



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2760

DATE FILMED 3/3/89 CAMERA NO. 3

CAMERAMAN AS

83040733643

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GAFFNER

U.S. CONGRESS

Run 2760

October 31, 1988

John Surina, Staff Director
Federal Election Commission
999 E Street, N.W.
Washington, DC 20004

Dear Mr. Surina:

I, Robert H. Gaffner, am a Republican candidate for Congress in the 21st Congressional District. My opponent in the November 8 general election is Democrat Jerry F. Costello the current incumbent and formerly county board chairman for St. Clair County, State of Illinois. Jerry Costello was elected to the U. S. House of Representatives in a special election held August 9, 1988.

We have had serious concern that a distinct separation of operations by Jerry Costello's elected office and staff and his campaign office and staff has not been maintained as is required by law.

We recently received copy of the enclosed letter, typed on St. Clair County stationary by county personnel which clearly deals with congressional campaign activity. Such use of taxpayer paid materials and taxpayer paid employees to promote and support Jerry Costello's congressional campaign activities gives an unfair advantage to an incumbent officeholder and, in our mind, violates FEC guidelines, rules and regulations.

Additionally, in the October 27 issue of the Greenville Advocate, the enclosed advertisement appeared. Please note that the advertisement announces the opening of a congressional office, which in and of itself is not true. This is merely an announcement of the hours when either he or a member of his staff will be available at the Greenville Municipal Building to field questions. More importantly, however, the advertisement does not indicate whether this is paid for from his congressional budget or his campaign budget, yet, please note that the advertisement closes with "Keep a Good Congressman Working for You."

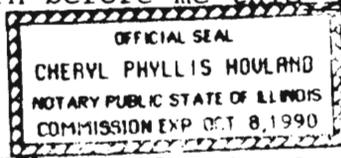
Therefore, I, Robert H. Gaffner, hereby file this formal complaint with your office for the FEC to determine if such abuse of elected office does exist.

Very truly yours,



Robert H. Gaffner
Candidate for Congress
Illinois 21st Congressional District

Subscribed and sworn before me this 31st day of October, 1988.



Cheryl Phyllis Houland
Notary Public

08 NOV -2 11:11 AM '88

300 EAST MAIN STREET • COLLINSVILLE, ILLINOIS 62234 • (618) 346-2188

Paid for by Gaffner for Congress Committee '88

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ST. CLAIR COUNTY BOARD

10 Public Square • Room 8561 • Belleville, Illinois 62220 • (618) 277-6600

JERRY F. COSTELLO
CHAIRMAN

June 1, 1988

Mr. George Donner
922 Harnett
Mascoutah, IL 62258

Dear George:

Thank you for your invitation to have myself and Bob Gaffner speak before the Kaskaskia Industrial Corporation at your annual dinner on Saturday, October 29, 1988.

Because of the sudden death of Mal Price, we will have a special primary election on July 12, 1988 and a special runoff election on August 9, 1988. As of this time, both myself and Mr. Gaffner have primary opposition.

By accepting your invitation we certainly would be taking the voters for granted in that we both have at least one election to win before the November 8, 1988 General Election. Therefore, I would suggest that we wait to see who wins the July 12 and August 9 special elections.

Again, thank you very much for your consideration.

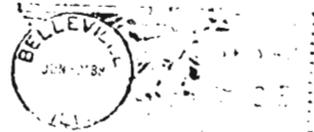
Sincerely,

JERRY F. COSTELLO, Chairman
St. Clair County Board

JFC/js

3304073345

ST. CLAIR COUNTY BOARD
JERRY F. COSTELLO, CHAIRMAN
10 PUBLIC SQUARE, ROOM 8-561
BELLEVILLE, ILLINOIS 62220



Mr. George Donner
922 Harnett
Mascoutah, IL 62258



...the only royal Egyptian tomb that escaped the plundering of grave robbers. The relics of the tomb found in Egypt's National Museum.



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IN ORDER TO SERVE
YOU BETTER

CONGRESSMAN JERRY COSTELLO

has opened a Congressional Office
in **GREENVILLE**

For your convenience, the office is open
every **Wednesday from 10 a.m. - 3 p.m.**

403 S. Third St.
Greenville
Phone: 664-1644

*Congressman Jerry Costello appreciates the
opportunity to **serve you.***

Keep a good
Congressman
working for
YOU





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 3, 1988

SPECIAL DELIVERY

Mr. Jerry Costello
629 Garden Boulevard
Belleville, IL 62221

RE: MUR 2760
Jerry Costello

Dear Mr. Costello:

This letter is to notify you that on November 2, 1988, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2760. 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. You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response, we have enclosed a pre-addressed, postage paid, special delivery envelope. If no response is received within 15 days, the Commission may take further action based on the available information.

The complaint may be dismissed by the Commission prior to the receipt of your response if the evidence submitted does not indicate that a violation of the Act has been committed. Should the Commission dismiss the complaint, you will be notified by overnight express mail.

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.

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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.

If you have any questions, please contact Michael Marinelli at (202) 376-3200.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Envelope
Form

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 3, 1988

SPECIAL DELIVERY

Amiel Cueto, Treasurer
Costello For Congress
PO Box 8250
Belleville, IL 62222

RE: MUR 2760
Costello For Congress
and Amiel Cueto, as
treasurer

Dear Mr. Cueto:

This letter is to notify you that on November 2, 1988, the Federal Election Commission received a complaint which alleges that Costello For Congress and you, as treasurer, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2760. 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 Costello For Congress 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. You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response, we have enclosed a pre-addressed, postage paid, special delivery envelope. If no response is received within 15 days, the Commission may take further action based on the available information.

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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.

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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.

If you have any questions, please contact Michael Marinelli at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel



By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Envelope
Form

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 3, 1988

SPECIAL DELIVERY

David E. Embry, Treasurer
Gaffner For Congress
Committee '88
2 Springhill Drive
Greenville, IL 62246

RE: MUR 2760

Dear Mr. Embry:

This letter acknowledges receipt on November 2, 1988, of your complaint against Costello For Congress and Amiel Cueto, as treasurer, and Jerry Costello, alleging violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within 24 hours. You will be notified as soon as the Commission takes final action on your complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Please be advised that this matter shall remain confidential in accordance with 2 U.S.C. Sections 437g(a)(4)(B) and 437g(a)(2)(A) unless the respondents notify the Commission in writing that they wish the matter to be made public.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
by [Signature]

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

1563070908



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 3, 1988

SPECIAL DELIVERY

Mr. Robert Gaffner
2 Springhill Drive
Greenville, IL 62246

RE: MUR 2760

Dear Mr. Gaffner:

This letter acknowledges receipt on November 2, 1988, of your complaint against Costello For Congress and Amiel Cueto, as treasurer, and Jerry Costello, alleging violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within 24 hours. You will be notified as soon as the Commission takes final action on your complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Please be advised that this matter shall remain confidential in accordance with 2 U.S.C. Sections 437g(a)(4)(B) and 437g(a)(12)(A) unless the respondents notify the Commission in writing that they wish the matter to be made public.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
by *ASR*

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: *MDC* MARJORIE W. EMMONS/JOSHUA MCFADDEN *JM*

DATE: NOVEMBER 4, 1988

SUBJECT: MUR 2760
FIRST GENERAL COUNSEL'S REPORT
SIGNED NOVEMBER 3, 1988

The above-captioned report was received in the Secretariat at 3:34 p.m. on Thursday, November 3, 1988 and circulated to the Commission on an expedited no-objection basis at 4:00 p.m. on Thursday, November 3, 1988.

There were no objections to the report.

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88 NOV -3 PH 3: 34

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

SENSITIVE

EXPEDITED FIRST GENERAL COUNSEL'S REPORT

MUR: 2760
STAFF: Michael Marinelli

COMPLAINANTS: Gaffner for Congress Committee '88
Robert H Gaffner

RESPONDENTS: Costello for Congress Committee
Jerry Costello

SUMMARY OF ALLEGATIONS

The Complainant alleges that the Respondents violated 2 U.S.C § 441d(a) by failing to disclose the sponsorship and authorization of a newspaper advertisement that appeared in the October 27, 1988 issue of a local newspaper, The Greenville Advocate. Complainant has provided copies of the advertisements and the direct mailings. He also alleges the Respondents violated the Act by using county stationery and personnel for a campaign mailing.

PRELIMINARY LEGAL ANALYSIS

An examination of the copy of the advertisement and the direct mailings provided in the complaint indicates that the sponsors of this advertisement does not state who paid for and authorized them. The use of county personnel and materials may have resulted in a potential in-kind contribution. Therefore,

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Respondents must be given the opportunity to respond to the allegations before the Office of the General Counsel can make recommendations regarding this matter.

Lawrence M. Noble
General Counsel

11-3-88
Date

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

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**JERRY
COSTELLO**

FEDERAL ELECTION COMMISSION
RECEIVED
MAIL ROOM

06C# 1027

88 NOV 14 PM 1:50
DEMOCRAT FOR CONGRESS

November 10, 1988

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

RE: MUR 2760
Costello For Congress
and Amiel Cueto, as
treasurer

Dear Mr. Noble:

This is to acknowledge receipt of your letter dated November 3, 1988 regarding a complaint filed with your office by our Republican opponent, Robert H. Gaffner, just days prior to the November 8th General Election.

The letter of complaint alleges that Congressman Costello has not maintained the distinct separation of operations between his elected office and his campaign office. Our opponent offers a letter from County Board Chairman Jerry Costello dated June 1, 1988 to support the accusation.

The charge is ludicrous and totally without merit. Please note that the letter pre-dates by more than two months Jerry Costello's election to Congress. The letter, addressed to Mr. George Donner, was written in response to an invitation received by Chairman Costello in his capacity as Chairman of the St. Clair County Board. Chairman Costello was responding to the invitation as County Board Chairman. It should also be noted that Chairman Costello had been invited to the annual Kaskaskia Industrial Development Corporation annual dinner in each of the seven previous years as Chairman of the St. Clair County Board.

The second complaint contained in our opponent's letter cited a campaign advertisement which appeared in the October 27th issue of the Greenville Advocate. The ad, placed in the Greenville Advocate was paid for, in advance, by "Costello for Congress Committee" funds as evidenced by the enclosed copy of a check issued to the newspaper on October 25.

The absence of a disclaimer was simply a printer's error. Our

Authorized and paid for by Costello for Congress Committee

P. O. Box 8250 • Belleville, Illinois 62222 • Phone 618-236-1717

88 NOV 14 PM 4:36

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"mock up" included the proper congressional campaign disclaimer.

The complaint also questions the opening of Congressman Costello's Bond County district office. Congressman Costello has opened a congressional office in every county of the 21st District and the ad is completely accurate.

I ask the Commission to note that our opponent's complaint corresponds directly with the closing days of his failed campaign for Congress. I am confident the complaint was filed as part of a "free press" strategy for his campaign as opposed to any true feelings of merit concerning his charges.

If you have any further questions, please advise.

Sincerely,



Amiel Cueto, Treasurer
Costello for Congress Committee

AC/gc
Enc.

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APR 1988
305 SOUTH 2ND STREET
GREENVILLE, IL 62246

October 25 88

One Hundred Twenty Eight and No/100-----

128.00

TO
Greenville Advocate
305 South 2nd Street
Greenville, IL 62246

Do not NOT NEGOTIABLE

DELIVERED TO YOUR DOOR

10/25/88 Newspaper Advertising

128.00 ✓

20,886.23

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DEC #1256

RECEIVED
FEDERAL ELECTION COMMISSION

**JERRY
COSTELLO**

DEMOCRAT FOR CONGRESS 88 DEC -5 PM 11:35

December 2, 1988

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

RE: MUR 2760
Costello For Congress
and Amiel Cueto, as
Treasurer

88 DEC -5 AM 11:34

Dear Mr. Noble:

In reference to the above captioned item, the enclosed statement from Mike Nichols Authorizing Agent, from Bel-Clair Printing Co. should have been enclosed with our letter of November 10th to you.

I have also enclosed a copy of our November 10th correspondence.

Should you have any further questions, please do not hesitate to contact our office.

Sincerely,

Darlene Costello
Darlene Costello
Costello For Congress Committee

ENC: Statement of Mike Nichols
11/10/88 Letter From Amiel Cueto, Treasurer

Authorized and paid for by Costello for Congress Committee

P. O. Box 8250 • Belleville, Illinois 62222 • Phone 618-236-1717

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November 8, 1988

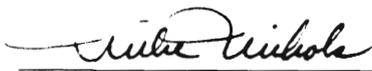
STATEMENT FROM MIKE NICHOLS

It is my understanding that a complaint has been filed with the Federal Election Commission concerning the absence of a disclaimer on a Costello for Congress ad that ran in the Greenville Advocate prior to the November General Election.

As the authorizing agent for Bel-Clair Printing Co., I attest that the disclaimer was inadvertently omitted in the layout phase of the printing process of the ad.

It should be noted that I did extensive work for the Costello for Congress campaign and that all other ads and materials completed by Bel-Clair Printing Co. contained the prescribed disclaimer. I would also note that the ad in question was laid out under deadline pressure, which contributed to our error.

All costs connected with the material in question was paid for by a Costello for Congress campaign check issued through Dave Wagner, the Campaign Manager.



Authorizing Agent,
Bel-Clair Printing Co.

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JERRY COSTELLO

DEMOCRAT FOR CONGRESS

November 10, 1988

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

RE: MUR 2760
Costello For Congress
and Amiel Cueto, as
treasurer

Dear Mr. Noble:

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The second complaint contained in our opponent's letter cited a campaign advertisement which appeared in the October 27th issue of the Greenville Advocate. The ad, placed in the Greenville Advocate was paid for, in advance, by "Costello for Congress Committee" funds as evidenced by the enclosed copy of a check issued to the newspaper on October 25.

The absence of a disclaimer was simply a printer's error. Our

Authorized and paid for by Costello for Congress Committee

P. O. Box 8250 • Belleville, Illinois 62222 • Phone 618-236-1717

"mock up" included the proper congressional campaign disclaimer.

The complaint also questions the opening of Congressman Costello's Bond County district office. Congressman Costello has opened a congressional office in every county of the 21st District and the ad is completely accurate.

I ask the Commission to note that our opponent's complaint corresponds directly with the closing days of his failed campaign for Congress. I am confident the complaint was filed as part of a "free press" strategy for his campaign as opposed to any true feelings of merit concerning his charges.

If you have any further questions, please advise.

Sincerely,



Amiel Cueto, Treasurer
Costello for Congress Committee

AC/gc
Enc.

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89 JAN 26 AM 10:36

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2760
 Costello for Congress Committee)
 and Amiel Cueto, as treasurer)
 Representative Jerry Costello)

SENSITIVE
EXECUTIVE SESSION
FEB 07 1989

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 2, 1988, this Office received a complaint from Robert H. Gaffner, the Republican candidate for Congress in the 21st Congressional District in Illinois. The Complaint alleges that his opponent, the Democratic incumbent and former chairman of the St. Clair County Board of Supervisors, Representative Jerry Costello and the Costello for Congress Committee (the "Committee") violated 2 U.S.C § 441d(a) by failing to disclose the sponsorship and authorization of a newspaper advertisement that appeared in the October 27, 1988 issue of a local newspaper, The Greenville Advocate. Complainant has provided copies of the advertisements. He also alleges the respondents violated the Act by using county stationery and personnel for a campaign mailing.

On December 5, 1988 this Office received a response from the Committee replying to the allegations in the complaint. The Committee states that the omission of an authorization from the advertisement was inadvertent and caused by a mistake by the printing firm, Bel-Clair Printing Co. when preparing the advertisement. A statement to this effect from Mike Nichols, an authorizing agent of Bel-Clair, is included in the Committee's reply. As for the use of county stationery and personnel, the

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Committee states that such use was not campaign related. The Committee points out that the message in the letter declined an invitation that had been offered Mr. Costello, in his capacity as Chairman of the St. Clair County Board of Supervisors and predated the candidate's election to Congress by two months.

II. FACTUAL AND LEGAL ANALYSIS

A. The Legal Standard

Under 2 U.S.C. § 441d(a), newspaper advertisements and direct mailings that expressly advocate the election or defeat of a clearly identified candidate or solicit contributions must disclose the sponsorship and authorization. If the candidate or his authorized committee paid for the advertisement or direct mailing, this must be disclosed on the literature. If the candidate authorized the advertisements or direct mailing and some other party paid for it, that also must be disclosed. In situations where the advertisement or direct mailing is neither paid for nor authorized by the candidate, those parties making the responsible parties must state that fact as well as the identity of those responsible for the literature.

Under 2 U.S.C. § 434(b) political committees are required to report all contributions they receive. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office or the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose. See 2 U.S.C. § 431(8). The term "person"

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includes an individual, partnership, committee association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

2 U.S.C. § 431(11).

Under the Federal Election Campaign Act of 1971, as amended (the "Act"), a political committee may not accept contributions made from the general treasury funds of a corporation. 2 U.S.C. § 441b(a). This prohibition extends to contributions made by incorporated organization, profit or nonprofit, including a non stock corporation, an incorporated membership organization and an incorporated cooperative. 11 C.F.R. § 114.2(a).

B. Application of the Law to the Facts

1. The lack of a disclaimer

An examination of the copy of the advertisement provided in the complaint indicates that the advertisement failed to include the proper disclaimer required by 2 U.S.C. § 441d(a). However, the Committee has provided evidence that this was due to inadvertence by the printer or other vendor. In instances where substantiated submissions showed the proper disclaimer was inadvertently omitted by the printer or other vendor from political advertisements expressly advocating the election or defeat of a candidate, the Commission has nevertheless taken no further action after reason to believe a violation of Section 441d(a) occurred. See MUR 2260. In this situation, the claim of inadvertence is supported by the signed, but unsworn statement of the authorizing agent of the firm. Therefore, the Office of the

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General Counsel recommends that the Commission find reason to believe that Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. § 441d(a), and take no further action.

2. The use of county stationery and personnel

While the Federal Government does not fall under the definition of person for the purposes of the Act, the Commission has taken the position that this exclusion does not extend to state governments. See MURs 1686 and 2074. Therefore, state governments are persons under the Act. While the Commission has not dealt with the circumstances involving a local government, it follows that local governments also would fall under the scope of Section 431(11). Thus, the County of St. Clair would be considered a person under the Act. Further, according to the St. Clair County Clerk's Office, the St. Clair County Board of Supervisors is also incorporated. Commission has previously taken the position that Section 441b applies to municipal corporations. See Advisory Opinions 1977-32 and 1982-26. Therefore, it would also follow that the St. Clair County Board of Supervisors would be bound by the Act's prohibitions on corporate contributions.

The complaint enclosed a letter printed on county stationary which responses to an invitation. The response read in part:

Thank you for your invitation to have myself and Bob Gaffner speak before the Kaskaskia Industrial Corporation at your annual dinner on Saturday, October 29, 1988.

By accepting your invitation we certainly would be

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taking the voters for granted in that we both have at least one election to win before the November 8, 1988 General Election. Therefore, I would suggest that we wait to see who wins the July 12 and August 9 special elections.

The Committee's response to the complaint explains the letter as follow:

The letter addressed to Mr. George Donner, was written in response to an invitation received by Chairman Costello in his capacity as Chairman of the St. Clair County Board. Chairman Costello was responding to the invitation as County Board Chairman. It should also be noted that Chairman Costello had been invited to the Kaskaskia Industrial Development Corporation annual dinner in each of the seven previous years as Chairman of the St. Clair County Board.

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Since his eventual opponent in the general election was also invited to the event, it appears that the invitation may have been to solicit Mr. Costello's appearance as a candidate as well as based on his position as Chairman of the St. Clair County Board. Therefore, there may be reason to believe that the Committee has violated the Act. However, based on the facts presented in the response that Mr. Costello had been invited to the event seven times in the past as county chairman and that this involves the preparation and mailing of a single letter, it would be appropriate to take no further action against the Committee. Therefore, the Office of the General Counsel recommends that Commission find reason to believe that Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. §§ 434(b) and 441b and take no further action.

Since there is no evidence that the candidate was personally involved in any violation of the Act, this Office further recommends that the Commission find no reason to believe that

Representative Jerry Costello violated 2 U.S.C. §§ 434(b), 441b and 441d(a).

III. RECOMMENDATIONS

1. Find no reason to believe that Representative Jerry Costello violated 2 U.S.C. §§ 434(b), 441b and 441d(a).
2. Find reason to believe that Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. §§ 434(b), 441b and 441d(a) and take no further action.
3. Approve the attached letter.
4. Close the file.

Lawrence M. Noble
General Counsel

1-25-89

Date

BY:



Lois G. Lerner
Associate General Counsel

Attachments

1. Response to Complaint
2. Proposed letter to Respondents
3. Proposed letter to Complainants
4. Proposed Factual and Legal Analysis

89040733668



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN *JM*
COMMISSION SECRETARY

DATE: JANUARY 31, 1989

SUBJECT: OBJECTIONS TO MUR 2760 - General Counsel's Report
Signed January 25, 1989

The above-captioned document was circulated to the Commission on Thursday, January 26, 1989 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	_____ X _____
Commissioner Josefiak	_____ X _____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Thomas	_____ X _____

This matter will be placed on the meeting agenda for February 7, 1989.

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)	
)	
Costello for Congress Committee)	MUR 2760
and Amiel Cueto, as treasurer)	
)	
Representative Jerry Costello)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 7, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2760:

1. Find no reason to believe that Representative Jerry Costello violated 2 U.S.C. §§ 434(b), 441b and 441d(a).
2. Find no reason to believe that Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. §§ 434(b) and 441b.
3. Find reason to believe that Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. § 441d(a) and take no further action.
4. Close the file.
5. Direct the Office of General Counsel to send an appropriate letter pursuant to the above actions.

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

Attest:

2/8/89
Date

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

39040735570



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 16, 1989

The Honorable Jerry Costello
629 Garden Boulevard
Belleville, IL 62221

RE: MUR 2760
The Honorable
Jerry Costello

Dear Representative Costello:

On November 3, 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 February 7, 1989, the Commission found, on the basis of the information in the complaint, and information provided by the Costello for Congress Committee, that there is no reason to believe you violated 2 U.S.C. §§ 434(b), 441b and 441d(a). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. 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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

89040733671

plm



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

February 16, 1989

Amiel Cueto, Treasurer
Costello for Congress Committee
P.O. Box 8250
Belleville, IL 62222

RE: MUR 2760
Costello for Congress
Committee and Amiel
Cueto, as treasurer

Dear Mr. Cueto:

On February 7, 1989, the Federal Election Commission found reason to believe that the Costello for Congress Committee (the "Committee") and you, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. On the same day the Commission found no reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441b. Enclosed is a copy of the First General Counsel's Report and Certification. A Statement of Reasons concerning the Section 434(b) and 441b findings will be forwarded to you at a later date.

The Commission reminds you that the failure to provide a disclaimer with political advertisements is a violation of 2 U.S.C. § 441d(a). You should take immediate steps to insure that this activity does not occur in the future.

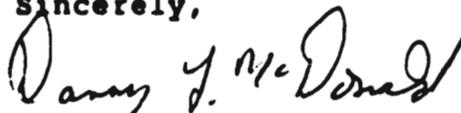
The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

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Amiel Cueto, treasurer
Page 2

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

Sincerely,



Danny L. McDonald
Chairman

Enclosure
First General Counsel's Report
Certification

89040733675



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

February 16, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Gaffner
David D. Embry, Treasurer
Gaffner for Congress
Committee '88
2 Springhill Drive
Greenville, IL 62246

RE: MUR 2760

Dear Mr. Gaffner and Mr. Embry:

This is in reference to the complaint you filed with the Federal Election Commission on November 2, 1988, concerning advertisements produced by the Costello for Congress Committee (the "Committee") and use of county personnel by the Costello Campaign.

Based on that complaint, on February 7, 1989, the Commission found that there was no reason to believe that Representative Jerry Costello violated 2 U.S.C. §§ 434(b), 441b and 441d(a).

On that same day, the Commission found reason to believe that the Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. § 441d(a). However, after considering the circumstances of this matter, the Commission also determined to take no further action against the Committee and Amiel Cueto, as treasurer, and closed the file in this matter. On February 7, 1989, the Commission also found no reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441b. Enclosed is a copy of the First General Counsel's Report and Certification. A Statement of Reasons concerning the Section 434(b) and 441b findings will be forwarded to you at a later date.

This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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Mr. Robert Gaffner and Mr. David Embry
Page 2

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

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosures
First General Counsel's Report
Certification

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2760

DATE FILMED 3/3/89 CAMERA NO. 3

CAMERAMAN AS

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

- 4 / 4 / 89

THE FOLLOWING MATERIAL IS BEING ADDED TO THE FILE IN

MUR 2760

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 20, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Gaffner
David D. Embry, Treasurer
Gaffner for Congress
Committee '88
2 Springhill Drive
Greenville, IL 62246

RE: MUR 2760

Dear Mr. Gaffner and Mr. Embry:

By letter dated February 16, 1989, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against the Costello for Congress Committee (the "Committee") and Amiel Cueto, as treasurer, and Representative Jerry Costello. Enclosed with that letter was the First General Counsel's Report and Certification.

Enclosed please find a Statement of Reasons adopted by the Commission explaining its decision to find no reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441b. This document will be placed on the public record as part of the file of MUR 2760.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

March 20, 1989

Amiel Cueto, Treasurer
Costello for Congress Committee
P.O. Box 8250
Belleville, IL 62222

RE: MUR 2760
Costello for Congress
Committee and Amiel
Cueto, as treasurer

Dear Mr. Cueto:

By letter dated February 16, 1989, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was the First General Counsel's Report and Certification.

Enclosed please find a Statement of Reasons adopted by the Commission explaining its decision to find no reason to believe that the Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. §§ 434(b) and 441b. This document will be placed on the public record as part of the file of MUR 2760.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Statement of Reasons

9374074222



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 2/14/97

Microfilm

Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 2760

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FEDERAL ELECTION COMMISSION

WASHINGTON D C 20463

MEMORANDUM

TO: COMMISSIONERS
EX-OFFICIO
STAFF DIRECTOR
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN *JM*

DATE: MARCH 8, 1989

SUBJECT: STATEMENT OF REASONS FOR MUR 2760

Attached is a copy of the signed Statement of Reasons in MUR 2760 received in the Commission Secretary's Office Wednesday, March 8, 1989 at 3:41 p.m.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Costello for Congress Committee) MUR 2760
and Amiel Cueto, as treasurer)

STATEMENT OF REASONS

On November 2, 1988, the Federal Election Commission received a complaint from Robert M. Gaffner, a candidate for Congress in the 21st Congressional District of Illinois. The complainant alleged, inter alia, that his opponent used county government stationery to write a letter that "clearly deals with congressional campaign activity....[which] violates FEC guidelines, rules and regulations." Complaint at 1.

On November 10, 1988, the Costello for Congress Committee responded to the complaint. -The Committee said the letter at issue was a "response to an invitation received by Chairman Costello in his capacity as Chairman of the St. Clair County Board. Chairman Costello was responding to the invitation as County Board Chairman." Response at 1 (emphasis added). The response went on to note that Chairman Costello had received this same invitation "in each of the seven previous years [he served] as Chairman of the St. Clair County Board." Id.

On January 25, 1989, the General Counsel recommended the Commission find reason to believe the Costello for Congress Committee violated 2 U.S.C. §434(b) and §441b on Chairman Costello's use of county government stationery. Counsel's rationale was that "since [Mr. Costello's] eventual opponent in the general election was also invited to the event, it appears that the invitation may have been to solicit Mr. Costello's appearance as a candidate as well as based

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on his position as Chairman of the St. Clair County Board." Further, Counsel advocated that a local government is a "person" as defined under §431(11) of the Act and that since the St. Clair County Board is incorporated, it is bound by the Act's prohibitions on corporate contributions under §441b. Gen. Cnsl. Rept. at 4, 5.1/

On February 7, 1989, the Commission voted to find no reason to believe the Committee violated 2 U.S.C. §§434(b) and 441b. The Commission's basis for this decision was that no violation of the Act occurs when a local officeholder uses county government stationery to officially respond to an invitation he receives as a county official. The Commission concluded that Chairman Costello responded in his official capacity since he had been invited to this same event as County Chairman seven times in the past.2/

Accordingly, the Commission found no reason to believe the Costello for Congress Committee and Amiel Cueto, as treasurer, violated 2 U.S.C. §434(b) and 441b and voted to close the file.

1/ Counsel also recommended taking no further action on these violations since this case involved the mailing of a single letter.

2/ The Commission, therefore, did not need to reach the issue of whether §431(11) applies to local governments or whether §441b applies to an incorporated County Board of Supervisors.

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3-6-89
Date

Danny L. McDonald
Danny L. McDonald
Chairman

3-6-89
Date

Lee Ann Elliott
Lee Ann Elliott
Commissioner

3-6-89
Date

Joan D. Aikens
Joan D. Aikens
Commissioner

3-6-89
Date

Thomas J. Josefak
Thomas J. Josefak
Commissioner

3/8/89
Date

John Warren McGarry
John Warren McGarry
Commissioner

3/8/89
Date

Scott E. Thomas
Scott E. Thomas
Commissioner

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