrast, Rep. Davis ... has a specific program to benefit this district and the country as a whole." "I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability."

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Therefore, within the guidelines of Furgatch, the message is express advocacy subject to the requirements of the Act.

2. **Was the Publication of the Open Letter an Expenditure Under the Act?**

The term "expenditure" includes any purchase, payment ... or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). An exemption, commonly denoted the "press or media exemption," provides that "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication ..." is not included within the definition of expenditure. 2 U.S.C. § 431(9)(B)(i). This exemption is elaborated upon by the Commission's regulations at 11 C.F.R. § 100.8(b)(2). That regulation states that any "cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by any political party, political committee or candidate ... ." That regulation clarifies that the exemption extends to those expenses incurred by the institutional press in covering and commenting on election campaigns. That interpretation is consistent with the purpose of the exemption carved out by Congress.

The press exemption was a 1974 amendment to the Act designed to "make it plain that it is not the intent of the Congress ... to

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limit or burden in any way the first amendment freedoms of the press and of association." H.R. Rep. No. 98-943, 93 Cong., 2d Sess. 4, reprinted in FEC, LEGISLATIVE HISTORY OF FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 at 638 (1977). Courts have also consistently interpreted the media exemption in its application to the corporate press. In cases challenging the jurisdiction of the Commission on grounds that the media exemption applies to certain activities, courts have first sought to determine whether the press entity was acting as a press entity with respect to the conduct in question. See e.g., FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981); FEC v. Readers Digest Association, Inc., 509 F. Supp. 1210 (S.D.N.Y. 1981). The Commission has also consistently held that the media exemption is available only to press entities engaged in legitimate press functions. See MURs 2289 and 1809; AO 1987-8 (n.1). Therefore, Mr. Tezak, an individual purchaser of advertising space, is not a person or entity that can qualify for the exemption under Section 431(9)(B)(i).

The open letter represents an expenditure, the purpose of which was evidently to influence a federal election. Such expenditure is a contribution within the meaning and application of the Act.

Accordingly, several violations may be made out under the alleged facts.

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**A. Alleged In-Kind and Excessive Contribution**

The complainant alleges that the expenditure was not independent, and therefore, constituted an in-kind contribution in excess of the statutory limitation. The open letter, according to the complainant, cost approximately $1800 to publish. Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person may contribute more than $1000 in the aggregate to a federal candidate and his authorized committee. In addition no political committee may knowingly accept any contribution which violates Section 441a. 2 U.S.C. § 441a(f). Mark Tezak was identified in the open letter as the expending party.

The costs to publish the open letter is an expenditure apparently made for the purpose of influencing an election for federal office. 2 U.S.C. § 431(9)(A). The author of the open letter states that voters "must know the truth" before the election. As depicted by the author, that "truth" would affect the voters' decisions, i.e., influence a federal election. Such expenditures, if not independent, are deemed in-kind contributions subject to the limitation on contributions. 2 U.S.C. § 441a(a)(7)(B)(i) and 11 C.F.R. § 109.1(c).

To be considered independent, the expenditure must be made without cooperation or consultation with a candidate, authorized committee or agent of such candidate. These criteria are enumerated in 2 U.S.C. § 431(17). Section 109.1 of the Commission's regulations clarifies the meaning of an independent expenditure. Under that regulation, an expenditure will be

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presumed to have been made in consultation and cooperation with a candidate or an authorized committee when it is:

> (A) Based on information about the candidate's plans, projects, or needs provided to the expending party by the candidate, or by the candidate's agents, with a view toward having the expenditure made;
>
> (B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;
>
> 11 C.F.R. § 109.1(b)(4)(i)

The complainant argues that to believe that Mr. Davis was not involved in this communication is naive because Mr. Davis and Robert Tezak are members of the same political party and have had an "unusually long, close personal and political relationship;" and Mr. Tezak may have raised funds for the Davis campaign. No other circumstances are alleged to negate the independency of the expenditure.

However, the subject matter of the open letter addresses derogatory statements concerning both Messrs. Davis and Robert Tezak. The refutation of such statements may have been an objective of the Davis Committee as well as an objective of Robert Tezak in writing the open letter. Further, during 1986, Jack Davis was chairman of the Will County Republican Committee, while Robert Tezak chaired a fundraising affiliate, in addition to their personal relationship. 3/ In view of the possible congruent objectives, the gentlemen's involvement and probable interaction

3/ In the open letter, Robert Tezak describes Rep. Davis as his friend.

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during the 1986 election cycle, the possibility that the "plans, projects or needs" of the candidate were known to, made available to or acted upon by the expending party and the possibility that the expenditure was made by a person authorized to raise funds should be reviewed.

Considering the relationship expressed and other circumstances, this expenditure may not have been independent. Therefore, there is reason to believe that Mark R. Tezak violated 2 U.S.C. § 441a(a)(1)(A).

**B. Failure to Report An Independent Expenditure or An In-Kind Contribution**

If the advertisement is subject to the Act, the costs expended to publish the advertisement must be disclosed. Any purchase or payment made by any person for the purpose of influencing any election to federal office is an expenditure under the Act. 2 U.S.C. § 431(9)(A). The advertisement as evidenced by the disclaimer was "[p]aid for by Mark Robert Tezak/Not Authorized by Jack Davis." According to the complainant, approximately $1800 was spent to publish this advertisement.

Under the Act every person who makes an independent expenditure in excess of $250 must file a statement concerning that expenditure. Further, any independent expenditure aggregating $1000 made within 20 days prior to, but more than 24 hours before, an election, must be reported within 24 hours. 2 U.S.C. § 434(c).

According to the complainant, this advertisement appeared on the Sunday prior to the 1986 November election. Since the

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expenditure assertedly exceeded $1000 and was made within 20 days, but more than 24 hours, before an election, filing the appropriate statement was required. However, a review of the public records did not reveal such filing. Therefore, there is reason to believe that Mark R. Tezak violated 2 U.S.C. § 434(c).

If this expenditure was not independent within the meaning of the Act, the reporting requirement under Section 434(c) would not be imposed. As indicated in Section A supra, this expenditure may have constituted an in-kind contribution to the Davis Committee. Under Section 434(b)(2)(A), a political committee must disclose the receipt of contributions from persons other than political committees.

That reporting obligation is imposed on political committees under the Act. See 2 U.S.C. § 434, AO 1986-38. A political committee means, inter alia, "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). At this time it appears that Mark Tezak acted as an individual, not on behalf of a group or other entity included in the term "political committee."

Accordingly at this time, the Office of the General Counsel makes no recommendation that the registration and reporting obligations applicable to political committees should have been fulfilled by the Tezaks.

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C. **Alleged Corporate Contribution**

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any federal candidate or political committee to knowingly accept or receive any contribution from a corporation.

Corporations are prohibited from making a contribution or expenditure, defined to included "anything of value," in connection with federal elections. It is also unlawful for any officer or director to consent to a corporate contribution or expenditure in connection with a federal campaign. 2 U.S.C. §§ 441b(a), (b)(2).

The complainant intimates that corporate funds may have financed the open letter. This allegation is ostensibly based on the identification of the author, Robert Tezak, as chairman and chief executive officer of International Games, Inc. in both the text and signature of the open letter. Contributions by this company to local organizations are also mentioned in the text. Such references to and identification with the company suggest a corporate connection.

There are no allegations or evidence that Mark R. Tezak was an officer or director of International Games, Inc. Accordingly, the Office of the General Counsel makes no recommendation on this ground at this time.

D. **Alleged Improper Disclaimer**

The complainant alleges that the disclaimer which appeared on the open letter misrepresented the source of payment and

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authorization. The disclaimer stated that the open letter was "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis."

Pursuant to 2 U.S.C. § 441d(a), whenever a person finances a communication to advocate the election or defeat of a clearly identified candidate, a statement disclosing the source of the funds expended and the authorization (or lack) by a federal candidate or committee must be made. The disclosure statement on the open letter ostensibly fulfills these requirements.

However, the complainant has questioned the veracity or completeness of that statement. The complainant suggests that corporate funds, not those of Mark Tezak, may have financed the communication. The complainant further suggests that the expenditure may have been coordinated with and authorized by a federal candidate or committee. Should either of these allegations be confirmed, then the disclaimer failed to provide the required information. Although no concrete evidence on these allegations has been supplied, the likelihood that corporate or other funds may have been used or that the expenditure was coordinated with the Davis Committee exists. Therefore, there is reason to believe that Mark R. Tezak violated 2 U.S.C. § 441d(a).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of ) MUR 2679
)
)
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Mark R. Tezak
Moose Island
Channanhon, Illinois 60410

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen (15) days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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## INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to, you including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from January 1, 1986 to January 1, 1987.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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## DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"Open Letter" shall mean the full-page advertisement entitled "An Open Letter to Shawn Collins," published on November 2, 1986, in the Joliet Herald News, signed by Robert Tezak and reportedly paid for by Mark Robert Tezak.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2679
Questions to Mark R. Tezak

1. Please state your name, current address (residence and business, and telephone number (residence and business).

2. With respect to the Open Letter, please state in what newspapers, periodical publications and other media it appeared and on what date(s).

3. Please identify all persons who were involved in the planning, preparation and writing of the Open Letter and in the purchasing of advertising space for the Open Letter. Describe in full each such person's participation, involvement, authorization or other activity undertaken in connection with the Open Letter.

4. Please identify who paid the costs to publish this Open Letter. Please state the total amount of expenditures made in connection with the Open Letter, how and by whom payment was tendered.

5. What was the source of funds for the payment of costs associated with the Open Letter?

6. Please provide a copy of all documents relating to the payment of costs for the preparation and publication of the Open Letter and all relevant account identification. If payment was made by check or the written instrument, please provide a copy (both sides) of such check or other written instrument.

7. Please state your position, duties and responsibilities, if any, with International Games, Inc.

8. Please list the names and addresses of all persons who served as officers and directors of International Games, Inc. during calendar year 1986, and state their position(s).

9. Did you attend any meetings during calendar year 1986 to discuss the drafting, preparation, dissemination or publication of the Open Letter? With respect to each such meeting, please state the dates on which such meetings were held and who attended, and describe the content of the discussions or provide documentation of each such meeting, including but not limited to, transcripts or minutes of each such meeting.

10. Did you or Robert Tezak contact Jack Davis or any official, agent or volunteer of Davis for Congress regarding the Open Letter? If so, please identify each person contacted or involved in the Open Letter and describe in detail the nature of those contacts.

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11. Did you, Robert Tezak or anyone else to your knowledge have any direct contact with, or received guidance, direction or instruction from Jack Davis or anyone associated with Davis for Congress regarding the Open Letter? If so, please provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of all persons who participated in such communications. Please provide notes from, or transcripts or copies of, those communications, if any.

12. Please describe in detail all contacts, communications, activities, fundraising efforts or other associations, if any, you had with Jack Davis or anyone associated with Davis for Congress.

13. Please describe, to the extent of your knowledge if any, any contacts, fundraising efforts, communications or other associations between Robert Tezak and Jack Davis or anyone associated with Davis for Congress.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 27, 1989

Arthur J. Dreyer, Treasurer
Davis for Congress
17075 S. Park
South Holland, Illinois 60473

RE: MUR 2679
Davis for Congress and
Arthur J. Dreyer, as
treasurer

Dear Mr. Dreyer:

On September 6, 1988, the Federal Election Commission notified Davis for Congress (the "Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to the Committee and you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on January 10 , 1989 found that there is reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f), provisions of 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 the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with answers to the enclosed questions, within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

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

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the

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General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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

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

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

If you have any questions, please contact Celia L. Jacoby, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Questions
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Davis For Congress and Arthur J. Dreyer, as treasurer

MUR 2679

This matter originated from a signed, sworn complaint. The complainant, Martin J. Gleason, asserts that violations occurred during the 1986 4th Illinois Congressional District Election campaign. The alleged violations arose from the publication of an "open letter" signed by Robert Tezak and "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis." This advertisement was published on November 2, 1986, two days prior to the election.

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires expenditures to influence federal elections be disclosed. The complainant alleges that the open letter was published in violation of the Act. The statutory provisions which the complainant asserts were violated are:

1. Section 441d(a) which requires certain disclaimers,

2. Section 441b(a) which prohibits the making and receipt of corporate contributions,

3. Section 441a(a)(1)(A) which limits individual contributions to $1000,

4. Section 441a(f) which prohibits a political committee's receipt of excessive contributions,

5. Section 434(c) which requires certain expenditures to be reported within 24 hours, and this section generally concerning the reporting of receipts in excess of $200.

The independence of the expenditure has also been challenged.

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The complainant believes that the disclaimer failed to reflect the truth, and that the advertisement was an unlawful expenditure of funds. The complainant asks that the Commission determine whether corporate funds were utilized as Robert Tezak was identified in the advertisement as "Chairman and Chief Executive Officer, International Games, Inc." The complainant further alleges that Mr. Davis failed to report the cost of this advertisement as an in-kind contribution, and that the Tezaks failed to report any expenditure to the Commission. The complainant also asks that the Commission investigate the possibility that the advertising space was sold at a discount.

The complainant asserts that the "unusually long, close personal and political relationship of Tezak and Davis" warrants disbelief that the advertisement was not authorized by Jack Davis or his authorized committee, Davis for Congress (the "Davis Committee"). He also asserts that during 1986, Mr. Davis chaired the Will County Republican Committee while Robert Tezak headed "The Eagles," a fundraising affiliate of that committee. The complainant further alleges that Robert Tezak may have raised funds for the Davis campaign. According to the complainant, Mark Tezak is the son of Robert Tezak. No evidence, other than these allegations, was provided to support the allegations raised by the complainant.

In a response to this complaint, Jack Davis asserted that he privately refuted this advertisement in a conversation with Robert Tezak and that no one in his campaign authorized the publication of the open letter.

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Some of the supposed violations will turn on a determination that the "open letter" constituted an independent expenditure under the Act, that is, whether it was a communication that advocated the election or defeat of a clearly identified candidate. 2 U.S.C. § 431(17); 2 U.S.C. § 441d(a). However, to the extent that the expenditure was made for the "purpose of influencing" a federal election, and was made "in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate or his committee," the expenditure must be disclosed, even absent a determination of express advocacy. Such expenditures are contributions under the Act. 2 U.S.C. § 431(9)(A), § 434 and § 441a(a)(7)(B)(i).

**1. Did the Open Letter Expressly Advocate the Election or Defeat of a Federal Candidate?**

Under the Act a political communication which "expressly advocates" either the election or defeat of a candidate for federal office must be reported. The Commission's regulations at Section 109.1(b)(2) state that express advocacy means "any communication containing a message advocating election or defeat," but such message is not limited to any particular words or phrases. Unless the challenged communication rises to express advocacy, the Act may not be implicated. See Buckley v. Valeo, 424 U.S. 1, 80 (1976). The features of express advocacy were enumerated in FEC v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 108 S.Ct. 151 (1987). These features are:

1. Speech is express if its message is unmistakable and unambiguous, suggestive of only one plausible meaning.

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2. Speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act.

3. It must be clear what action is advocated.

The Furgatch court emphasized that if any reasonable alternative reading of the speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. But the statement of advocacy need not be presented in the clearest, most explicit language.

The published advertisement which is the basis of this complaint is titled an "open letter" addressed to Shawn Collins, the apparent Democratic candidate for the Fourth Illinois Congressional District. Mr. Collins is not specifically identified as a candidate in that race; his candidacy is, however, evident from various phrases in the advertisement. 1/ The premise for the letter is to respond to "false allegations." The letter apparently rebuts various charges made by Mr. Collins that are unflattering to Robert Tezak and Jack Davis. To each "allegation" evidently made by Mr. Collins, Robert Tezak responded with his views of the "truth." From the tenor of the statements about Jack Davis, ostensibly the Republican candidate for the same election,

1/ Some of these elliptical references are: "You have done nothing to earn the trust of the voters of this district. In fact, voters might well be wary of your record ..." "You are, therefore, using the last resort of a desperate political challenger." "You have no positive program for the residents of the Fourth Congressional District. You are running a campaign of negativism and innuendo." "Your political career does little to inspire voter confidence."

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the author's allegiance to Mr. Davis is evident. 2/

Each "truth" response implies that the candidate, Mr. Collins, is untruthful. Further, the writer challenges Mr. Collin's qualifications for office. The author then writes "Will County voters must know the truth before Tuesday's election..." and "[t]he voters will decide on Tuesday, Mr. Collins, I predict their decision will be the right one... ."

Taken as a whole, the open letter calls on the reader to consider the alleged untruthfulness and qualifications of candidates for the U.S. House of Representatives. The timing of this letter (the Sunday prior to election day), the naming of persons who are known to be involved in a particular political contest (although not explicitly so identified), statements on those persons' qualifications to hold office, and references to the voters' decision on Tuesday (election day) make the relationship of this open letter to a particular electoral campaign unmistakable. The clear implications drawn from this advertisement are the promotion of Mr. Davis' candidacy and opposition to Mr. Collins'. The only reasonable interpretation of this message is that one should not vote for Mr. Collins.

2/ Among the references to Mr. Davis' candidacy are: "You make no real accusations against the integrity and experience of Rep. Davis. ... a man of proven honor and ability ... you hope to ... keep the voters confused." "In contrast, Rep. Davis ... has a specific program to benefit this district and the country as a whole." "I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability."

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Therefore, within the guidelines of Furgatch, the message is express advocacy subject to the requirements of the Act.

2. **Was the Publication of the Open Letter an Expenditure Under the Act?**

The term "expenditure" includes any purchase, payment ... or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). An exemption, commonly denoted the "press or media exemption," provides that "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication ..." is not included within the definition of expenditure. 2 U.S.C. § 431(9)(B)(i). This exemption is elaborated upon by the Commission's regulations at 11 C.F.R. § 100.8(b)(2). That regulation states that any "cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by any political party, political committee or candidate ... ." That regulation clarifies that the exemption extends to those expenses incurred by the institutional press in covering and commenting on election campaigns. That interpretation is consistent with the purpose of the exemption carved out by Congress.

The press exemption was a 1974 amendment to the Act designed to "make it plain that it is not the intent of the Congress ... to

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limit or burden in any way the first amendment freedoms of the press and of association." H.R. Rep. No. 98-943, 93 Cong., 2d Sess. 4, reprinted in FEC, LEGISLATIVE HISTORY OF FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 at 638 (1977). Courts have also consistently interpreted the media exemption in its application to the corporate press. In cases challenging the jurisdiction of the Commission on grounds that the media exemption applies to certain activities, courts have first sought to determine whether the press entity was acting as a press entity with respect to the conduct in question. See e.g., FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981); FEC v. Readers Digest Association, Inc., 509 F. Supp. 1210 (S.D.N.Y. 1981). The Commission has also consistently held that the media exemption is available only to press entities engaged in legitimate press functions. See MURs 2289 and 1809; AO 1987-8 (n.1). Therefore, Mr. Tezak, an individual purchaser of advertising space, is not a person or entity that can qualify for the exemption under Section 431(9)(B)(i).

The open letter represents an expenditure, the purpose of which was evidently to influence a federal election. Such expenditure is a contribution within the meaning and application of the Act.

Accordingly, several violations may be made out under the alleged facts.

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**A. Alleged In-Kind and Excessive Contribution**

The complainant alleges that the expenditure was not independent, and therefore, constituted an in-kind contribution in excess of the statutory limitation. The open letter, according to the complainant, cost approximately $1800 to publish. Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person may contribute more than $1000 in the aggregate to a federal candidate and his authorized committee. In addition no political committee may knowingly accept any contribution which violates Section 441a. 2 U.S.C. § 441a(f). Mark Tezak was identified in the open letter as the expending party.

The costs to publish the open letter is an expenditure apparently made for the purpose of influencing an election for federal office. 2 U.S.C. § 431(9)(A). The author of the open letter states that voters "must know the truth" before the election. As depicted by the author, that "truth" would affect the voters' decisions, i.e., influence a federal election. Such expenditures, if not independent, are deemed in-kind contributions subject to the limitation on contributions. 2 U.S.C. § 441a(a)(7)(B)(i) and 11 C.F.R. § 109.1(c).

To be considered independent, the expenditure must be made without cooperation or consultation with a candidate, authorized committee or agent of such candidate. These criteria are enumerated in 2 U.S.C. § 431(17). Section 109.1 of the Commission's regulations clarifies the meaning of an independent expenditure. Under that regulation, an expenditure will be

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presumed to have been made in consultation and cooperation with a candidate or an authorized committee when it is:

> (A) Based on information about the candidate's plans, projects, or needs provided to the expending party by the candidate, or by the candidate's agents, with a view toward having the expenditure made;
>
> (B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;
>
> 11 C.F.R. § 109.1(b)(4)(i)

The complainant argues that to believe that Mr. Davis was not involved in this communication is naive because Mr. Davis and Robert Tezak are members of the same political party and have had an "unusually long, close personal and political relationship;" and Mr. Tezak may have raised funds for the Davis campaign. No other circumstances are alleged to negate the independency of the expenditure.

However, the subject matter of the open letter addresses derogatory statements concerning both Messrs. Davis and Robert Tezak. The refutation of such statements may have been an objective of the Davis Committee as well as an objective of Robert Tezak in writing the open letter. Further, during 1986, Jack Davis was chairman of the Will County Republican Committee, while Robert Tezak chaired a fundraising affiliate, in addition to their personal relationship. 3/ In view of the possible congruent objectives, the gentlemen's involvement and probable interaction during the 1986 election cycle, the possibility that the "plans,

3/ In the open letter, Robert Tezak describes Rep. Davis as his friend.

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projects or needs" of the candidate were known to, made available to or acted upon by the expending party and the possibility that the expenditure was made by a person authorized to raise funds should be reviewed.

In response, Mr. Davis wrote that neither he nor his committee authorized the publication of the Tezak open letter. However, authorization is not the only factor which may jeopardize the independence of an expenditure. In view of the relationship expressed and other circumstances, this expenditure may not have been independent. Therefore, there is reason to believe that the Davis Committee and its treasurer violated 2 U.S.C. § 441a(f).

**B. Failure to Report An Independent Expenditure or An In-Kind Contribution**

If the advertisement is subject to the Act, the costs expended to publish the advertisement must be disclosed. Any purchase or payment made by any person for the purpose of influencing any election to federal office is an expenditure under the Act. 2 U.S.C. § 431(9)(A). The advertisement as evidenced by the disclaimer was "[p]aid for by Mark Robert Tezak/Not Authorized by Jack Davis." According to the complainant, approximately $1800 was spent to publish this advertisement.

Under the Act every person who makes an independent expenditure in excess of $250 must file a statement concerning that expenditure. Further, any independent expenditure aggregating $1000 made within 20 days prior to, but more than 24 hours before, an election, must be reported within 24 hours. 2 U.S.C. § 434(c).

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According to the complainant, this advertisement appeared on the Sunday prior to the 1986 November election. Since the expenditure assertedly exceeded $1000 and was made within 20 days, but more than 24 hours, before an election, filing the appropriate statement was required. However, a review of the public records did not reveal such filing.

If this expenditure was not independent within the meaning of the Act, the reporting requirement under Section 434(c) would not be imposed. As indicated in Section A supra, this expenditure may have constituted an in-kind contribution to the Davis Committee. Under Section 434(b)(2)(A), a political committee must disclose the receipt of contributions from persons other than political committees. A review of filed reports of receipts and disbursements did not reveal the disclosure of this in-kind contribution. Therefore, to the extent that this expenditure was an in-kind contribution, the Davis Committee was obligated to report the receipt and disbursement of that sum. See 11 C.F.R. § 109.1(c). Since the filed reports do not make the requisite disclosure, a violation of Section 434 by the Davis Committee may have occurred. Therefore, there is reason to believe that Davis for Congress and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. § 434.

C. Alleged Corporate Contribution

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any federal candidate or political committee to knowingly accept or receive any contribution from a corporation.

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Corporations are prohibited from making a contribution or expenditure, defined to included "anything of value," in connection with federal elections. It is also unlawful for any officer or director to consent to a corporate contribution or expenditure in connection with a federal campaign. 2 U.S.C. SS 441b(a), (b)(2).

The complainant intimates that corporate funds may have financed the open letter. This allegation is ostensibly based on the identification of the author, Robert Tezak, as chairman and chief executive officer of International Games, Inc. in both the text and signature of the open letter. Contributions by this company to local organizations are also mentioned in the text. However, an unsubstantiated speculation does not warrant a finding at this time that a corporate contribution occurred.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of ) MUR 2679
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INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Arthur J. Dreyer, Treasurer
Davis for Congress
17075 S. Park
South Holland, Illinois 60437

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen (15) days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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## INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to, you including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from January 1, 1986 to January 1, 1987.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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## DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"Open Letter" shall mean the full-page advertisement entitled "An Open Letter to Shawn Collins," published on November 2, 1986, in the Joliet Herald News, signed by Robert Tezak and reportedly paid for by Mark Robert Tezak.

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2679
Questions to Arthur J. Dreyer, Treasurer
Davis for Congress

1. Please state your name, current address (residence and business, and telephone number (residence and business).

2. Please state whether you or anyone associated with Davis for Congress attended any meetings during calendar year 1986 to discuss the drafting, preparation, dissemination or publication of the Open Letter. With respect to each such meeting, please state the dates on which such meetings were held and who attended, and describe the content of the discussions or provide documentation of each such meeting, including but not limited to, transcripts or minutes of each such meeting.

3. Did anyone contact Jack Davis or any official, agent or volunteer of Davis for Congress regarding the Open Letter? If so, please identify each person contacted or involved in the Open Letter and describe in detail the nature of those contacts. Please identify each person who so contacted Jack Davis or Davis for Congress.

4. With respect to the Open Letter, please state in what newspaper, periodical publications and other media it appeared and on what date(s).

5. Please identify all persons who were involved in the planning, preparation and writing of the Open Letter and in the purchasing of advertising space for the Open Letter. Please describe in full each such person's participation, involvement, authorization of, or other activity undertaken in connection with the Open Letter.

6. Please identify who paid the costs to publish this Open Letter. Please state the total amount of expenditures made in connection with the Open Letter.

7. What was the source of funds for the payment of costs associated with the Open Letter?

8. Please provide a copy of all documents relating to the payment of costs for the preparation and publication of the Open Letter and all relevant account identification. If payment was made by check or other written instrument, please provide a copy (both sides) of such check or other written instrument.

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9. Did you or anyone associated with Davis for Congress have any direct contact with, or give any guidance, direction or instruction to any person regarding the Open Letter? If so, please provide a=complete and detailed description of any such direct contact, guidance, direction or instruction. Please include the names of all persons who participated in such communications. Please provide notes from, or transcripts or copies of, those communications, if any.

10. Please identify all officers, directors, employees, staff members, volunteers, consultants, fundraising personnel or other agents of Davis for Congress.

11. Please describe in detail all contacts, fundraising efforts by, communications with or other associations between Davis for Congress and Robert Tezak.

12. Please describe in detail all contacts, fundraising efforts by, communications with or other associations between Davis for Congress and Mark Robert Tezak.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 27, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Joliet Herald News
Larry Kambic, Advertising Director
300 Caterpillar Drive
Joliet, Illinois 60436

RE: MUR 2679

Dear Mr. Kambic:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached interrogatories and request for production of documents which require The Joliet Herald News to provide certain information in connection with an investigation it is conducting. The Commission does not consider The Joliet Herald News a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this matter.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to these interrogatories. However, you are required to submit the information within fifteen (15) days of your receipt of this letter. All answers to questions must be submitted under oath.

If you have any questions, please contact Celia L. Jacoby, the attorney assigned to this matter, at (800) 424-9530.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Interrogatories

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of ) MUR 2679
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INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: The Joliet Herald News
Larry Kambic, Advertising Director
300 Caterpillar Drive
Joliet, Illinois 60436

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen (15) days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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## INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to, you including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from January 1, 1986 to January 1, 1987.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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## DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the non-respondent witness in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"Open Letter" shall mean the full-page advertisement entitled "An Open Letter to Shawn Collins," published on November 2, 1986, in the Joliet Herald News, signed by Robert Tezak and reportedly paid for by Mark Robert Tezak.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2679
Questions to The Joliet Herald News

On November 2, 1986, The Joliet Herald News (the "newspaper") published a full-page advertisement entitled "Let's Clear the Air, Mr. Collins - An Open Letter to Shawn Collins," signed Robert J. Tezak (the "Open Letter"). With respect to the Open Letter, please respond to the following questions.

1. Who contacted the newspaper regarding the Open Letter? State the name and address of the person who placed this Open Letter in the newspaper.

2. What was the charge or cost to publish the Open Letter?

3. Who paid those charges? Please provide a copy of all documents relating to the payment of the charges for the publication of the Open Letter.

4. Did any of the following individuals contact the newspaper concerning the Open Letter:

   Mark Robert Tezak
   Robert J. Tezak
   Jack Davis
   Arthur J. Dreyer

   If so, please identify each such person and describe in full such person's contact with the newspaper.

5. What is the standard rate charged by the newspaper for full-page advertisements? Please describe in full the normal or standard procedure for procuring advertising space in the newspaper. Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the newspaper during November 1986, in the ordinary course of business.

6. Separately with regard to each question above, identify the natural person answering the question and identify each person who provided any information used in answering the question.

2104085522336

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 27, 1989

The Honorable Jack Davis
101 N. Joliet Street
Joliet, Illinois 60431

RE: MUR 2679
Honorable Jack Davis

Dear Mr. Davis:

On September 6, 1988, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 10, 1989, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe at this time that you violated any statute within the Commission's jurisdiction. Accordingly, the Commission closed its file in this matter as it pertains to you.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

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

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

21040852237

OGC#1837

# JACK DAVIS

# FOR CONGRESS

4th District
Illinois

4331 Lincoln Highway
Matteson, IL 60443
(312) 747-1988

MUR 2679

**Honorary Campaign Managers**

**John Annerino**
Will County
G.O.P. Chairman

**Henry Banser**
Aurora Twnship
G.O.P. Chairman

**Jan Carlson**
Kane County
G.O.P. Chairman

**Dallas Ingemunson**
Kendall County
G.O.P. Chairman

**Charles Panici**
Bloom Twnship
G.O.P. Committeeman

**George Townsend**
Rich Twnship
G.O.P. Committeeman

February 7, 1989

RECEIVED
FEDERAL ELECTION COMMISSION
89 FEB 14 AM 9:29
RECEIVED
89 FEB 14 PM 12:06

Danny L. McDonald
Chairman
Federal Elections Commission
999 E. St. N.W.
Washington, D.C. 20463

Attention: Celia Jacoby

Dear Mr. McDonald:

The enclosed responses to your interrogatories are as complete and factual as I can make them within my recollection and the recollection of those of my prior staff to whom I could speak.

Mr. Dreyer, my former Treasurer, had absolutely no knowledge of this isolated event and has resigned as Treasurer due to gravely ill health, and in fact is struggling for his life at this writing.

Thus the obligation to respond comes from me.

I thought I made our position very clear in response to Martin Gleason's original complaint against my Committee and I still reject any wrong doing on the counts made by complainant all of which appear to be aimed at Mr. Tezak himself rather than Davis for Congress!

I must once again remind you that Mr. Gleason himself is a man of dubious character who served as an unreported functionary for both candidate Shawn Collins in 1986 and candidate George Sangemeister in 1988.

Mr. Gleason is, or was registered to vote in two geographic subdivisions in Illinois simultaneously after

Authorized and paid for by
the Davis for Congress Committee

having sworn under oath he resided permanently in each one!

In 1986 Collins and Gleason concocted a negative campaign about Rober Tezak portraying him as an evil manipulator who was a corrupt public official and bombarded a naive local press with constant insinuations, innuendoes, and outright lies in an attempt to discredit Mr. Tezak.

Their hope was in discrediting Mr. Tezak, that his G.O.P. political associates and candidates could as well be portrayed poorly in the public consiousness.

Mr. Tezak was born and reared in Joliet where he eventually became a wealthy businessman and controversial political figure as the three term (12 years) Coroner of Will County.

Mr. Collins was a nine month resident of the community when he became a candidate for Congress in 1986.

It is my belief that Mr. Tezak was highly insulted, outraged and emotionally involved in seeking some kind of public revenge against Mr. Collins and ultimately came upon his "open letter" idea.

I would point out to you that perhaps Mr. Collins should have reported that "open letter" as a contribution to his campaign because I lost my home county to Mr. Collins on November 4, 1986 after having been one of the most popular elected officials in Will County for ten years!

I viewed Mr. Tezak's letter as highly damaging and having negative influence on my campaign in the last two critical days before the November 4, general election.

That was the reason for my anger at Mr. Tezak described in my original response letter to you and for my anger at having to continue to respond to Gleason and Sangmeisters' renewed 1988 attack on my integrity.

I had <u>nothing</u> to do with the "open letter'!

However, I noted on page three of your brief that under the act, and despite the fact I had absolutely nothing to do with the planning, production, financing

9104035223 9

or approval of the "open letter", I am obliged to report to you that such a letter was written! My ignorance of the reporting requirements regarding the alleged contribution can and should be excused as I acted in good faith however the lesson learned is"check with experts and/or report."

If that is the case the law or regulation needs amendment, but also if that is the case I did not make the required report and will accept that responsibility although I still believe it is Mr. Collins who should have made the report!

It is important to note here that the letter appeared in one daily newspaper in a District where there are six dailys and fifteen weekly and/or semi-weekly publications!

It is also important to note that a full page advertisement is hardly invisible to anyone in the community in which it was published and if my intent was to obfuscate or intentionally not report such a "contribution" to my campaign, I could have hardly accomplished that feat without immediate notice. The timing of this by Mr. Gleason is obvious.

I believe in this final anaylsis that your judgements should turn on the intent of this candidate to completely comply with the act and my view of the "open letter" as negative to my campaign, and unauthorized by my campaign.

I stand ready for any further cooperation with you to resolve this matter.

Sincerely,

Jack Davis

Enclosures: 1

9104085 2240

1. Jack D. Davis (On behalf of Davis for Congress)
128 Fir Street
New Lenox, Il 60451
815-485-6681

2. No one held such meetings.

3. No one contacted Jack Davis or Davis for Congress

4. November 2, 1986 Joliet Herald News
300 Caterpillar Drive
Joliet, Il 60435
815-729-6161

5. Unknown

6. Unknown

7. Unknown

8. Davis for Congress has no such records and is unaware of any such records.

9. No

10. Richard J. Kavanaugh
Campaign Manager
3033 W. Jefferson
Joliet, I. 60451
815-729-3500

David Galleon
Casual Labor
Lockport, Il 60441
815-838-3795

Tom McCaffrey
Senior Coordinator
2965 Four Towers Drive
Apt. 1
Cincinnati, Ohio 45238

Deb Amend/ Pat Tully
Consultants
National Republican
Congressional Committee
201 S. 1st Street
Washington, D.C.

Heather Davis
128 Fir
New Lenox, Il 60451
Chief Schedular

Janine Starkowicz
Coordinator
Address Unknown
Alexandria, Virginia

Paul Lis
Public Relations
Ottawa Motel
Ottawa, IL

2 1 0 4 0 8 5 2 2 4 1

11. No formal relationship structurally or financially was established or maintained between the Davis for Congress Committee and Robert Tezak.

Solicitations for contributions were made to a host of contributors in the 4th Congressional District for ticket sales to the "George Bush for Davis for Congress" breakfast and other smaller fund raising events. Mr. Tezak was always included in those requests as were all the regular Republican contributors in the District.

The structure of the Republican Party in Will County Illinois was such that my duties as Chairman of the organization brought me into frequent contact with all the officers and functionaries of the party organization and during the 90 day campaign from August 4, 1986 to November 4, 1986 I had frequent contact with Mr. Tezak, other major functionaries, Township Chairman and G.O.P. candidates for County, State and Federal office.

Mr. Tezak was a major contributor to County and State candidates in the Republican Party in Illinois and our relationship was one of professional politicians seeking to help restore the County G.O.P. to its prewatergate dominance in the county. Mr. Tezak and I have no personal relationship outside politics, nor have we since we first met in 1976 when we were both first time candidates for office.

12. None

Jack Davis
(On behalf of Davis for
Congress Committee)

91040852242

OGC 1891


# HERALD NEWS

"The Ring of Truth"

Serving Will, Grundy, and Kendall Counties


RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION
89 FEB 21 AM 9:38

Mur 2679

300 CATERPILLAR DRIVE • JOLIET, ILLINOIS 60436-1097 • (815) 729-6161

February 17, 1989

89 FEB 21 PM 1:54

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

Dear Mr. Noble:

As Advertising Director for the Herald-News I am responding to your request for information regarding your investigation into the advertisement you refer to as the "Open Letter."

1. At this time we have no written record of who contacted the Herald-News or who specifically placed the ad in our newspaper. My own personal recollection is that an advertising agency from Chicago made the initial contact. (Answered by Jack Azman).

2. The charge for the ad was $1879.53. (Answered by Jack Azman).

3. We no longer have records pertaining to the payment of the charges for the publication of the Open Letter. (Answered by Jack Azman).

4. We no longer have records indicating who might have contacted the Herald-News regarding the Open Letter. (Answered by Jack Azman).

5. The standard rate for a full page ad run on November 2, 1986 in the Herald-News was $1879.53. The normal procedure for procuring advertising space in the Herald-News at that time and at the present time would be for an individual to contact our office and inquire as to rates. If the ad was placed, they would supply us with the copy (and prepayment for any political advertisement). Payment may be made by cash, check or money order. Standard deadline for a display ad is 3-4 days prior to the publication date. (Answered by Jack Azman).

Sincerely,

Jack Azman
Director of Advertising

JA/pl

"The Ring of Truth"
A COPLEY NEWSPAPER
A paper for all the people all the time

PUBLISHED EVERY WEEK DAY EVENING AND SUNDAY MORNING

ESTABLISHED APRIL 20, 1839, AS THE JOLIET COURIER

2104035224 3

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2679
Questions to The Joliet Herald News

On November 2, 1986, The Joliet Herald News (the "newspaper") published a full-page advertisement entitled "Let's Clear the Air, Mr. Collins - An Open Letter to Shawn Collins," signed Robert J. Tezak (the "Open Letter"). With respect to the Open Letter, please respond to the following questions.

1. Who contacted the newspaper regarding the Open Letter? State the name and address of the person who placed this Open Letter in the newspaper.

2. What was the charge or cost to publish the Open Letter?

3. Who paid those charges? Please provide a copy of all documents relating to the payment of the charges for the publication of the Open Letter.

4. Did any of the following individuals contact the newspaper concerning the Open Letter:

   Mark Robert Tezak
   Robert J. Tezak
   Jack Davis
   Arthur J. Dreyer

   If so, please identify each such person and describe in full such person's contact with the newspaper.

5. What is the standard rate charged by the newspaper for full-page advertisements? Please describe in full the normal or standard procedure for procuring advertising space in the newspaper. Please include information on prices, deadlines, methods of payment and all other information pertinent and necessary for placing an advertisement in the newspaper during November 1986, in the ordinary course of business.

6. Separately with regard to each question above, identify the natural person answering the question and identify each person who provided any information used in answering the question.

9104035222 4

# LET'S CLEAR THE AIR, MR. COLLINS.

## *An open letter to Shawn Collins*

I resent your false allegations about me.

I resent your using me to make false allegations about State Representative Jack Davis, one of Illinois' finest state legislators. Will County voters must know the truth before Tuesday's election.

Here are your allegations and my rebuttals.

**Allegation:**
You have questioned Rep. Davis' integrity time and again. You have questioned whether he has earned the trust of the voters of the Fourth Congressional District.

**Truth:**
You have done *nothing* to earn the trust of the voters of this district. In fact, voters might well be wary of your record and your associates. You moved into the district eight months ago; your advisors are former aides to Chicago Mayor Harold Washington.

Jack Davis has lived and worked here for over 25 years. As a State Representative and Illinois House Leader, he brought tens of millions of dollars and tens of thousands of job opportunities to Will County. He has been endorsed by the *Chicago Tribune* as the best candidate for the job.

**Allegation:**
You have accused Rep. Davis of cronyism in the move of state offices to the former J.C. Penney building being developed by John Bays and *myself*. You have implied that Davis is working for the good of his friends, not for the revitalization of downtown Joliet.

**Truth:**
Rep. Davis and a bipartisan group of community leaders supported the move of state offices into a rehabbed downtown office building – and, in fact, the leases were in place for the J.C. Penney building – long before Mr. Bays and I replaced the previous developers who were unable to complete the project. Neither Mr. Bays nor I had any connection with the state's initial decision to move the offices.

Rep. Davis is my friend, as are Senator Alan Dixon, Governor James Thompson, Secretary of State Jim Edgar, Congressmen Ed Madigan and Harris Fawell, President Reagan's son Michael Reagan, and many other office holders, both Democratic and Republican. And the late Congressman George O'Brien was a close personal friend.

Are you suggesting that people should not have friends and supporters?

Perhaps, Mr. Collins, you should look to your own Democratic Party county chairman, reportedly under an investigation, for a better example of self-interest on the part of a public official!

**Allegation:**
You have linked my respect and support for Rep. Davis with the Private Industry Council's move to the former Moose Building, stating that "the apparent agent for the building...is widely believed to be owned or controlled" by me.

**Truth:**
I am not connected with the building. Its owner, John Bays, is a courageous man who is assuming the risk of renovating a dilapidated building as a much needed step in the revitalization of downtown Joliet.

Now, Mr. Collins, I'd like to present a few statements and questions of my own:

- You can make no real accusations against the integrity or experience of Rep. Davis. You are, therefore, using the last resort of a desperate political challenger: "THE BIG LIE." By saying preposterous things about a man of honor and proven ability, you hope to keep him busy refuting those charges and keep the voters confused. This is the same technique used by followers of Lyndon LaRouche. It's not working for them and it won't work for you.
- You have no positive program for the residents of the Fourth Congressional District. You are running on a campaign of negativism and innuendo. In contrast, Rep. Davis stands on his excellent record in Springfield and has a specific program to benefit this district and the country as a whole. I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability.
- Your own political career does little to inspire voter confidence. Why did you leave your position on the Democratic staff investigating cost overruns in the McCormick Place annex construction? Were you allegedly fired because you purportedly were caught leaking confidential information? Why hire ex-aides to Mayor Washington as your advisors and fund-raisers if you don't have a close connection to Chicago politics? Do Will County voters want Mayor Washington/Chicago influence here? What have you ever accomplished to earn the trust of the residents of the Fourth District?

In conclusion, I'd like to counter the charges you have levelled personally against me. You have accused me of contributing heavily to the Illinois Republican Party in exchange for favors. *My political contributions are made on the basis of my convictions, without regard to personal gain. Furthermore, those contributions are far surpassed by my contributions to the people of Joliet and Will County.*

As founder, chairman, and chief executive officer of International Games, a leader in the toy industry, I could have located my business anywhere in the country. But I chose to remain in Joliet, where I was born and where my family has been in business for three generations. Not only does International Games bring tax dollars and employment to Will County but we have contributed close to *one million dollars* to local charities such as MS, Cystic Fibrosis, Toys for Tots, Big Brothers, Big Sisters, College of St. Francis, and numerous churches and schools. I have made personal investments in numerous projects in Joliet, Will County which have led to jobs and a broader tax base.

Yes, I'm a successful businessman, but that's what this country is all about. We all have the freedom to succeed or fail. We also have free speech, which is why an out-of-towner, an eight-month resident of Will County such as yourself, can make unsubstantiated charges against an outstanding legislator such as Jack Davis.

The voters will decide on Tuesday, Mr. Collins. I predict their decision will be the right one, especially at a time when government needs positive, not negative people.

Sincerely,

Robert J. Tezak

Robert J. Tezak
Chairman and Chief Executive Officer
International Games, Inc.

9104052245

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 2, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark R. Tezak
Moose Island
Channahon, Illinois 60410

RE: MUR 2679
Mark R. Tezak

Dear Mr. Tezak:

On January 10, 1989, the Commission found reason to believe you violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A) and 441d(a). Additionally, on that date, the Commission approved a Factual and Legal Analysis that formed the basis for its decision. On January 27, 1989, the Commission notified you of its determinations. Included with this notification letter were the Factual and Legal Analysis and questions regarding the matters at issue. A copy of this letter and its enclosures are attached for your information.

Although this letter requested a response to these questions within fifteen days, to date a response has not been received. In the event a response is not received from you in ten days from your receipt of this letter, the Office of the General Counsel will seek Commission authorization for a subpoena to obtain this information.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: George F. Rishel
Acting Associate General Counsel

Enclosures

91040352246

RECEIVED
FEDERAL ELECTION COMMISSION
1989 PM 3:43

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Davis For Congress Committee | ) | MUR 2679 |
| and Arthur J. Dreyer, | ) | |
| as treasurer | ) | |
| Mark R. Tezak | ) | |

SENSITIVE

COMPREHENSIVE INVESTIGATIVE REPORT #1

I. BACKGROUND

On January 10, 1989, the Commission found reason to believe the Davis For Congress Committee ("the Committee") and Arthur J. Dryer, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f), and that Mark R. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A) and 441d(a). Underlying the Commission's determinations was evidence that a newspaper advertisement paid for by Mr. Tezak and purported to be an independent expenditure was not reported and may, in fact, have been an excessive in-kind contribution. Also on that date the Commission approved questions for the respondents and for the advertising director of the Joliet Herald News, the newspaper in which the ad appeared.

II. STATUS OF THE INVESTIGATION TO DATE

On February 14, 1989, the candidate responded on behalf of the Committee, denying that communications had occurred between his committee and Mr. Tezak.*/ On February 21, 1989, the newspaper's director of advertising submitted a response stating that no written records exist regarding the transactions in

*/ Due to illness, the treasurer of record was unable to respond.

9104085224 7

question. Additionally, on March 15, 1989, Mr. Davis met with staff to discuss the Commission's reason to believe determinations.

In the absence of a response from Mr. Tezak, this Office attempted to contact him to ascertain whether he had received the Commission's notification of reason to believe. When these attempts proved unsuccessful, on May 1, 1989, this Office re-mailed the Commission's notification letter with a letter informing Mr. Tezak that he had ten days to respond. At the conclusion of that ten-day period, this Office will report to the Commission.

Lawrence M. Noble
General Counsel

May 11, 1989
Date

By: George F. Rishel
George F. Rishel
Acting Associate General Counsel

91040352248

Staff assigned: Patty Reilly

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MWE MARJORIE W. EMMONS/JOSHUA MCFADDEN JM

DATE: MAY 15, 1989

SUBJECT: MUR 2679
COMPREHENSIVE INVESTIGATIVE REPORT #1
SIGNED MAY 11, 1989

The above-captioned report was received in the Secretariat at 3:43 p.m. on Thursday, May 11, 1989 and circulated to the Commission on a 24-hour no-objection basis at 12:00 p.m. on Friday, May 12, 1989.

There were no objections to the report.

7104035 2243

# STATEMENT OF DESIGNATION OF COUNSEL

MUR #2679

NAME OF COUNSEL: MICHAEL F. LAVELLE

ADDRESS: LAVELLE & HOLDEN, LTD
1029 LAKE ST.
OAK PARK, IL. 60301

TELEPHONE: 312-383-2525

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.

06-21-89
Date

Signature

RESPONDENT'S NAME: MARK R. JEZAK

ADDRESS: 1101 W. JEFFERSON ST.
JOLIET, IL. 60435

HOME PHONE: 815-723-7515

BUSINESS PHONE:

21040352250

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 AUG -7 PM 1:09

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Davis for Congress Committee<br>and Arthur J. Dryer, as<br>treasurer<br>Mark R. Tezak | )<br>)<br>)<br>)<br>) | MUR 2679 |

GENERAL COUNSEL'S REPORT

## I. BACKGROUND

On January 10, 1989, the Commission found reason to believe the Davis for Congress Committee and Arthur J. Dryer, as treasurer, ("the Committee") violated 2 U.S.C. §§ 434 and 441a(f). Also on that date the Commission found reason to believe Mark R. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A) and 441a(d). Underlying the Commission's determinations was evidence that a purported independent expenditure paid for by Mr. Tezak was in fact an unreported excessive in-kind contribution. Also on January 10, 1989, the Commission approved questions for the respondents and for the advertising director of the Joliet Herald, the newspaper in which the alleged independent expenditure appeared. These notifications were mailed on January 27, 1989.

On February 14, 1989, the candidate responded on behalf of the Committee, denying that communications had occurred between his Committee and Mr. Tezak. On February 21, 1989, the newspaper's director of advertising submitted his response.

Efforts to obtain Mr. Tezak's response in this matter have not proven fruitful. Mr. Tezak did not respond to the Commission's reason to believe notification letter. Efforts to ascertain whether this notice was received were unsuccessful

9104035225 1

due to respondent's unpublished phone number. On May 1, 1989, this Office re-mailed the Commission's reason to believe notification by certified mail. When the certified receipt was not returned to this Office, a trace was placed on this letter. Subsequently, this Office was informed on July 19, 1989 by the Post Office that the second notification letter could not be located. In the interim, on June 21, 1989, this Office received a designation of counsel statement submitted on behalf of Mr. Tezak. In telephone conversations between counsel and this Office, counsel stated that a response would be submitted to the Commission's questions as soon as possible. Because no response has been received to date despite telephone inquiries, this Office recommends that the Commission approve the attached subpoena to Mark Tezak.

## II. RECOMMENDATIONS

1. Authorize the attached subpoena and order to Mark R. Tezak.
2. Approve the attached letter.

Lawrence M. Noble
General Counsel

8/4/89
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
Subpoena/Order (1)
Letter (1)

Staff assigned: Patty Reilly

9104035222 52

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of<br><br>Davis for Congress Committee<br>and Arthur J. Dryer, as treasurer<br>Mark R. Tezak | )<br>)<br>)<br>)<br>) | MUR 2679 |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 10, 1989, the Commission decided by a vote of 6-0 to take the following actions in MUR 2679:

1. Authorize the subpoena and order to Mark R. Tezak, as recommended in the General Counsel's Report to the Commission dated August 4, 1989.

2. Approve the letter, as recommended in the General Counsel's Report to the Commission dated August 4, 1989.

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

Attest:

8-11-89
Date

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

Received in the Secretariat: Monday, August 7, 1989 at 1:09 p.m.
Circulated to the Commission: Wednesday, August 9, 1989 at 11:00 a.m.
Deadline for vote: Friday, August 11, 1989 at 11:00 a.m.

cmj

2104055225 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 21, 1989

Michael E. Lavelle, Esquire
Lavelle & Holden, LTD.
1029 Lake Street
Oak Park, IL. 60301

RE: MUR 2679
Mark R. Tezak

Dear Mr. Lavelle:

On January 27, 1989, your client, Mark R. Tezak, was notified that the Federal Election Commission had found reason to believe Mr. Tezak violated 2 U.S.C. §§ 433(c), 441a(A)(1)(A), and 441a(d), provisions of the Federal Election Campaign Act of 1971, as amended.

Pursuant to its investigation of this matter, the Commission has issued the attached subpoena and order requiring Mr. Tezak to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code.

It is required that you submit all answers to questions under oath within fifteen days of your receipt of this subpoena and order.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Subpoena and Order

2 1 0 4 0 3 5 2 2 5 4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 2679
)

**SUBPOENA TO PRODUCE DOCUMENTS**
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Mark R. Tezak
c/o Michael F. Lavalle, Esquire
Lavalle & Holden, Ltd.
1029 Lake Street
Oak Park, IL. 60301

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within fifteen days of receipt of this Order and Subpoena.

9104035225

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 17th, day of August, 1989.

Danny L. McDonald

Danny L. McDonald, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions (6 pages total)

9104035225 6

**INSTRUCTIONS**

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to, you including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from January 1, 1986 to January 1, 1987.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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## DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"Open Letter" shall mean the full-page advertisement entitled "An Open Letter to Shawn Collins," published on November 2, 1986, in the Joliet Herald News, signed by Robert Tezak and reportedly paid for by Mark Robert Tezak.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 2679
)

**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Questions to Mark R. Tezak

1. Please state your name, current address (residence and business) and telephone number (residence and business).

2. With respect to the Open Letter, please state in what newspapers, periodical publications and other media it appeared and on what date(s).

3. Please identify all persons who were involved in the planning, preparation and writing of the Open Letter and in the purchasing of advertising space for the Open Letter. Describe in full each such person's participation, involvement, authorization or other activity undertaken in connection with the Open Letter.

4. Please identify who paid the costs to publish this Open Letter. Please state the total amount of expenditures made in connection with the Open Letter, how and by whom payment was tendered.

5. What was the source of funds for the payment of costs associated with the Open Letter?

6. Please provide a copy of all documents relating to the payment of costs for the preparation and publication of the Open Letter and all relevant account identification. If payment was made by check or the written instrument, please provide a copy (both sides) of such check or other written instrument.

7. Please state your position, duties and responsibilities, if any, with International Games, Inc.

8. Please list the names and addresses of all persons who served as officers and directors of International Games, Inc. during calendar year 1986, and state their position(s).

9. Did you attend any meetings during calendar year 1986 to discuss the drafting, preparation, dissemination or publication of the Open Letter? With respect to each such meeting, please state the dates on which such meetings were held and who attended, and describe the content of the discussions or provide documentation of each such meeting, including but not limited to, transcripts or minutes of each such meeting.

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10. Did you or Robert Tezak contact Jack Davis or any official, agent or volunteer of Davis for Congress regarding the Open Letter? If so, please identify each person contacted or involved in the Open Letter and describe in detail the nature of those contacts.

11. Did you, Robert Tezak or anyone else to your knowledge have any contact with, or receive guidance, direction or instruction from Jack Davis or anyone associated with Davis for Congress regarding the Open Letter? If so, please provide a complete and detailed description of any such contact, guidance, direction or instruction. Please include the names of all persons who participated in such communications. Please provide notes from, or transcripts or copies of, those communications, if any.

12. Please describe in detail all contacts, communications, activities, fundraising efforts or other associations, if any, you had with Jack Davis or anyone associated with Davis for Congress.

13. Please describe all contacts, fundraising efforts, communications or other associations between Robert Tezak and Jack Davis or anyone associated with Davis for Congress.

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**Lavelle & Holden, Ltd.**
Attorneys At Law
1029 Lake Street, Suite 200, Oak Park, Illinois 60301
Telephone: 312/383-2525 Telecopier: 312/383-2660

September 7, 1989

Ms. Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Mark R. Tezak
MUR 2679;
Subpoena for
Interrogatories

Dear Patty:

This letter is a request for an extension of 15 days to respond to the referenced matter.

Your interrogatories were forwarded today to Mark R. Tezak for response. It appears that Mark Tezak moved to Arizona a few months ago and I was not notified. I had mailed the interrogatories to his Illinois address and they were returned to me by the postal service as undeliverable as addressed.

Best regards

Very truly yours,

Michael E. Lavelle

Michael E. Lavelle

MEL:cjm

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1989

Michael E. Lavelle, Esquire
Lavelle & Holden, LTD.
1029 Lake Street
Oak Park, IL. 60301

RE: MUR 2679
Mark R. Tezak

Dear Mr. Lavelle:

This is in response to your letter dated September 7, 1989, which we received on September 7, 1989, requesting an extension of fifteen days to respond to the Commission's subpoena in the above-captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on September 25, 1989. In the event a response is not received on that date, this Office will request that the Commission authorize judicial enforcement of this subpoena.

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

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

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FEDERAL ELECTION COMMISSION
MAIL ROOM

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MUR 2679
Mark R. Tezak

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 2679
)

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

89 SEP 21 AM 11:04

**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Questions to Mark R. Tezak

1. Please state your name, current address (residence and business) and telephone number (residence and business)

MARK ROBERT TEZAK
8739 VIA DE LAGUNA
SCOTTSDALE AZ 85258

2. With respect to the Open Letter, please state in what newspapers, periodical publications and other media it appeared and on what date(s).

JOLIET HERALD

3. Please identify all persons who were involved in the planning, preparation and writing of the Open Letter and in the purchasing of advertising space for the Open Letter. Describe in full each such person's participation, involvement, authorization or other activity undertaken in connection with the Open Letter.

IT WAS MY IDEA BECAUSE I WAS TIRED OF HEARING ALL THE LIES FROM COLLINS AND MY DAD AND I DISCUSSED IT

4. Please identify who paid the costs to publish this Open Letter. Please state the total amount of expenditures made in connection with the Open Letter, how and by whom payment was tendered.

I THINK MY DAD ISSUED A CHECK ~~AFTER~~ I ~~GAVE~~ PUT UP THE MONEY

5. What was the source of funds for the payment of costs associated with the Open Letter?

MY MONEY PERIOD

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MUR 2679
Mark R. Tezak

6. Please provide a copy of all documents relating to the payment of costs for the preparation and publication of the Open Letter and all relevant account identification. If payment was made by check or the written instrument, please provide a copy (both sides) of such check or other written instrument.

NOVe

7. Please state your position, duties and responsibilities, if any, with International Games, Inc.

NONe

8. Please list the names and addresses of all persons who served as officers and directors of International Games, Inc. during calendar year 1986, and state their positions(s).

DONT KNOW

9. Did you attend any meetings during calendar year 1986 to discuss the drafting, preparation, dissemination or publication of the Open Letter? With respect to each such meeting, please state the dates on which such meetings were held and who attended, and describe the content of the discussions or provide documentation of each such meeting, including but not limited to, transcripts or minutes of each such meeting.

I ONLY DISCUSSED THE LETTER WITH MY DAD I DONT REMEMBER DATES OR ANY OTHER DETAIL

10. Did you or Robert Tezak contact Jack Davis or any official, agent or volunteer of Davis for Congress regarding the Open Letter? If so, please identify each person contacted or involved in the Open Letter and describe in detail the nature of those contacts.

NO NOT TO MY KNOWLEDGE

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MUR 2679
Mark R. Tezak

11. Did you, Robert Tezak or anyone else to your knowledge have any contact with, or receive guidance, direction or instruction from Jack Davis or anyone associated with Davis for Congress regarding the Open Letter? If so, please provide a complete and detailed description of any such contact, guidance, direction or instruction. Please include the names of all persons who participated in such communications. Please provided notes from, or transcripts or copies of, those communications, if any.

NO

12. Please describe in detail all contacts, communications, activities, fundraising efforts or other associations, if any, you had with Jack Davis or anyone associated with Davis for Congress.

NONE

13. Please describe all contacts, fundraising efforts, communications or other associations between Robert Tezak and Jack Davis or anyone associated with Davis for Congress.

DON'T KNOW

MARK R. TEZAK

ILLINOIS
STATE OF ~~ARIZONA~~ )
) SS
COUNTY OF WILL )

OFFICIAL SEAL
LYNN R SNYDER
NOTARY PUBLIC STATE OF ILLINOIS
COMMISSION EXP OCT 16 1990

Subsribed and sworn to before me this 20th day of September, 1989.

Lynn R. Snyder
NOTARY PUBLIC

2 1 0 4 0 3 5 2 2 6 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 1, 1990

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

Robert J. Tezak
c/o Michael E. Lavelle, Esq.
Lavelle & Holden, Ltd.
1029 Lake Street, Suite 200
Oak Park, Illinois 60301

RE: MUR 2679

Dear Mr. Lavelle:

On September 6, 1988, your client, Robert Tezak, was notified that the Federal Election Commission had received a complaint asserting that he had violated the Federal Election Campaign Act of 1971, as amended. On September 26, 1988, the Commission received Mr. Tezak's response to the complaint. Although this response provided some information, the Commission still has questions regarding the activity at issue in this matter. Therefore, the Commission requests that Mr. Tezak answer the attached questions under oath and produce the requested documents within 15 days of your receipt of this request.

If you have any questions, please contact Mark Allen, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Instructions
Definitions
Questions and Document Requests

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**INSTRUCTIONS**

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to December 31, 1986.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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**DEFINITIONS**

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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**QUESTIONS AND DOCUMENT REQUESTS**

1. Describe your role in the Republican Party during 1986, including but not limited to any and all official and unofficial offices and titles you held. Describe in detail all contacts, communications, activities, fundraising efforts or other associations you had with Jack Davis or anyone associated with Jack Davis for Congress.

2. Attached is a copy of an advertisement titled "LET'S CLEAR THE AIR, MR. COLLINS: An Open Letter to Shawn Collins" signed by you that appeared in the Joliet Herald News on November 2, 1986.

a. Identify all persons who were involved in the planning, preparation and writing of the Open Letter to Shawn Collins ("Open Letter") and in the purchasing of advertising space for the Open Letter. Describe in full each person's participation, involvement, authorization or other activity undertaken in connection with the Open Letter.

b. Identify who paid the costs to publish this Open Letter. Please state the total amount of expenditures made in connection with the Open Letter, how and by whom payment was tendered.

c. What was the source of funds for the payment of costs associated with the Open Letter?

d. Provide copies of all documents relating to the payment of costs for the preparation and publication of the Open Letter and all relevant account identification. Provide copies of any invoices and checks or other written instruments (both sides).

e. Did you attend any meetings during 1986 to discuss the drafting, preparation, dissemination or publication of the Open Letter? With respect to each such meeting, state the dates on which such meetings were held, identify the individuals who attended, and describe the content of the discussions or provide documentation of each such meeting, including but not limited to, transcripts or minutes of each such meeting.

f. Did you contact Jack Davis or any official, agent or volunteer of Davis for Congress regarding the Open Letter? If so, identify each person contacted or involved in the Open Letter and describe in detail the nature of these contacts.

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g. Did you or anyone else to your knowledge have any direct contact with, or receive guidance, direction or instruction from Jack Davis or anyone associated with Davis for Congress regarding the Open Letter? If so, provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Include the names of all persons who participated in such communications. Provide notes from, or transcripts or copies of, those communications, if any.

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# LET'S CLEAR THE AIR, MR. COLLINS.

## *An open letter to Shaun Collins*

I resent your false allegations about me.

I resent your using me to make false allegations about State Representative Jack Davis, one of Illinois' finest state legislators. Will County voters must know the truth before Tuesday's election.

Here are your allegations and my rebuttals.

**Allegation:**
You have questioned Rep. Davis' integrity time and again. You have questioned whether he has earned the trust of the voters of the Fourth Congressional District.

**Truth:**
You have done *nothing* to earn the trust of the voters of this district. In fact, voters might well be wary of your record and your associates. You moved into the district eight months ago; your advisors are former aides to Chicago Mayor Harold Washington.

Jack Davis has lived and worked here for over 25 years. As a State Representative and Illinois House Leader, he brought tens of millions of dollars and tens of thousands of job opportunities to Will County. He has been endorsed by the Chicago *Tribune* as the best candidate for the job.

**Allegation:**
You have accused Rep. Davis of cronyism in the move of state offices to the former J.C. Penney building being developed by John Baye and myself. You have implied that Davis is working for the good of his friends, not for the revitalization of downtown Joliet.

**Truth:**
Rep. Davis and a bipartisan group of community leaders supported the move of state offices into a rehabilitated downtown office building—and, in fact, the leases were in place for the J.C. Penney building—long before Mr. Baye and I replaced the previous developers who were unable to complete the project. Neither Mr. Baye nor I had any connection with the state's initial decision to move the offices.

Rep. Davis is my friend, as are Senator Alan Dixon, Governor James Thompson, Secretary of State Jim Edgar, Congressman Ed Madigan and Harris Fahrendt, President Reagan's son Michael Reagan, and many other office holders, both Democratic and Republican. And the late Congressman George O'Brien was a close personal friend.

Are you suggesting that people should not have friends and supporters?

Perhaps, Mr. Collins, you should look to your own Democratic Party county chairman, reportedly under an investigation, for a better example of self-interest on the part of a public official.

**Allegation:**
You have linked my respect and support for Rep. Davis with the Private Industry Council's move to the former Moose Building, stating that "the apparent agent for the building...is widely believed to be owned or controlled" by me.

**Truth:**
I am not connected with the building. Its owner, John Baye, is a courageous man who is assuming the risk of renovating a dilapidated building as a much needed step in the revitalization of downtown Joliet.

Now, Mr. Collins, I'd like to present a few statements and questions of my own:

- You can make no real accusations against the integrity or experience of Rep. Davis. You are, therefore, using the last resort of a desperate political challenger: "THE BIG LIE." By saying preposterous things about a man of honor and proven ability, you hope to keep him busy refuting those charges and keep the voters confused. This is the same technique used by followers of Lyndon LaRouche. It's not working for them and it won't work for you.
- You have no positive program for the residents of the Fourth Congressional District. You are running on a campaign of negativism and innuendo. In contrast, Rep. Davis stands on his excellent record in Springfield and has a specific program to benefit this district and the country as a whole. I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability.
- Your own political career does little to inspire voter confidence. Why did you leave your position on the Democratic staff investigating cost overruns in the McCormick Place annex construction? Were you allegedly fired because you purportedly were caught leaking confidential information? Why hire ex-aides to Mayor Washington as your advisors and fund-raisers if you don't have a close connection to Chicago politics? Do Will County voters want Mayor Washington/Chicago influence here? What have you ever accomplished to earn the trust of the residents of the Fourth District?

In conclusion, I'd like to counter the charges you have levelled personally against me. You have accused me of contributing heavily to the Illinois Republican Party in exchange for favors. *My political contributions are made on the basis of my convictions, without regard to personal gain. Furthermore, those contributions are far surpassed by my contributions to the people of Joliet and Will County.*

As founder, chairman, and chief executive officer of International Games, a leader in the toy industry, I could have located my business anywhere in the country. But I chose to remain in Joliet, where I was born and where my family has been in business for three generations. Not only does International Games bring tax dollars and employment to Will County, but we have contributed close to *one million dollars* to local charities such as MS, Cystic Fibrosis, Toys for Tots, Big Brothers/Big Sisters, College of St. Francis, and numerous churches and schools. I have made personal investments in numerous projects in Joliet/Will County which have led to jobs and a broader tax base.

Yes, I'm a successful businessman, but that's what this country is all about. We all have the freedom to succeed or fail. We also have free speech, which is why an out-of-towner, an eight-month resident of Will County such as yourself, can make unsubstantiated charges against an outstanding legislator such as Jack Davis.

The voters will decide on Tuesday, Mr. Collins. I predict their decision will be the right one, especially at a time when government needs positive, not negative people.

Sincerely,

Robert J. Tunik

Robert J. Tunik
Chairman and Chief Executive Officer
International Games, Inc.

Paid for by Mark Pilgrim Tunik, Inc. authorized by Jack Davis

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

SENSITIVE

AUG 14 1990

EXECUTIVE SESSION

SUBMITTED LATE

July 30, 1990

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Suspension of Rules to Consider General Counsel's Report in MUR 2679

The General Counsel's Report in this matter was circulated to the Commission on July 25, 1990. Because the Commission is not meeting on August 7, 1990, objections to the Report have caused it to be placed on the August 14, 1990 Executive Session agenda. The Report recommends a deposition subpoena for use on August 10th (see pages 5-6 & n.2 of the Report). Therefore, I ask that the Commission suspend its rules and consider the General Counsel's Report of July 25, 1990 in MUR 2679 at its Executive Session on July 31, 1990.

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

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| In the matter of | ) | |
| | ) | |
| Davis for Congress Committee and Arthur J. Dreyer, as treasurer | ) | MUR 2679 |
| Mark R. Tezak | ) | |
| Robert J. Tezak | ) | |

GENERAL COUNSEL'S REPORT

## I. BACKGROUND

This matter focuses on a newspaper advertisement in the form of an "open letter" signed by Robert Tezak and, according to the advertisement's disclaimer, "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis." This advertisement was published in The Joliet Herald News on November 2, 1986 at a cost of $1,879.53 two days before the election. On January 10, 1989 the Commission found reason to believe the Davis for Congress Committee and Arthur J. Dryer, as treasurer, ("the Committee") violated 2 U.S.C. §§ 434 and 441a(f), and that Mark R. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a). Also on that date the Commission issued interrogatories and document requests to these respondents and to The Joliet Herald News as a non-respondent witness. Underlying the Commission's determinations was evidence that the open letter, a purported independent expenditure paid for by Mark Tezak, was in fact an unreported excessive in-kind contribution to the Committee.

On February 14, 1989 the candidate responded on behalf of the Committee, denying that communications had occurred between the Committee and Mark Tezak (Attachment 1). The Joliet Herald News

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responded on February 21, 1989 (Attachment 2). After several months of delay and after the Commission reissued the questions, this time under subpoena, Mark Tezak responded on September 21, 1989 (Attachment 3). Robert Tezak, Mark Tezak's father, was notified as a respondent to the complaint in this matter. This Office made no recommendations regarding Robert Tezak in the First General Counsel's Report pending responses to the investigation. This report now recommends reason to believe findings regarding Robert Tezak.

## II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person may contribute more than $1,000 in the aggregate to a federal candidate and his or her authorized committee with respect to any election. 2 U.S.C. § 441a(a)(1)(A). Pursuant to 2 U.S.C. § 434(c), every person who makes an independent expenditure in excess of $250 must file a statement concerning the expenditure. Further, any independent expenditure aggregating $1,000 made within 20 days prior to, but more than 24 hours before, an election, must be reported within 24 hours. Id. To be considered independent, the expenditure must be made without cooperation or consultation with a candidate, authorized committee, or agent of such candidate, and must not be made in concert with, or at the request or suggestion of, a candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17). The regulations further define this cooperation or consultation as any arrangement, coordination or direction by the candidate or his or her agent prior to the

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publication of the communication. 11 C.F.R. § 109.1(b)(4)(i). An expenditure will be presumed to be so made when it is

> (A) Based upon information about the candidate's plans, projects, or needs provided to the expending person by candidate, or by the candidate's agents, with a view toward having an expenditure made;
> (B) Made by or through any person who is, or has been, authorized to raise or expend funds . . . .

Id. In addition, the Act provides that whenever a person makes an expenditure financing a communication to advocate the election or defeat of a clearly identified candidate, a statement disclosing the source of the funds expended and the authorization (or lack thereof) by a federal candidate or committee must be made. 2 U.S.C. § 441d(a).

The Joliet Herald News stated in its interrogatory response that the "open letter" advertisement cost $1,879.53 and that the ad was placed by a Chicago advertising firm. Candidate Davis stated that there was no communication between his campaign and Robert Tezak regarding the open letter, but did note that his position as chairman of the county Republican party brought him into frequent contact with Tezak, an elected Republican county official and a major contributor to county and state Republican candidates.[1] The complaint asserted that during 1986 Jack Davis

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1. Mr. Tezak had been a Republican precinct committeeman for over 20 years, and was a delegate to the Republican National Convention in 1980 and 1984. He was elected Will County Coroner in 1976 and after re-election in 1980 and 1984, did not run for re-election in 1988. In the 1988 election cycle, he and/or his state political committee provided substantial assistance to local Republican candidates, perhaps including payment for brochures advocating the election of Jack Davis and other federal candidates. Although this Office has

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chaired the county Republican Committee while Robert Tezak headed a fundraising affiliate of that committee; in the open letter itself, Tezak refers to Davis as a friend.

Although Robert Tezak signed the open letter, the disclaimer stated that his son Mark Tezak paid for it, and thus the Commission made reason to believe findings against Mark. Mark Tezak was very uncooperative in responding to interrogatories and document requests; when he finally did reply, he provided skeletal answers. He states that he discussed the open letter with Robert Tezak and that Robert Tezak wrote a check to pay for the ad, but alleges that he "put up" the money and so the source of funds for the open letter was himself. No more information is provided by Mark and he contends that he has none of the documents subpoenaed by the Commission.

Mark Tezak's responses are sparse and there remain questions as to the exact role played by Robert Tezak. There is a question as to whether Robert Tezak was actually the source of the funds used for the open letter. Thus, the disclaimer may have been improper, and so there is reason to believe that Robert Tezak may have violated 2 U.S.C. § 441d(a). Also, if the $1,879 payment was an independent expenditure, it would be required to be reported, and, consistent with the Commission's findings against Mark Tezak, this Office recommends that the Commission find reason to believe that Robert Tezak violated 2 U.S.C. §§ 434(c).

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(Footnote 1 continued from previous page)
no information regarding the extent of Mr. Tezak's activities in 1986, it appears likely that he engaged in similar activities in that election cycle as well.

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On January 10, 1989 the Commission found reason to believe that Mark Tezak may have violated, in addition to the above two provisions, 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Davis Committee. The Commission thus found reason to believe that the $1,879 cost to publish the open letter may have been a contribution and not an independent expenditure. This finding is challenged by the response of the Davis Committee, which asserts that there was no connection between the Committee and the open letter. Nonetheless, questions are raised by the relationship between Robert Tezak and the candidate as alleged in the complaint and as detailed in the Davis Committee's response to the interrogatories, as well as by Robert Tezak's prominent role in the county and state Republican party. Thus, there is the possibility that the "plans, projects, or needs" of the candidate were known to, made available to, or acted upon by Robert Tezak who may have been the expending party, and that he may have been authorized to raise or expend funds for the Committee. See 11 C.F.R. § 109.1(b)(4)(i). Therefore, this Office recommends that the Commission now find reason to believe that Robert Tezak violated 2 U.S.C. § 441a(a)(1)(A).

The reason to believe findings recommended in this report will allow this Office to investigate Robert Tezak's role in this matter. Based on the difficulty this Office had in obtaining responses to the questions sent to Mark Tezak, this Office also recommends that the questions and document requests be sent to Robert Tezak, who is represented by the same counsel, under subpoena and order. This Office is now scheduled to depose Robert

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Tezak on August 10 It would be useful to inquire as to this matter as well, so this Office requests that the Commission approve a deposition subpoena.

III. **RECOMMENDATIONS**

1. Find reason to believe that Robert J. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a).

2. Approve the attached Factual and Legal Analysis, Order to Submit Answers and Subpoena for Documents, Deposition Subpoena, and the appropriate letter.

Lawrence M. Noble
General Counsel

7/25/90
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Response from Davis for Congress Committee
2. Response from The Joliet Herald News
3. Response from Mark Tezak
4. Factual and Legal Analysis
5. Order and Subpoena
6. Deposition Subpoena

Staff Assigned: Mark Allen

21040852278

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**MEMORANDUM**

**TO:** LAWRENCE M. NOBLE
GENERAL COUNSEL

**FROM:** MARJORIE W. EMMONS/DONNA ROACH DR
COMMISSION SECRETARY

**DATE:** JULY 27, 1990

**SUBJECT:** MUR 2679 - GENERAL COUNSEL'S REPORT
DATED JULY 25, 1990

The above-captioned document was circulated to the Commission on WEDNESDAY, JULY 25, 1990 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

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

This matter will be placed on the meeting agenda for TUESDAY, AUGUST 14, 1990.

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 | ) | |
| | ) | MUR 2679 |
| Davis for Congress Committee and | ) | |
| Arthur J. Dreyer, as treasurer; | ) | |
| Mark R. Tezak; | ) | |
| Robert J. Tezak. | ) | |

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 31, 1990, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2679:

1. Find reason to believe that Robert J. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a).

2. Approve the Factual and Legal Analysis, Order to Submit Answers and Subpoena for Documents, Deposition Subpoena, and the appropriate letter as recommended in the General Counsel's July 25, 1990 report.

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

Attest:

7-31-90
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1990

Michael E. Lavelle, Esquire
Lavelle & Holden, Ltd.
1029 Lake Street, Suite 200
Oak Park, IL 60301

RE: MUR 2679
Robert J. Tezak

Dear Mr. Lavelle:

On September 6, 1988 the Federal Election Commission notified your client, Robert Tezak, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations and additional information received, the Commission, on July 31, 1990, found that there is reason to believe Robert Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a), provisions of 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 Robert Tezak. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter, along with responses to the enclosed subpoena and order. Where appropriate, statements should be submitted under oath. In addition, please find enclosed the Commission's deposition subpoena for Robert Tezak.

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

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable

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

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

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

If you have any questions, please contact Mark Allen, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Vice Chairman

Enclosures
Factual & Legal Analysis
Subpoena and Order
Deposition Subpoena

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Robert Tezak** **MUR 2679**

The Federal Election Commission ("Commission") received a complaint from Martin Gleason on August 25, 1988. The complaint focuses on a newspaper advertisement in the form of an "open letter" signed by Robert Tezak and, according to the advertisement's disclaimer, "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis." This advertisement was published in The Joliet Herald News on November 2, 1986 at a cost of $1,879.53 two days before the election. Robert Tezak was notified as a respondent to the complaint in this matter and responded on September 26, 1988.

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person may contribute more than $1,000 in the aggregate to a federal candidate and his or her authorized committee with respect to any election. 2 U.S.C. § 441a(a)(1)(A). Pursuant to 2 U.S.C. § 434(c), every person who makes an independent expenditure in excess of $250 must file a statement concerning the expenditure. Further, any independent expenditure aggregating $1,000 made within 20 days prior to, but more than 24 hours before, an election, must be reported within 24 hours. Id. The Act defines "independent expenditure" as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with a candidate, authorized committee, or agent of

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such candidate, and must not be made in concert with, or at the request or suggestion of, a candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17). The regulations further define this cooperation or consultation as any arrangement, coordination or direction by the candidate or his or her agent prior to the publication of the communication. 11 C.F.R. § 109.1(b)(4)(i). An expenditure will be presumed to be so made when it is

> (A) Based upon information about the candidate's plans, projects, or needs provided to the expending person by candidate, or by the candidate's agents, with a view toward having an expenditure made;
> (B) Made by or through any person who is, or has been, authorized to raise or expend funds . . . .

Id. The regulation defines "expressly advocating" as any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as "vote for," "vote against," etc. Id. § 109.1(b)(2). The term "expenditure" does not include any news story, commentary, or editorial distributed through the facilities of any newspaper unless such facilities are owned or controlled by any political party, political committee, or candidate. 2 U.S.C. § 431(9)(B)(i). The regulations further explain this exemption. Pursuant to 11 C.F.R. § 100.8(b)(2), any cost incurred in covering or carrying a news story, commentary, or editorial by any newspaper is not an expenditure, unless the facility is owned or controlled by a political party, committee, or candidate.

In addition, the Act provides that whenever a person finances a communication to advocate the election or defeat of a clearly

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identified candidate, a statement disclosing the source of the funds expended and the authorization (or lack thereof) by a federal candidate or committee must be made. 2 U.S.C. § 441d(a).

In his response to the complaint, Tezak asserts that the complainant has raised only unsupported speculations and that the publication of the open letter is not an independent expenditure because the statement does not expressly advocate the election or defeat of a candidate. In addition, Tezak asserts that the open letter is exempted from the definition of expenditure because it is a commentary distributed through the facilities of a newspaper not owned or controlled by a political party, committee, or candidate. For these two reasons, the response asserts, the Commission does not have jurisdiction over this matter.

The Commission disagrees with these points. Under the Act a political communication which "expressly advocates" either the election or defeat or a candidate for federal office must be reported. 2 U.S.C. § 434(c). The Commission's regulations state that express advocacy means any communication containing a message advocating election or defeat, but such message is not limited to any particular words or phrases. 11 C.F.R. § 109.1(b)(2). The features of express advocacy were enumerated in F.E.C. v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 108 S. Ct. 151 (1987). The Furgatch court emphasized that if any reasonable alternative reading of the speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. But the statement of advocacy need not be presented in the clearest, most explicit language.

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The published advertisement which is the basis of this complaint is titled an "open letter" addressed to Shawn Collins, the apparent Democratic candidate for the Fourth Illinois Congressional District. Mr. Collins is not specifically identified as a candidate in that race; his candidacy is, however, evident from various phrases in the open letter.[1] The premise for the letter is to respond to "false allegations." The letter apparently rebuts various charges made by Mr. Collins that are unflattering to Robert Tezak and Jack Davis. To each "allegation" evidently made by Mr. Collins, Robert Tezak responded with his views of the "truth." From the tenor of the statements about Jack Davis, ostensibly the Republican candidate for the same election, the author's allegiance to Mr. Davis is evident.[2]

Each "truth" response implies that the candidate, Mr. Collins, is untruthful. Further, the writer challenges Mr. Collins's qualifications for office. The author Robert Tezak then writes "Will County voters must know the truth before Tuesday's

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1. Some of these elliptical references are: "You have done nothing to earn the trust of the voters in this district. In fact, voters might well be wary of your record . . ." "You are, therefore, using the last resort of a desperate political challenger." "You have no positive program for the residents of the Fourth Congressional District. You are running a campaign of negativism and innuendo." "Your political career does little to inspire voter confidence."

2. Among the references to Mr. Davis' candidacy are: "You make no real accusations against the integrity and experience of Rep. Davis . . . a man of proven honor and ability . . . you hope to . . . keep the voters confused." "In contrast, Rep. Davis . . . has a specific program to benefit this district and the country as a whole." "I believe that the voters of Will County are intelligent enough to read through your negative rhetoric and elect a candidate of real ability."

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election . . ." and "[t]he voters will decide on Tuesday, Mr. Collins, I predict their decision will be the right one . . ."

Taken as a whole, the open letter calls on the reader to consider the alleged untruthfulness and qualifications of candidates for the U.S. House of Representatives. The timing of this letter (the Sunday before election day), the naming of persons who are known to be involved in a particular political contest (although not so explicitly identified), statements on those persons' qualifications to hold office, and references to the voters' decision on Tuesday (election day) make the relationship of this open letter to a particular electoral campaign unmistakable. The clear implications drawn from this advertisement are the promotion of Jack Davis' candidacy and opposition to Mr. Collins'. The only reasonable interpretation of this message is that one should not vote for Mr. Collins. Therefore, within the guidelines of Furgatch, the message is express advocacy subject to the requirements of the Act.

The Commission also disagrees that the open letter qualifies under the press/media exemption to the definition of "expenditure" at 2 U.S.C. § 431(9)(A)(i). The accompanying regulation explains that the exemption applies to costs incurred in covering or carrying a news story, commentary, or editorial by a newspaper unless the paper is owned by a political party, committee, or candidate. See 11 C.F.R. § 100.8(b)(2). This regulation clarifies that the exemption extends to those expenses incurred by the institutional press in covering and commenting on

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election campaigns.[3] Therefore, Mr. Tezak, an individual purchaser of advertising space, is not a person or entity that can qualify for the exemption under section 431(9)(B)(i).

The open letter thus constitutes an expenditure, the purpose of which was evidently to influence a federal election. Moreover, there are questions as to the exact role in the open letter played by Robert Tezak. Although the disclaimer on the open letter stated that Mark Tezak paid for the advertisement, Mark Tezak has stated that Robert Tezak actually wrote the check for the advertisement although alleging that he "put up" the money for the advertisement. If Robert Tezak was actually the source of the funds used for the open letter, the disclaimer may have been improper, and so there is reason to believe that Robert Tezak may have violated 2 U.S.C. § 441d(a). Also, if the $1,879 payment was an independent expenditure, it would be required to be reported, which he did not do, and so there is reason to believe that Robert Tezak may have violated 2 U.S.C. §§ 434(c).

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3. This interpretation is consistent with the purpose of the exemption carved out by Congress. The press exemption was a 1974 amendment to the Act designed to "make it plain that it is not the intent of Congress . . . to limit or burden in any way the first amendment freedoms of the press and of association." H.R. Rep. No. 98-943, 93d Cong., 2d Sess. 4, reprinted in FEC, LEGISLATIVE HISTORY OF FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 at 638 (1977). Courts have also consistently interpreted the media exemption in its application to the corporate press. In cases challenging the jurisdiction of the Commission on grounds that the media exemption applies to certain activities, courts have first sought to determine whether the press entity was acting as a press entity with respect to the conduct in question. See, e.g., FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981); FEC v. Readers Digest Association, Inc., 509 F. Supp. 1210 (S.D.N.Y. 1981). The Commission has also consistently held that the media exemption is available only to press entities engaged in legitimate press functions. See MURs 2289 and 1809; AO 1987-8 (n.1).

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Jack Davis's position as chairman of the county Republican party brought him into frequent contact with Robert Tezak, an elected Republican county official and a major contributor to county and state Republican candidates. The complaint asserted that during 1986 Jack Davis chaired the county Republican Committee while Robert Tezak headed a fundraising affiliate of that committee. Robert Tezak's role in the county and state party and the relationship between Robert Tezak and the candidate Jack Davis as alleged in the complaint raise the possibility that the "plans, projects, or needs" of the candidate were known to, made available to, or acted upon by Robert Tezak who may have been the expending party, and that he may have been authorized to raise funds for the Committee. If so, the expenditure would not be independent and would instead constitute an excessive in-kind contribution to the campaign. See 11 C.F.R. § 109.1(b)(4)(i). Therefore, there is reason to believe that Robert Tezak violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Davis Committee.

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**BEFORE THE FEDERAL ELECTION COMMISSION**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| | ) | RE: MUR 2679 |
| | ) | |

**SUBPOENA TO PRODUCE DOCUMENTS**
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Robert J. Tezak
c/o Michael E. Lavelle, Esq.
Lavelle & Holden, Ltd.
1029 Lake Street, Suite 200
Oak Park, Illinois 60301

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this 30 day of August, 1990.

John Warren McGarry

John Warren McGarry, Vice Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

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**INSTRUCTIONS**

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to December 31, 1986.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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**DEFINITIONS**

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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**QUESTIONS AND DOCUMENT REQUESTS**

1. Describe your role in the Republican Party during 1986, including but not limited to any and all official and unofficial offices and titles you held. Describe in detail all contacts, communications, activities, fundraising efforts or other associations you had with Jack Davis or anyone associated with Jack Davis for Congress.

2. Attached is a copy of an advertisement titled "LET'S CLEAR THE AIR, MR. COLLINS: An Open Letter to Shawn Collins" signed by you that appeared in the Joliet Herald News on November 2, 1986.

a. Identify all persons who were involved in the planning, preparation and writing of the Open Letter to Shawn Collins ("Open Letter") and in the purchasing of advertising space for the Open Letter. Describe in full each person's participation, involvement, authorization or other activity undertaken in connection with the Open Letter.

b. Identify who paid the costs to publish this Open Letter. Please state the total amount of expenditures made in connection with the Open Letter, how and by whom payment was tendered.

c. What was the source of funds for the payment of costs associated with the Open Letter?

d. Provide copies of all documents relating to the payment of costs for the preparation and publication of the Open Letter and all relevant account identification. Provide copies of any invoices and checks or other written instruments (both sides).

e. Did you attend any meetings during 1986 to discuss the drafting, preparation, dissemination or publication of the Open Letter? With respect to each such meeting, state the dates on which such meetings were held, identify the individuals who attended, and describe the content of the discussions or provide documentation of each such meeting, including but not limited to, transcripts or minutes of each such meeting.

f. Did you contact Jack Davis or any official, agent or volunteer of Davis for Congress regarding the Open Letter? If so, identify each person contacted or involved in the Open Letter and describe in detail the nature of these contacts.

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g. Did you or anyone else to your knowledge have any direct contact with, or receive guidance, direction or instruction from Jack Davis or anyone associated with Davis for Congress regarding the Open Letter? If so, provide a complete and detailed description of any such direct contact, guidance, direction or instruction. Include the names of all persons who participated in such communications. Provide notes from, or transcripts or copies of, those communications, if any.

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )
) MUR 2679
)

**SUBPOENA**

TO: Robert J. Tesak
c/o Michael E. Lavelle, Esquire
Lavelle & Holden, Ltd.
1029 Lake Street, Suite 200
Oak Park, IL 60301

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to this matter. Notice is hereby given that the deposition is to be taken on August 10 in the Commission's Washington, D.C. offices, beginning at 10:00 a.m. and continuing each day thereafter as necessary, or such other date and time as agreed upon.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C., on this 3rd day of August, 1990.

John Warren McGarry

John Warren McGarry
Vice Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

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FEDERAL ELECTION COMMISSION
MAIL ROOM

90 OCT -9 AM 10:59

LAW OFFICES
**Lavelle, Holden & Juneau, Ltd.**

MAIN OFFICE
1029 Lake Street, Suite 203, Oak Park, Illinois 60301
Telephone: 708/383-2528 Facsimile: 708/383-2660

CHICAGO OFFICE
123 West Madison Street, 14th Fl., Chicago, Illinois 60602
Telephone: 312/621-1022 Facsimile: 312/368-8770

October 4, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 OCT -9 PM 4:03

Mr. Robert Raich
Federal Election Commission
999 E. St. NW
Washington, D.C. 20463

Re: MUR 2679

Dear Rob:

Enclosed is the original copy of the response to the interrogatories served on Robert Tezak in MUR 2679.

Very truly yours,

Mike

Michael E. Lavelle

MEL:cjm
Enclosure

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## ANSWERS

1. Precinct committeeman, Executive committeeman on the Will County Republican Central Committeeman, Will County Coroner, involved in various fundraising efforts for numerous candidates as well as Jack Davis. Jack Davis is a friend and Chairman of the Republican Party.

2.

a. Family members thought I should clear the air on numerous attacks by Shawn Collins.

b. I believe it was my son.

c. Family members

d. no

f. no

g. no

X Robert J. Tezak

ROBERT J. TEZAK

SUBSCRIBED AND SWORN TO AND BEFORE ME THIS 28th DAY OF SEPTEMBER 1990

OFFICIAL SEAL
DEANNA LYNN BOYD
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. OCT. 29,1993

NOTARY PUBLIC Deanna L. Boyd 9/28

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1990

Michael E. Lavelle, Esq.
Lavelle, Holden & Juneau, Ltd.
1029 Lake Street
Suite 200
Oak Park, IL 60301

RE: MUR 2679

Robert Tezak

Dear Mr. Lavelle:

This letter is to confirm your telephone call with Mark Allen of this Office on November 15, 1990, regarding your providing the following documents as agreed upon at the October 3, 1990 deposition of your client Robert Tezak:

In MUR 2679, a copy of the check used to pay for the "open letter" or an affidavit describing the efforts made in a search therefor and stating that it could not be located.

This Office looks forward to receiving this information within 15 days. If you have any further questions concerning this matter, please contact Mark Allen, the attorney assigned to this matter, at 202/376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

91 JUN 14 AM 8:22

**BEFORE THE FEDERAL ELECTION COMMISSION**

**SENSITIVE**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Davis for Congress Committee and Arthur J. Dreyer, as treasurer | ) | MUR 2679 |
| Mark R. Tezak | ) | |
| Robert J. Tezak | ) | |

**GENERAL COUNSEL'S REPORT**

## I. BACKGROUND

This matter focuses on a newspaper advertisement in the form of an "open letter" signed by Robert Tezak and, according to the advertisement's disclaimer, "[p]aid for by Mark Robert Tezak/Not authorized by Jack Davis." This advertisement was published in The Joliet Herald News on November 2, 1986, two days before the election. On January 10, 1989 the Commission found reason to believe the Davis for Congress Committee and Arthur J. Dryer, as treasurer, ("the Committee") violated 2 U.S.C. §§ 434 and 441a(f), and that Mark R. Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a). These findings were based on the disclaimer that Mark Tezak paid for the open letter. On July 31, 1990, the Commission found reason to believe that Robert Tezak, Mark Tezak's father, violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a), based on the possibility that he, rather than Mark Tezak, paid for the open letter.

This complaint was filed in 1988 and the activity noted therein took place in 1986. This Office has investigated this matter, and in view of the isolated nature of the violation, the amount of money involved, and the resources necessary to determine the precise nature of the violation, this Office now recommends

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that the Commission take no further action and close the file in this matter.

## II. ANALYSIS

### A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person may contribute more than $1,000 in the aggregate to a federal candidate and his or her authorized committee with respect to any election. 2 U.S.C. § 441a(a)(1)(A). Pursuant to 2 U.S.C. § 434(c), every person who makes an independent expenditure in excess of $250 must file a statement concerning the expenditure. Further, any independent expenditure aggregating $1,000 made within 20 days prior to, but more than 24 hours before, an election, must be reported within 24 hours. Id. To be considered independent, the expenditure must be made without cooperation or consultation with a candidate, authorized committee, or agent of such candidate, and must not be made in concert with, or at the request or suggestion of, a candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17). The regulations further define this cooperation or consultation as any arrangement, coordination or direction by the candidate or his or her agent prior to the publication of the communication. 11 C.F.R. § 109.1(b)(4)(i). An expenditure will be presumed to be so made when it is

> (A) Based upon information about the candidate's plans, projects, or needs provided to the expending person by candidate, or by the candidate's agents, with a view toward having an expenditure made;
> (B) Made by or through any person who is, or has been, authorized to raise or expend funds . . . .

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Id. In addition, the Act provides that whenever a person makes an expenditure financing a communication to advocate the election or defeat of a clearly identified candidate, a statement disclosing the source of the funds expended and the authorization (or lack thereof) by a federal candidate or committee must be made. 2 U.S.C. § 441d(a).

B. The Payment for the Open Letter Is Not an Independent Expenditure

The investigation in this matter revealed that $1879.53 was paid to The Joliet Herald News for the "open letter" advertisement. A major issue is whether the payment for the open letter constitutes an independent expenditure or a coordinated expenditure. The open letter was authored by Robert Tezak and was assertedly paid for by Robert's son Mark Tezak. The latter and candidate Davis both stated in responses to interrogatories that Mark had no contact with Davis or the Committee. Robert Tezak, by contrast, had substantial contact with candidate Davis.

Candidate Davis stated that there was no communication between his campaign and Robert Tezak regarding the open letter, but did note that his position as chairman of the Will County Republican Party brought him into frequent contact with Tezak, a member of the Executive Committee of the Will County Republican Party Central Committee and an elected Republican county official (Will County Coroner). Because of Tezak's official party position, it is doubtful that any campaign activity on behalf of the Davis campaign in which he was involved could be viewed as an independent expenditure. In fact, Robert Tezak's specific

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activities and relationship with the candidate confirm that the open letter expenditure must be deemed coordinated rather than independent. Tezak stated in his response to the Commission's Subpoena and Order that in 1986 he was precinct committeeman, Executive Committeeman on the Will County Republican Central Committee, Will County Coroner, and involved in various fundraising efforts for numerous candidates including Jack Davis (Attachment 1).[1] As in the open letter, Robert Tezak refers to Davis as a friend. Tezak stated in his October 3, 1990 deposition that he saw Davis frequently during that period and actually hosted fundraising events for Davis' 1986 congressional campaign (Attachment 2; transcript at 271-72).[2] In addition, Tezak and Davis discussed the issues of the ongoing campaigns including Davis' congressional campaign (transcript at 287). Indeed, Tezak called Davis to tell him about the open letter before it was published (transcript at 283).

Robert Tezak's extensive involvement in local politics and with the candidate gave him access to the general "plans, projects, or needs," of the candidate. In addition, Tezak actually notified the candidate regarding the publication of the

---

1. Mr. Tezak had been a Republican precinct committeeman for over 20 years, and was a delegate to the Republican National Convention in 1980 and 1984. He was elected Will County Coroner in 1976 and re-elected in 1980 and 1984. Tezak is also a major contributor to county and state Republican candidates.

2. The relevant pages of Robert Tezak's deposition transcript are reproduced as Attachment 2.

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open letter, and he raised funds on behalf of the candidate. All three of these facts preclude the independence of the expenditure of the open letter. Therefore, the expenditure for the open letter constitutes a coordinated expenditure. See 11 C.F.R. § 109.1(b)(4)(i).

C. Question of Who Paid for the Open Letter

In contrast to the certainty of the coordinated nature of the expenditure is the question of whether Robert Tezak or Mark Tezak funded the open letter. Although Robert Tezak signed the open letter, the disclaimer stated that his son Mark Tezak paid for it, and thus the Commission initially made reason to believe findings against Mark. Mark Tezak was approximately 19 years old in 1986. He stated in his interrogatory response that he discussed the open letter with Robert Tezak and that Robert Tezak wrote a check to pay for the open letter, but Mark alleges that he "put up" the money and so the source of funds for the open letter was himself. Mark also stated that the open letter was his idea. No more information is provided by Mark and he contends that he has none of the documents subpoenaed by the Commission. Robert Tezak, however, stated in his deposition that Mark used a money order to pay for the open letter (transcript at 275). Robert Tezak also stated that other family members may have given Mark money for the purpose of buying the ad (transcript at 277). Finally, Robert stated that he made the decision to purchase the ad (transcript at 273).

The circumstances of the payment for the open letter remain unclear. If Mark Tezak paid for the open letter, the $1,879.53

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payment is an excessive in-kind contribution of $879.53 under 2 U.S.C. § 441a(a)(1)(A). If Robert Tezak provided the funds for the open letter, such payment would constitute an excessive contribution and a disclaimer violation under 2 U.S.C. § 441d(a).[3] Either way, the open letter constitutes the receipt of an excessive contribution by the Davis Committee under 2 U.S.C. § 441a(f).

D. Further Inquiry Not Recommended

On January 10, 1989, the Commission found reason to believe regarding Mark Tezak and the Davis Committee based on the possibility that Mark Tezak paid for the open letter. On July 31, 1990, the Commission found reason to believe regarding Robert Tezak based on the possibility that he paid for the open letter. At this point in this Office's investigation, a question remains as to whether Robert Tezak or Mark Tezak funded the open letter. Further investigation, which may or may not determine which individual actually paid for the open letter, might not be a justifiable use of the Commission's resources. This Office is of the opinion that further inquiry regarding the open letter long after the 1986 election would be time consuming and not worth the use of Commission resources regarding an isolated violation not involving a substantial expenditure.

This Office therefore recommends that the Commission use its prosecutorial discretion, take no further action and close the file in this matter. See Heckler v. Chaney, 470 U.S. 821 (1985).

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3. Robert Tezak had previously contributed $1,000 to the Davis Committee for the 1986 general election.

7 1 0 4 0 3 5 2 3 0 5

## III. RECOMMENDATION

Take no further action, close the file in this matter, and approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 6/14/91

BY: Lois G. Lerner
Associate General Counsel

Attachment
Robert Tezak response to Order and Subpoena

Staff Assigned: Mark Allen

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1 A Yes.

2 Q With no assistance from your attorney or anybody

3 else?

4 A No, I faxed them to Deanna. I believe I was in

5 Phoenix at the time and I wrote them out and faxed them to

6 Deanna. She typed them for me.

7 Q Now, you told me earlier in the deposition that

8 you were a member of the Will County Central Committee

9 Executive Committee; is that right?

10 A Yes.

11 Q And were you a member of that in 1986?

12 A Yes.

13 Q Who is chairman of that?

14 A In '86, Jack Davis.

15 Q He was chairman of the Executive Committee?

16 A He was chairman of the Republican Central

17 Committee.

18 Q Did the Executive Committee have a chairman?

19 A I thought we just -- we went over that once

20 already. The chairman of the Republican Central Committee

21 provided over the media, remember that?

22 Q I wonder if he was just an official title as

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1 chairman of the --

2 A Chairman of the Republican Party.

3 Q Of Will County?

4 THE WITNESS: Will County.

5 THE REPORTER: Excuse me, could you please try

6 to talk one at a time?

7 (Discussion off the record.)

8 BY MR. RAICH:

9 Q You testified earlier that you had monthly

10 meetings; is that right?

11 A The party had monthly meetings, yes.

12 Q Well, the Executive Committee had monthly

13 meetings?

14 A Yes.

15 Q Did you see Jack Davis at these monthly

16 meetings?

17 A If I was there, which was rare.

18 Q You mentioned in Exhibit 1 -- rather pardon me,

19 in answer 1 to Exhibit 24 that Jack Davis is also a friend

20 of yours?

21 A Yes.

22 Q For how long have you been friends?

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A About 15 years.

Q You are still friends today?

A I haven't seen him since he moved away. But I had heard from him, he called up a couple times and said "hi," so I would imagine we're still friends.

Q When did he move away?

A Pardon?

Q When did he move away?

A The summer of -- I would say sometime in '89, spring to summer of '89 maybe.

Q Did you see him more frequently than once a month at these Executive Committee meetings in 1986?

A I saw him numerous times at different functions, whether it be charitable, political or anything else.

Q About how frequently would you see him in 1986?

A I don't know, once or twice a week probably.

Q Did you do fundraising on his behalf?

A I did fundraising on everyone's behalf.

Q Did -- what did that entail?

A Making phone calls. I guess that would be about it. Various people that would come to his fundraiser or whatever.

ATTACHMENT 2
Page 4 of 16



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1 Q You state in your answer 1 on Exhibit 24 that
2 you were involved in various fundraising efforts. Could
3 that involve -- those various efforts involve anything
4 other than the phone calls?
5 A I mean, various efforts for Jack Davis and
6 numerous other candidates, and I hosted a couple parties,
7 a couple cocktail parties, different things of that nature
8 several times.
9 Q Do you recall any specifically for Jack Davis?
10 A Yes, sure. I don't know when, but, yes, I did
11 have a couple of cocktail parties or something for him.
12 Q Other than the contacts with Jack Davis
13 personally, a couple times a week or so, did you have
14 additional contacts with other people associated with his
15 campaign in 1986?
16 A Not really. Basically Jack Davis.
17 Q Now, in response to 2A, you indicated that you
18 wanted to clear the air of attacks by Shawn Collins.
19 Whose idea was it "to clear the air"?
20 A Basically, I guess my family's, my sons, myself,
21 I mean, just -- it repeatedly came up, it was a process
22 that took a course of a year -- well, prior to Jack Davis

9 1 0 3 4 0 3 5 2 3 1 0

1 being candidate for Congress or anything else. And I just
2 got -- I think it got pretty old and everybody just got
3 tired of it and I decided I was going to take a stance
4 because I was going to, you know, bring it out in the open
5 once and for all, because it certainly wasn't helping, it
6 wasn't stopping, so I was going to answer it.
7 Q You decided that yourself?
8 A Basically. Urging of friends, family, we just
9 got tired of it.
10 Q Was it your idea to purchase an ad?
11 A I don't know if it was solely my idea.
12 Q Did you make the decision to do it?
13 A Oh, yes.
14 Q You mentioned people who helped you think about
15 this, one was your son, you mentioned there were other
16 people. Who were those other people?
17 A My son, family members, you know, close
18 friends. I don't know who.
19 Q You don't remember who --
20 A During that --
21 Q -- other than your son?
22 A -- during that period of time, yes, close

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1 friends, mother, father, aunts, uncles, sisters. I mean,
2 just all those kind of people who just got tired of all
3 the lies and all the junk.
4 Q Did your mother and your father specifically
5 advise you regarding the add?
6 A Well, they more or less -- it kind of traveled
7 quietly in the family where they would, you know, express
8 their discontent, you know, and it would get back to me.
9 I knew they weren't happy about the situation.
10 Q And is that the same with regard to the other
11 relatives you listed?
12 A Some I would say, you know, it would just depend
13 on the circumstance when one of these idiotic things came
14 out.
15 Q Was your son discussing this with you more than
16 your other relatives?
17 A Yes, I guess so because I saw him a lot, quite a
18 bit.
19 Q Let's see, he is 23 now, so he would have been
20 about 19 in 1986; is that right?
21 A Roughly, yes.
22 Q Do you remember any specific statements that

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1 your son or other family members or friends made with
2 regard to the advertisement?
3 A "In regard" -- what do you mean?
4 Q To the advertisement you purchased before you
5 purchased it?
6 A No, I mean it was a -- in general, a consensus,
7 they all felt I should say something, somehow.
8 Q Who paid the costs for the advertisement?
9 A I believe that it was my son and I don't know
10 what -- I mean, that was generated from, whether it was
11 aunts, uncles, mother, father, as far as I know it was his
12 funds. How they were actually derived, I don't know.
13 Q I see, do you know if he took his own check and
14 wrote it to the newspaper?
15 A I think what happened is that he got a money
16 order and I'm very vague on it, I believe he had cash, he
17 got a money order and that's how it was paid for. And I'm
18 really not sure.
19 Q I see, so you think he had a money order and
20 paid the newspaper with that, is that what you think?
21 A I believe, yes, I would think so.
22 Q Did he tell you this?

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A This is just vaguely how I remember it happening.

Q You remember the source of your belief?

A I believe it was his funds. And I believe it was a money order -- that he purchased a money order to pay for the ad. But I'm not sure.

Q And you think he took the money order and paid it directly to the newspaper, and that's your recollection?

A I think. I just don't remember.

Q Now, in Exhibit 24, answer 2C, you indicated that the source of the funds was family members. Do you see where I'm looking?

A 2?

Q 2C.

A Yes.

Q Family members. Was there somebody other than your son?

A Well, that's what I basically just got done telling you. I said I don't know what for sure the source of the funds was, but I believe it was probably different family members, you know, chipped in money. I really

ATTACHMENT 2
Page 9 of 16

1 don't know that to be a fact, that's what I think
2 happened.
3 Q But as far as you know, though, your son was the
4 only family member, is that your recollection?
5 A Well, he was the person who actually, I think,
6 got the money order and paid for the ad, I think. I think
7 there may have been other people that gave him money,
8 family members and I'm not sure of that.
9 Q You think other family members specifically gave
10 him money for the purpose of buying an add; is that right?
11 A I think so, I'm not sure.
12 Q Do you have any idea who those family members
13 were?
14 A I have no idea.
15 Q In fact, you are not even sure that the family
16 members did?
17 A Right, exactly.
18 MR. RAICH: Let's go off the record for a
19 minute.
20 (Discussion off the record.)
21 MR. RAICH: Will you mark this, please.
22 (Exhibit 25 identified.)

1 (Pause.)

2 THE WITNESS: This was no -- there was really no

3 meetings.

4 BY MR. RAICH:

5 Q You mentioned that members of your family and

6 friends perhaps had talked to you about this?

7 A Yes, I mean as a matter of conversations or

8 meetings at other places and other events, there was no

9 specific effort on just that question.

10 Q Were there any members of the family or these

11 friends that you talked to who were also out, involved in

12 the Jack Davis campaign?

13 A No, I don't believe so.

14 Q Now, did you contact anyone connected with the

15 Jack Davis campaign before this ad ran?

16 A No, I did not.

17 Q Did you contact Jack Davis personally about it?

18 A No, I did not.

19 Q In your bi-weekly meetings with him or

20 thereabouts, did you even mention to him that you would be

21 placing an ad in the newspaper?

22 A No, I intentionally didn't.



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1 Q Why is that?

2 A Because I didn't want to put him in a position

3 that he would have to say yes or no to the article when I

4 had made up my mind I was doing it anyway.

5 Q You were afraid he might say don't run the

6 article?

7 A I didn't want to put him in the position to say

8 it, because I had made up my mind that I was doing it and

9 I did it. So, regardless of what he would have said, it

10 wouldn't really made a difference to me.

11 Q Did he talk to you after the article ran?

12 A I called him late Saturday evening, I believe

13 this ran on Sunday, to let him know so he wouldn't have to

14 read it in the paper.

15 Q What did he say?

16 A He didn't know what to say. He was just kind of

17 surprised. That was about it.

18 Q Did he talk to you then about it after the

19 advertisement ran in the newspaper?

20 A Well, you know, sometime after that, I had saw

21 him and he was just -- he was concerned that it would

22 cause him a problem and I just said I didn't see how it

1 would cause him a problem because I'm the one who did it.
2 Q And what did he say?
3 A I don't know whether he believed it or not. But
4 that was the fact of the matter and that's what I did and
5 I have no regrets if I had to do it over again.
6 Q What did he mean when he said it can cause him a
7 problem?
8 A Well, in his campaign or whatever, I don't know
9 what he meant. He was hoping that I didn't cause anything
10 to cause him a problem. Whether it be with the news media
11 or who, I don't know.
12 Q He didn't explain what he meant?
13 A No, and I refrained from pushing it, just like I
14 did not mentioning it from the start because I didn't want
15 anybody else involved. It was my choice and my final
16 decision and I did it.
17 Q So you don't have any idea of what he meant when
18 he --
19 A No.
20 Q -- said he thought it hurt his campaign?
21 MR. LAVELLE: Excuse me, he didn't say he
22 thought it would hurt his campaign. He said he was



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1 afraid -- let me just make an objection. I don't believe
2 the witness said that Jack Davis said it was going to hurt
3 his campaign. I believe his testimony was that Jack Davis
4 hoped it wouldn't hurt his campaign.
5 MR. RAICH: That's right, and that was after the
6 ad had already run.
7 BY MR. RAICH:
8 Q Is that correct?
9 MR. LAVELLE: Excuse me, no, it was after the ad
10 was committed, --
11 THE WITNESS: Committed, yes --
12 MR. LAVELLE: But before it actually appeared in
13 the paper. This is the night of --
14 THE WITNESS: This is the conversation that --
15 MR. LAVELLE: Of Saturday and it was scheduled
16 for Sunday's paper, he called him, I believe he testified,
17 to alert him that it was coming so he wouldn't be
18 surprised by finding it in the paper himself. That's what
19 he testified to.
20 THE WITNESS: That's correct.
21 BY MR. RAICH:
22 Q I see. So when you talked to him on that

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1 Saturday night before it ran on Sunday, he told you then
2 that he thought it would hurt his campaign?
3 A No, he didn't say anything about the thought,
4 thinking it would hurt. He hoped that it didn't affect
5 his efforts in any way.
6 Q And then did you talk to him about it
7 subsequently?
8 A No, not really. I mean, it was a nonissue as
9 far as Jack Davis was concerned. It was my issue and I
10 handled it.
11 Q After the ad ran, you and he never discussed it
12 again; is that right?
13 A I mean, not that I can recall on anything
14 pertinent or important.
15 Q Now did you or any of your friends or family
16 members receive any kind of guidance or information from
17 the Jack Davis campaign before this ad ran?
18 A Absolutely not.
19 Q As an active member of the Republican Central
20 Committee and the Republican Executive Committee, were you
21 aware of the status of the Jack Davis campaign?
22 A The status?

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Q Correct.

A Explain "status."

Q You knew campaign events that were happening, issues that were breaking, the news that was curving the campaign, et cetera; correct?

A Basically.

Q Did you discuss these issues with Jack Davis?

A What issues?

Q The issues regarding the campaign.

A It would depend on what you are talking about. I've talked many things about, you know, with him. If you want to be specific, you know, I could answer it, but --

Q Well, let me ask this. At the Republican Executive Committee meetings, was there talk about the progress, the problems in the Jack Davis campaign?

A I don't know if you would phrase them as problems or progress or anything like that. They were talked about all campaigns at Republican Central Committee and whatever issue was at hand.

Q And that would include, of course, the Jack Davis campaign, wouldn't it?

A Oh, sure, I would imagine.

ATTACHMENT 2
Page 16 of 16



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**MEMORANDUM**

**TO:** LAWRENCE M. NOBLE
GENERAL COUNSEL

**FROM:** MARJORIE W. EMMONS/DONNA ROACH DR
COMMISSION SECRETARY

**DATE:** JUNE 18, 1991

**SUBJECT:** MUR 2679 - GENERAL COUNSEL'S REPORT DATED JUNE 14, 1991

The above-captioned document was circulated to the Commission on FRI., JUNE 14, 1991 at 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

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

This matter will be placed on the meeting agenda for JUNE 25, 1991.

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 | ) | |
| | ) | MUR 2679 |
| Davis for Congress Committee and | ) | |
| Arthur J. Dreyer, as treasurer; | ) | |
| Mark R. Tezak; | ) | |
| Robert J. Tezak. | ) | |

**CERTIFICATION**

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 25, 1991, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2679:

1. Take no further action and close the file in this matter.

2. Approve the appropriate letters as recommended in the General Counsel's report dated June 14, 1991.

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

Attest:

6-26-91
Date

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

2104055323

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 9, 1991

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

Martin J. Gleason
600 Cornelia Street
Joliet, IL 60435

RE: MUR 2679

Dear Mr. Gleason:

This is in reference to the complaint you filed with the Federal Election Commission on August 25, 1988, concerning an advertisement published in the Joliet Herald News shortly before the 1986 general election.

Based on that complaint, on January 10, 1989, the Commission found that there was reason to believe Mark Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a), and that Davis for Congress and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter. On July 31, 1990, the Commission found that there was reason to believe Robert Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a). However, after considering the circumstances of this matter, the Commission determined to take no further action against Mark Tezak, the Davis Committee, and Robert Tezak, and closed the file in this matter on June 25, 1991. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended ("the Act"), allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Enclosed is a copy of the General Counsel's Report which recommended that the Commission take no further action and close the file in this matter. You will notice that on page four a footnote has been deleted. This footnote relates to another matter that is still under investigation. The confidentiality provisions of the Act prevent the Commission from releasing information regarding ongoing investigations. See 2 U.S.C. § 437g(a)(12)(A).

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

21040352325

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 9, 1991

Michael E. Lavelle, Esq.
Lavelle, Holden & Juneau, Ltd.
1029 Lake Street
Suite 200
Oak Park, IL 60301

RE: MUR 2679
Robert Tezak
Mark Tezak

Dear Mr. Lavelle:

On January 27, 1989, Mark Tezak was notified that the Federal Election Commission found reason to believe that he violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a). On August 6, 1990, you were notified that the Federal Election Commission found reason to believe that Robert Tezak violated 2 U.S.C. §§ 434(c), 441a(a)(1)(A), and 441d(a).

After considering the circumstances of the matter, the Commission determined on June 25, 1991, to take no further action against Mark Tezak and Robert Tezak, and closed the file. The file will be made part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The Commission concluded that the communication by Mark and Robert Tezak at issue in this matter was not an independent expenditure but rather was an excessive in-kind contribution. Thus, the Commission reminds you that the purchase of an express advocacy political advertisement in excess of $1,000 in coordination with a campaign committee appears to be a violation of 2 U.S.C. § 441a(a)(1)(A). In addition, a disclaimer not stating the sources of the funds used for such an advertisement appears to be a violation of 2 U.S.C. § 441d(a). Your clients should take immediate steps to insure that this activity does not occur in the future.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 9, 1991

Jack Davis, Treasurer
Davis for Congress Committee
Route 1, Box 53C
Springfield, IL 62025

RE: MUR 2679

Dear Mr. Davis:

On January 27, 1989, the Davis for Congress Committee ("the Committee") and Arthur J. Dreyer , as treasurer, were notified that the Federal Election Commission found reason to believe that the Committee and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f). On February 7, 1989, you submitted a response to the Commission's reason to believe findings.

After considering the circumstances of the matter, the Commission determined on June 25, 1991, to take no further action against the Committee and you, as treasurer, and closed the file. The file will be made part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The Commission concluded that the communication by Mark and Robert Tezak at issue in this matter was not an independent expenditure but rather was an excessive in-kind contribution to your campaign. Thus, the Commission reminds you that the failure to report an in-kind contribution in excess of $200 appears to be a violation of 2 U.S.C. § 434. In addition, the receipt of a contribution in excess of $1,000 from an individual appears to be a violation of 2 U.S.C. § 441a(f). You should take immediate steps to insure that this activity does not occur in the future.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

21040355328

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2679

DATE FILMED 7/26/91 CAMERA NO. 2

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9104035323 29

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 2679.

8/20/91

11040351271

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

August 2, 1991

Jack Davis
SAF/MIX
Suite 5C858
The Pentagon
Washington, D.C. 20330-1000

CLOSED

RE: MUR 2679

Dear Mr. Davis:

This is in response to your telephone conversations on July 30, 1991, with Mark Allen of this Office. Please find enclosed copies of the June 14, 1991 General Counsel's Report and the July 9, 1991 letter informing the complainant that the Commission has closed the file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures

11040561272

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 2679.

9/4/91

21040357779

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

August 30, 1991

Jack Davis, Treasurer
Davis for Congress Committee
SAF/MIX
Suite 5C858
The Pentagon
Washington, D.C. 20330-1000

Dear Mr. Davis:

On June 25, 1991, the Commission decided to take no further action and close the file in this matter and by letter dated July 9, 1991, the Commission notified you, in your capacity as current treasurer of record of the Davis for Congress Committee, of this action. This is in response to your letter dated July 29, 1991, in which you request that the Commission amend its files in a closed matter (MUR 2724) to reflect the former, deceased, treasurer of your committee as responsible, and also request that the Federal Election Commission reopen the investigation in MUR 2679 and proceed to litigation with respect to the merits of this matter. The Commission has considered your letter and on August 28, 1991, denied your request to alter its records in closed MUR 2724, and declined to reopen MUR 2679.

First, the Commission's policy is to name as a respondent in pending enforcement matters a successor treasurer in his or her official capacity as treasurer, even though the current treasurer may not have held that position at the time the events in question took place. In this matter, the General Counsel's Report dated June 14, 1991 and the notification letter dated July 9, 1991 both describe Mr. Dreyer as the treasurer of your committee at the time the Commission originally found reason to believe in the matter, but the letter is addressed to you as the committee's current treasurer of record and makes clear you are now the responsible person to act on behalf of the Committee. The caption of the General Counsel's Report did erroneously include the former treasurer rather than you as current treasurer, and we acknowledge this error.

Second, the Commission also declined to reopen MUR 2679 and "proceed to litigation," notwithstanding your invitation. Please note that the Commission views the open letter by Mark and

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Robert Tezak as an in-kind contribution, based not on evidence that the open letter was suggested by you or your committee, but rather on the indication that Robert Tezak had access to your campaign strategy and needs, that he notified you prior to the publication of the open letter, and that he raised funds on behalf of your campaign. See 11 C.F.R. § 109.1(a)(4)(i)(A),(B); General Counsel's Report dated June 14, 1991. Nonetheless, reason to believe, the only formal finding made by the Commission in this matter, is only the statutorily required finding to initiate an investigation and therefore does not constitute a determination by the Commission that a violation has occurred. Thus, in light of its decision to take no further action and close the matter, the Commission has issued no formal finding, binding or otherwise, that your committee has violated the Act.

The Commission will put your July 29, 1991 letter on the public record in this matter, along with any other submission you wish to make. Should you wish to submit any additional materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner
Associate General Counsel

11040353131

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Davis for Congress Committee | ) | MUR 2679 |
| and Jack Davis, as treasurer. | ) | |

## CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 28, 1991, the Commission decided by a vote of 6-0 to take the following actions in MUR 2679:

1. Deny Mr. Davis's request that the Commission alter its records in closed MUR 2724.

2. Deny Mr. Davis's request to reopen the file in MUR 2679 and proceed to litigation.

3. Approve the letter, as recommended in the General Counsel's Report dated August 23, 1991.

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

Attest:

8-28-91
Date

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

Received in the Secretariat: Fri., August 23, 1991 5:00 p.m.
Circulated to the Commission: Mon., August 26, 1991 11:00 a.m.
Deadline for vote: Wed., August 28, 1991 11:00 a.m.

dr

11040357732

RECEIVED
F.E.C.
SECRETARIAT
91 AUG 23 PM 5:00

**BEFORE THE FEDERAL ELECTION COMMISSION**

**SENSITIVE**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Davis for Congress Committee and Jack Davis, as treasurer | ) | MUR 2679 |

**GENERAL COUNSEL'S REPORT**

The Commission voted to close this matter on June 25, 1991. This vote was based upon the Office of the General Counsel's recommendations to take no further action against the respondents in the matter, i.e. Robert J. Tezak, Mark R. Tezak, and the Davis for Congress Committee and its treasurer.[1] Notification letters were mailed to the respondents and the complainant on July 9, 1991. In telephone calls to staff of this Office, former candidate Jack Davis voiced anger at the notice and admonition he received as a result of the Commission's vote (a copy of the notification letter sent to Mr. Davis is included as Attachment 1). This Office then forwarded to him a copy of the General Counsel's Report which had been forwarded to the complainant and invited him to submit his protest in writing if he wished the Commission to consider it. On August 7, 1991, this Office received a letter from Mr. Davis (Attachment 2).

The major thrust of Mr. Davis's letter is that the Davis Committee committed no violation of law and the Commission's contrary conclusion, expressed in the General Counsel's Report and

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1. The Commission had found reason to believe against Arthur J. Dreyer as treasurer of the Davis for Congress Committee. Subsequently, however, Jack Davis, the candidate, became treasurer of record for the Committee, and Mr. Dreyer has since passed away.

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in the July 9th letter to Mr. Davis is erroneous. As relief, Mr. Davis requests "that the Commission not close the file on MUR 2679 and that we proceed to litigation in the appropriate federal court jurisdiction [which I believe to be the the [sic] Northern District [4] of Illinois where the alleged violations were committed and the complainant lives."

Mr. Davis does not specifically ask that the Commission reconsider its "no further action" decision in favor of a "no probable cause" determination, and on the facts of this case this Office could not recommend such an outcome.[2] Rather, Mr. Davis appears to request that the Commission proceed to litigation, presumably after a probable cause finding, to allow Mr. Davis to prove his contention that the open letter was an independent expenditure. This Office previously advised the Commission to take no further action in the matter, and for all the reasons there stated we do not recommend the Commission expend the resources to bring this matter to litigation, notwithstanding Mr. Davis's invitation.[3] We have, however, crafted a responsive

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2. For all the reasons stated in the General Counsel's Report dated June 14, 1991, the communication paid for by Robert and/or Mark Tezak must be regarded as an excessive in-kind contribution to the Davis Committee.

3. Apart from a Commission suit to enforce the Act, it does not appear that a court would have jurisdiction to allow Mr. Davis to litigate the question of his committee's liability in this matter. Section 437g(a)(8) allows an aggrieved complainant to seek judicial review of a Commission dismissal, but there is no provision for such a suit by a respondent who the Commission has determined to no longer pursue. This result is consistent with Congress's intent to centralize administration of the Act in the Commission, 120 Cong. Rec. 35,134 (1974), reprinted in Legislative History of the Federal Election Campaign Act of 1974 at 1108 (the Act's "delicately balanced scheme of procedures and remedies ...

letter to Mr. Davis (Attachment 3), which explains the effect of the Commission's decision to take no further action, and which clarifies Mr. Davis's apparent misunderstanding about the basis for the Commission's view expressed in the July 9, 1991 notification letter.

Mr. Davis also asks that the Commission correct its records in MUR 2724, a closed matter, to substitute Mr. Dreyer, the deceased former treasurer, as the person responsible. In MUR 2724, pursuant to its policy of naming the current committee treasurer as the responsible party, the Commission insisted on the inclusion of Mr. Davis as treasurer. Contrary to Mr. Davis's statement, MUR 2679 has been handled consistently. In this matter, the June 14, 1991 General Counsel's Report and the July 9, 1991 notification letter both describe Mr. Dreyer as the treasurer at the time the Commission found reason to believe in the matter, but the letter is addressed to Mr. Davis as current treasurer and makes clear he is the responsible person on behalf of the Committee. Although not cited by Mr. Davis, the caption of the General Counsel's Report did erroneously include the former treasurer rather than Mr. Davis as current treasurer; the

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(Footnote 3 continued from previous page)
is intended to be the exclusive means for vindicating the rights and declaring the duties stated therein") (statement of Chairman Hays); as well as Congress's intent to promote resolutions of enforcement matters short of litigation where possible, H.R. Rep. 917, 94th Cong., 2d Sess. 4 (1976), reprinted in Legislative History of the FECA Amendments of 1976 at 804 (administrative enforcement process intended "to winnow out, short of litigation...those matters as to which settlement is both possible and desirable").

responsive letter will clarify the Commission's treasurer policy and its application to this matter.

**RECOMMENDATIONS**

1. Deny Mr. Davis's request that the Commission alter its records in closed MUR 2724.

2. Deny Mr. Davis's request to reopen the file in MUR 2679 and proceed to litigation.

3. Approve the attached letter.

Lawrence M. Noble
General Counsel

8-23-91
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Notification letter dated July 9, 1991 to Jack Davis
2. Letter from Jack Davis, dated July 29, 1991
3. Proposed letter

Staff Assigned: J. Bernstein

9 1 0 4 0 5 2 1 0 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 9, 1991

Jack Davis, Treasurer
Davis for Congress Committee
Route 1, Box 53C
Springfield, IL 62025

RE: MUR 2679

Dear Mr. Davis:

On January 27, 1989, the Davis for Congress Committee ("the Committee") and Arthur J. Dreyer , as treasurer, were notified that the Federal Election Commission found reason to believe that the Committee and Arthur J. Dreyer, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f). On February 7, 1989, you submitted a response to the Commission's reason to believe findings.

After considering the circumstances of the matter, the Commission determined on June 25, 1991, to take no further action against the Committee and you, as treasurer, and closed the file. The file will be made part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The Commission concluded that the communication by Mark and Robert Tezak at issue in this matter was not an independent expenditure but rather was an excessive in-kind contribution to your campaign. Thus, the Commission reminds you that the failure to report an in-kind contribution in excess of $200 appears to be a violation of 2 U.S.C. § 434. In addition, the receipt of a contribution in excess of $1,000 from an individual appears to be a violation of 2 U.S.C. § 441a(f). You should take immediate steps to insure that this activity does not occur in the future.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

ATTACHMENT 1
Page 1 of 1

91040051537

FEDERAL ELECTION COMMISSION
Bernstein
91 AUG -5 AM 10:40

LOIS G.LERNER, ASSOC. GEN. COUNSEL
GENERAL COUNSEL'S OFFICE
F.E.C.
999 'I' ST. NW
WASHINGTON,D.C. 20463

JULY 29,1991
RE. MUR 2679

91 AUG -7 AM 10:10

DEAR MS. LERNER

I HAVE JUST RECIEVED YOUR LETTER OF JULY 8,1991. IT MIGHT HAVE REACHED ME EARLIER HAD IT NOT BEEN SENT TO THE WRONG TOWN AND ZIP CODE IN ILLINOIS THAN THE ONE IN YOUR OFFICIAL FILES!

I WAS ASTONISHED AT THE CONTENT OF YOUR LETTER! YOU SAY IN PARAGRAPH 2 THAT THE COMMISSION WILL "TAKE NO FURTHER ACTION AGAINST THE COMMITTEE AND YOU AS TREASURER AND HAVE CLOSED THE FILE ON THIS MUR"

YOU THEN GO ON IN PARAGRAPH 3 TO SAY "THE COMMISSION HAS CONCLUDED THE DAVIS FOR CONGRESS COMMITTEE "APPEARS" TO HAVE 2 SECTIONS OF THE U.S. ELECTION CODE. YOU FURTHER ADMONISH ME AND THE COMMITTEE TO"TAKE IMMEDIATE STEPS TO INSURE IT DOES NOT HAPPEN AGAIN"!

I CATEGORICALLY REFUTE YOUR CONCLUSIONS AND DISREGARD YOUR ADMONITIONS AS MEANINGLESS ON GROUNDS THAT THE COMMITTEE AND ARTHUR DREYER AS TREASURER COMMITTED NO VIOLATIONS OF THE CODE AS CHARGED IN MUR 2679AND THE COMMISSION'S CLOSING THE FILE WITH A FACE SAVING" WARNING" PROVES MY POINT.

I DO CONGRATULATE YOU HOWEVER ON IDENTIFYING MR. DREYER AS THE PERSON RESPONSIBLE FOR THE REPORTS, BOOKS AND RECORDS OF THE DAVIS FOR CONGRESS COMMITTEE DURING THE TIME OF THE ALLEGATIONS CONTAINED IN MUR 2679. I DO SO OUT OF WONDER AND MARVEL AT YOUR ORGANIZATION WHO FOUGHT ME FOR MONTHS REGARDING DESIGNATING THE TREASURER OF RECORD AT THE TIME OF THE ALLEGED OFFENSE AS THE PERSON RESPONSIBLE UNDER THE LAW FOR THE FAILURE, IF ANY, TO ADEQUATELY REPORT, KEEP RECORDS AND CONDUCT THE OTHER PRESCRIBED DUTIES OF A COMMITTEE TREASURER UNDER THE LAW! DURING THE CONSIDERATION OF MUR 2724 I WAS REPEATEDLY INFORMED YOU NEVER DID THAT AND POLICY PROHIBITED YOU FROM SO DOING!

I NOW REQUEST THAT YOU CORRECT YOUR RECORDS ON MUR 2724 TO REFLECT THAT ALL THE COMMUNICATION TO THE DAVIS FOR CONGRESS COMMITTEE PURSUANT TO MUR 2724 SHOULD HAVE IDENTIFIED ARTHUR DREYER, TREASURER AS THE RESPONSIBLE UNDER THE LAW FOR THE ALLEGATIONS CONTAINED IN THAT MUR.

ATTACHMENT 2
Page 1 of 2

91040357138

FURTHERMORE, I HAVE JUST COMPLETED READING THE GENERAL COUNSEL'S REPORT SENT TO ME BY MARK ALLEN {2 AUG. 1991} WHICH ONCE AGAIN INDICTS THE COMMITTEE AND MR. DREYER AS TREASURER WITH YOUR "REASON TO BELIEVE" GOBBELDYGOOK AND THEN SANCTIMONIOUSLY CLOSES THE FILE BECAUSE THA F.E.C. "DOES NOT WISH TO COMMITT THE RESOURCES TO FULLY INVESTIGATE THE CIRCUMSTANCES OF THE EVENT".

YOU THEN INCREDIBLY GO ON IN THE "LAW" SECTION TO MAKE ASSUMPTIONS CONTRARY TO MY SWORN INTERROGATORIES AND IN FACT CONCLUDE THAT VIOLATIONS MUST HAVE OCCURRED BECAUSE OF THE CIRCUMSTANCES YOU SURMISE MAY HAVE OCCURRED THAT LEAD YOU TO THAT CONCLUSION|

ANY FEDERAL DISTRICT COURT IN AMERICA WOULD AND SHOULD LAUGH YOU OUT OF ITS JURISDICTION|

THEREFORE I WOULD ONCE AGAIN TELL YOU THAT THE COMMITTEE HAD NO KNOWLEDGE OF THE CONTENT, THE TIMIMG, THE FUNDING OR THE INTENT OF THE AUTHOR{S} OR FUNDER{S} OF THE OPEN LETTER AND TO PROVE THAT POINT I WOULD REQUEST THAT THE COMMISSION NOT CLOSE THE FILE ON MUR2679 AND THAT WE PROCEED TO LITIGATION IN THE APPROPRIATE FEDERAL COURT JURISDICTION {WHICH I BELIEVE TO BE THE THE NORTHERN DISTRICT {4} OF ILLINOIS WHERE THE ALLEGED VIOLATIONS WERE COMMITTED AND THE COMPLAINANT LIVES.

I AWAIT YOUR REPLY.

JACK DAVIS

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 2679.

9/12/91

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RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 SEP 10 AM 10:58

9-5-91

OFFICE OF THE GENERAL COUNSEL
F.E.C.
999 I ST. NW.
WASHINGTON, D.C. 20463
ATT. MARK ALLEN

91 SEP 10 PM 3:47

DEAR MR. ALLEN.

PURSUANT TO PARAGRAPH 4 OF THE F.E.C. REPLY OF 8/30/91 TO MY LETTER OF JULY 29, 1991 RELATIVE TO TO MUR 2679, I WISH TO ADD TO THE PUBLIC RECORD THE FOLLOWING:

RELATIVE TO YOUR LETTER OF 8/30/91 AND PRIOR COMMENTS MADE ABOUT YOUR FINDINGS IN YOUR "INVESTIGATION" OF THE "INDICATIONS" ABOUT THE ACTIONS OF ROBERT AND MARK TEZAK, I ONCE AGAIN WANT TO STATE FOR THE RECORD AS I HAVE BEFORE UNDER OATH THAT I HAD NO PRIOR KNOLEDGE THAT AN "OPEN LETTER " ADVERTISEMENT WAS GOING TO BE PLACED IN THE JOLIET HERALD NEWS NOR WAS, OR COULD I HAVE BEEN, AWARE OF THE CONTENT OF SUCH A LETTER!

INDEED, THE LETTER SEEMED TO ME TO BE AN ATTACK ON THE DEMO

CRAT
CANDIDATE FOR CONGRESS IN IL.#4 IN 1986 WHO HAD BEEN EXCORIORATING MR. TEZAK AS A VILLAIN THROUGHOUT THAT CAMPAIGN IN AN ATTEMPT TO DISCREDIT MR. TEZAK IN ORDER THAT SOME HOW IT WOULD ALSO DISCREDIT ME AND MY ROLE AS THE REPUBLICAN PARTY LEADER IN WILL CO., IL.

JACK D DAVIS
FMR. MEMBER OF CONGRESS.

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