



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 2788

DATE FILMED 9/13/90 CAMERA NO. 2

CAMERAMAN AS

90040300586

06CA1042



CONSERVATIVE CAMPAIGN FUND

1156 15th Street, NW
Suite 500
Washington, D.C. 20005
(202) 331-0584

Peter T. Flaherty
Chairman
Kenneth F. Boehm
Treasurer

MTV 2788

November 10, 1988

General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Sir:

This is a formal complaint regarding an apparent violation of the Federal Election Campaign Act of 1971, as amended. The complaint concerns the purchase of an advertisement in the New York Times of Tuesday, November 8, 1988, a copy of which is attached.

The advertisement promoting the candidacies of Michael Dukakis and Lloyd Bentsen for President and Vice-President appears to be a prohibited corporate expenditure. While we do not know the legal status of "United Typos," it appears to be a corporation. We ask the Commission to investigate the circumstances surrounding the publication of this advertisement.

Further, we ask the Commission to investigate whether the defendant has met the reporting requirements of the Act and the requirements pertaining to disclaimers.

Sincerely,

PTF
Peter T. Flaherty
Chairman

PTF/deks

Enclosure

Sworn to and signed before me by Peter T. Flaherty

Anne M. Garofalo . My commission expires 2/21/89

08 NOV 15 AM 11:17

88 NOV 15 AM 9:20

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90040600567

9 0 0 4 0 3 0 0 5 3 8 8

Listen to the
Heart-Ache Heart-Break
of America/ Reach Out/ Vote
Dukakis/Bentsen!
United Typos 4112 Grace Ave. NY NY 10366
Ad not affiliated with any Political Party

THE NEW YORK TIMES **POLITICS** TUESDAY, NOVEMBER 8, 1988

A19



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 22, 1988

Peter T. Flaherty, Chairman
Conservative Campaign Fund
1156 15th Street, NW
Suite 500
Washington, DC 20005

RE: MUR 2788

Dear Mr. Flaherty:

This letter acknowledges receipt on November 15, 1988, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by United Typos. The respondent 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 2788. 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

9 1 0 4 0 3 0 0 5 3 9

plan



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 22, 1988

United Typos
4312 Grace Avenue
New York, NY 10466

RE: MUR 2788

Gentlemen:

The Federal Election Commission received a complaint which alleges that United Typos 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 2788. 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 United Typos 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.

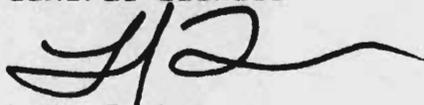
This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(12)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing 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.

90040300590

If you have any questions, please contact Joan Stieber, the staff member 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

20040300591

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 DEC -9 AM 8:48

OG C 1316

James J. Duffy
4712 Grace Avenue
Prattville, AL 36066
December 5, 1988

Wois Werner, Assoc. General Council
Federal Election Commission
Washington, D.C. 20463

88 DEC -9 AM 10:50

FEDERAL ELECTION COMMISSION

Dear Wois Werner:

This is in reply to your letter dated November 22, 1988,

(REF: MUR 2788).

5 The United Typos' Ad relates to a internal political
7 group of typographers, within New York Typographical Union #6
0 I paid for the ad. With the help of other co-workers -
3 J.Y. Times thinkers and Ad. buy-out people - the Ad ran in the U.Y. Times

4 I am a member of U.Y. Typographical Union #6
0 814 Broadway, N.Y. N.Y. 10003

2 I am a member of the New York Times staff. 4th floor
0 229 West 43 Street, N.Y. N.Y. 10036

The United Typos has its own address
United Typos, P.O. Box 2566, Times Square Station, N.Y. N.Y. 10108

I hope the above might be of some help to this inquiry.

Sincerely,
James J. Duffy

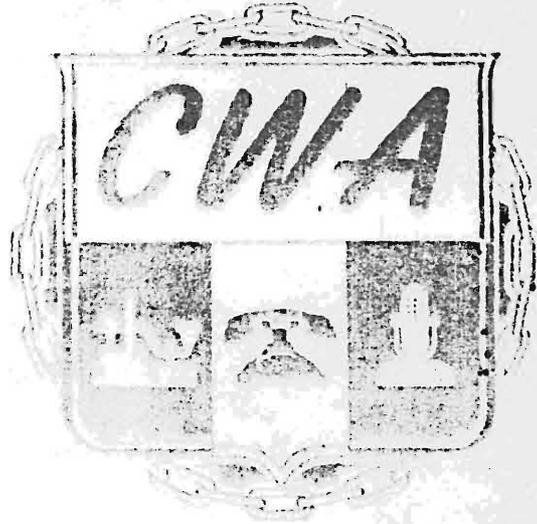
P.S. See Attached sheet

9 0 0 4 0 3 0 0 5 9 3

Communications Workers of America (AFL-CIO, CLC)

1925 K Street, NW

Washington, DC 20006



50 YEARS

The union, make no strings



Mr. James Duffy
4312 Grace Avenue
Bronx, New York 10466



NEW YORK TYPOGRAPHICAL UNION No. 6

817 BROADWAY, NEW YORK, N. Y. 10003-4787



Office of the President
BERTRAM A. POWERS

Mr. James J. Duffy
Composing Room
The New York Times
229 West 43rd Street
New York, New York 10036

BY HAND



89 MAY 22 AM 11:37

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 2788
DATE COMPLAINT RECEIVED
BY OGC: November 18, 1988
DATE OF NOTIFICATION TO
RESPONDENT: November 22, 1988
STAFF MEMBER: Sandra J. Dunham

COMPLAINANT: Peter T. Flaherty on behalf of the
Conservative Campaign Fund

RESPONDENT: James J. Duffy and
United Typos

RELEVANT STATUTES: 2 U.S.C. § 434(c) (1)
2 U.S.C. § 441d(a) (3)

INTERNAL REPORTS
CHECKED: None

FEDERAL AGENCIES
CHECKED: None

I. GENERATION OF MATTER

This matter arises as the result of a complaint filed with the Commission by Peter T. Flaherty, Chairman of the Conservative Campaign Fund.

II. FACTUAL AND LEGAL ANALYSIS

On November 22, 1988, the Office of the General Counsel received a complaint from the Conservative Campaign Fund alleging violations of the Federal Election Campaign Act (the "Act") based on a paid advertisement which appeared in the New York Times on Tuesday, November 8, 1988 (election day). (Attachment 1). The advertisement's message read: "Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print underneath this message, the advertisement stated: "United

90040800594

Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party." Speculating that "United Typos" was a corporation, Complainant alleged that the advertisement constituted a prohibited corporate expenditure. Complainant also asked the Commission to investigate whether United Typos had met the Act's reporting requirements and requirements pertaining to disclaimers.

In response to the complaint, James J. Duffy stated that United Typos is an "internal political group of typographers, within New York Typographical Union #6." (Attachment 2). Mr. Duffy further stated: "I paid for the ad. With the help of other co-workers - N.Y. Times printers and ad lay-out people - the ad ran in the N.Y. Times." The address which appeared in the advertisement seems to be Mr. Duffy's home address. A different address for United Typos was stated in the response.

Any newspaper communication expressly advocating the election of a clearly identified candidate, if not authorized by a candidate, political committee or its agents, must include the name of the persons who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

20040300595

While the New York Times advertisement included the name of United Typos, its disclaimer of any party affiliation did not make clear whether or not it was authorized by the named candidates or their political committees. Additionally, it is not clear whether James J. Duffy paid for the advertisement as an agent for United Typos or in his individual capacity.^{1/} The Office of the General Counsel, therefore, recommends that the Commission open a MUR and find reason to believe that James J. Duffy and United Typos violated 2 U.S.C. § 441d(a)(3).

Any expenditure by a person for a communication expressly advocating the election of a clearly identified candidate, which is made without the cooperation or consent of, or in consultation with a candidate or his agent or authorized committee, is considered an "independent expenditure" under the Act. 2 U.S.C. § 431(17). See also 11 C.F.R. § 109.1(a). Any person other than a political committee who makes over \$250 in independent expenditures during a calendar year must file a signed statement or report with the Commission, the Clerk of the House, or the Secretary of the Senate. 2 U.S.C. § 434(c)(1). See also 11 C.F.R. § 109.2(a). There is no indication, nor is it alleged that candidates Dukakis or Bentsen knew about the advertisement. Thus, the advertisement appears to qualify as an independent expenditure.

^{1/} It also does not appear that the advertisement was paid for or authorized by New York Typographical Union #6.

20040300596

If the cost of the advertisement exceeded \$250 when aggregated with any other independent expenditures made by James J. Duffy and United Typos in 1988, then James J. Duffy and United Typos would appear to have violated the Act by failing to report the expenditure. The Office of the General Counsel, therefore, recommends that the Commission also find reason to believe that James J. Duffy and United Typos violated 2 U.S.C. § 434(c) (1).

III. RECOMMENDATIONS

1. Find reason to believe that James J. Duffy and United Typos violated 2 U.S.C. §§ 434(c) (1) and 441d(a) (3).
2. Approve the attached letter, questions and Factual and Legal Analysis.

Lawrence M. Noble
General Counsel

May 19, 1989
Date

BY: George F. Rishel
George F. Rishel, Acting
Associate General Counsel

Attachments

1. Advertisement in 11/8/88 edition of New York Times
2. Response to Complaint
3. Proposed Letter and Factual and Legal Analysis
4. Questions

90040300597

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
James J. Duffy and
United Typos

)
)
)
)

MUR 2788

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 24, 1989, the Commission decided by a vote of 5-0 to take the following actions in MUR 2788:

1. Find reason to believe that James J. Duffy and United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).
2. Approve the letter, questions and Factual and Legal Analysis, as recommended in the First General Counsel's report signed May 19, 1989.

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

Attest:

5-24-89

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary:	Mon.,	5-22-89,	11:37
Circulated on 48 hour tally basis:	Mon.,	5-22-89,	4:00
Deadline for vote:	Wed.,	5-24-89,	4:00

20040300598

film



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James J. Duffy
United Typos
P.O. Box 2566
Times Square Station
New York, New York 10108

RE: MUR 2788
James J. Duffy and
United Typos

Dear Mr. Duffy:

On November 22, 1988, the Federal Election Commission notified United Typos 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 United Typos at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 23, 1989, found that there is reason to believe that you and United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3), 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 and United Typos. 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 and United Typos, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

20040300599

James J. Duffy
Page 2

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

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 Sandra J. Dunham, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,


Lee Ann Elliott
Vice Chairman

Enclosures
Questions
Designation of Counsel Form
Factual and Legal Analysis

90040000600

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: James J. Duffy and
United Typos

MUR: 2788

On November 22, 1988, the Office of the General Counsel received a complaint from the Conservative Campaign Fund alleging violations of the Federal Election Campaign Act (the "Act") based on a paid advertisement which appeared in the New York Times on Tuesday, November 8, 1988 (election day). The advertisement's message read: "Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print underneath this message, the advertisement stated: "United Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party." Speculating that "United Typos" was a corporation, Complainant alleged that the advertisement constituted a prohibited corporate expenditure. Complainant also asked the Commission to investigate whether United Typos had met the Act's reporting requirements and requirements pertaining to disclaimers.

In response to the complaint, James J. Duffy stated, that United Typos is an "internal political group of typographers, within New York Typographical Union #6." Mr. Duffy further stated: "I paid for the ad. With the help of other co-workers - N.Y. Times printers and ad lay-out people - the ad ran in the N.Y. Times." The address which appeared in the advertisement seems to be Mr. Duffy's home address. A different address for United Typos was stated in the response.

20040300501

Any newspaper communication expressly advocating the election of a clearly identified candidate, if not authorized by a candidate, political committee or its agents, must include the name of the persons who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

While the New York Times advertisement included the name of United Typos, its disclaimer of any party affiliation did not make clear whether or not it was authorized by the named candidates or their political committees. Additionally, it is not clear whether James J. Duffy paid for the advertisement as an agent for United Typos or in his individual capacity.^{1/}

Any expenditure by a person for a communication expressly advocating the election of a clearly identified candidate, which is made without the cooperation or consent of, or in consultation with a candidate or his agent or authorized committee, is considered an "independent expenditure" under the Act. 2 U.S.C. § 431(17). See also 11 C.F.R. § 109.1(a). Any person other than a political committee who makes over \$250 in independent expenditures during a calendar year must file a signed statement

^{1/} It also does not appear that the advertisement was paid for or authorized by New York Typographical Union #6.

20040300602

or report with the Commission, the Clerk of the House, or the Secretary of the Senate. 2 U.S.C. § 434(c)(1). See also 11 C.F.R. § 109.2(a). There is no indication, nor is it alleged that candidates Dukakis or Bentsen knew about the advertisement. Thus, the advertisement appears to qualify as an independent expenditure.

If the cost of the advertisement exceeded \$250 when aggregated with any other independent expenditures made by James J. Duffy and United Typos in 1988, then James J. Duffy and United Typos would appear to have violated the Act by failing to report the expenditure. Therefore, there is reason to believe that James J. Duffy and United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).

90040300603

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

) MUR 2788
)
)
)

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

**TO: James J. Duffy
United Typos
P.O. Box 2566
Times Square Station
New York, New York 10108**

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 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. 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.

200403004

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, 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.

DEFINITIONS

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

"You" shall mean James J. Duffy in your individual capacity and United Typos, including all officers, employees, agents or attorneys thereof.

9 1 0 4 0 3 0 0 6 0 5

"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.

"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.

INTERROGATORIES

1. In which edition(s) of the November 8, 1988 New York Times appeared the advertisement endorsing Dukakis/Bentsen?
2. Please produce the entire edition(s) of the New York Times for Tuesday, November 8, 1988 in which the advertisement appeared.
3. Who paid for the advertisement placed in the New York Times on November 8, 1988? If paid for by you, James J. Duffy, was this in your individual capacity or as an agent of United Typos?
4. Please produce the receipt for the advertisement in the New York Times on November 8, 1988.
5. Are all of the members of United Typos employees of the New York Times? If so, did United Typos receive an employee discount on the cost of placing the advertisement?
6. Did United Typos consult with candidates Dukakis or Bentsen or their political committees regarding the placement of the advertisement in the New York Times on November 8, 1988?
7. Did United Typos make any other election-related contributions or expenditures during 1988? If so, to whom were they made and what were the amounts?
8. Did you, James J. Duffy, make any other election-related contributions or expenditures during 1988? If so, to whom were they made and what were the amounts?

20040300606

MUR 2788
James J. Duffy and
United Typos
Page 4

9. What is the relationship between United Typos and the New York Typographical Union #6?
10. Did the New York Typographical Union #6 pay for or authorize the placement of the advertisement in the New York Times on November 8, 1988?

90040300607



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1989

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

James J. Duffy
United Typos
P.O. Box 2566
Times Square Station
New York, New York, 10108

RE: MUR 2788
James J. Duffy and
United Typos

Dear Mr. Duffy:

On May 31, 1989, you were notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the Commission's finding. The 30 day period for negotiations has expired. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Sandra J. Dunham, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

90040300608



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 2, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James J. Duffy
United Typos
4312 Grace Avenue
New York, New York 10466

RE: MUR 2788
James J. Duffy and
United Typos

Dear Mr. Duffy:

On November 22, 1988, the Federal Election Commission notified United Typos of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). You responded to the complaint on December 5, 1988, and provided the Commission with an address different from the one used in the notification letter. Although, on May 31, 1989, the Commission attempted to contact you at the address specified in your response, that letter was returned as undeliverable. Enclosed is the letter which was returned. Consequently, we are sending further correspondence to the address we used to send you the complaint.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 23, 1989, found that there is reason to believe that you and United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3), 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 the opportunity to demonstrate that no action should be taken against you and United Typos. 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.

20040300609

James J. Duffy
Page 2

If you have any questions, please contact Sandra J. Dunham, the staff person assigned to this matter, at (202) 376 - 8200.

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Legner
Associate General Counsel

Enclosures
Returned Letter
Questions
Designation of Counsel Form
Factual and Legal Analysis

90040300610

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

89 SEP -6 AM 10: 13

0603944
James J. Duffy
4310 Grace Avenue
Bram, N.Y., 10466
RE: MUR 2788
September 1, 1989

Sandra J. Dunham,
Federal Election Commission
Washington, D.C. 20463

Dear Sandra:

Enclosed is my reply to interrogation questions,
with exhibits.

Sorry for the delay. I hope it will not hurt
my case.

I have had three operations this year
at Roosevelt/Stroukos Hospital, with physical
therapy 2 times a week since June.

In regard to question #6, I am still
trying to locate N.Y. Telephone bill for the
month of December 1988. I would like to
submit a copy of the December '88 bill to
the Federal Election Commission at a later date.

Sincerely,
James J. Duffy

1
1
6
0
3
0
4
0
0
9

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF SPECIAL COUNSEL
89 SEP -6 AM 11: 20

Topic: Interrogation

1. City Edition, Late City Edition, National Edition.
See exhibit A, B, C

2. See exhibit A, B, C / N.Y. Times Editions, will follow.

3. I, James J. Duffy paid for the Advertisement
Placed in the New York Times, on November 8th, 1988.
It, the cost of the advertisement, was (an)
any individual expense. See exhibit D

4. See exhibit E

5. No. - United Tyfos are individuals and members
of New York Typographical Union #6, CWA.
United Tyfos did not receive an employee discount.

I, James J. Duffy, received an employee discount.
See exhibits D, E
6. No. - United Tyfos did not, - I, James J. Duffy consulted,
by phone, to their political committees, in Washington, DC,
in Boston, Mass. and in New York City, by phone and in
person.

7. No. - United Tyfos make no contributions on
expenditures during 1988.

20040300612

8. Yes. — On November 7, 1988, The New York Times ran the Dukakis/Holtsen Advertisement at my request. The cost of \$344.86. was my expense, an individual expenditure.
See exhibits E, F, G, H,

9. United Typos is a Political (Internal) group of individual members, of New York Typographical Union #6, CWA.
See exhibits I, K,

9
0
0
4
0
3
0
0
6
1
3

10. No. — New York Typographical Union did not pay or authorize the placement of the advertisements in the New York Times, on November 8, 1988 or on November 7, 1988.

The above 10 answers were answered by (submitted) by James J. Ditty

Sept 1, 1989

Sincerely,
James J. Ditty
4312 Grace Avenue
Bronx N.Y. 10466-1818

Sidney Blackin

SIDNEY BLACKIN
Notary Public, State of New York
No. 03-0306675
Qualified in Bronx County
Commission Expires March 30, 1991

Exhibit A

THE NEW YORK TIMES PULLING TUESDAY, NOVEMBER 9, 1990

90040300614

Listen to the
Heart-Ache-Heart-Break
of America. Reach Out V.
Dukakis/Bentsen!



THE NEW YORK TIMES PUBLISHING CORPORATION TUESDAY, NOVEMBER 4, 1992

Exhibit B

Listen to the
Heart Ache Heart-Break
of America. Reach Out Vote
Dukakis/Bentsen!

90040300615



Exhibit B

THE NEW YORK TIMES INTERNATIONAL TUESDAY, NOVEMBER 9, 1988

90040300616

LISTEN UP
Heart Ache: How Bill
of America Reach Out
Dukakis Bentsen!

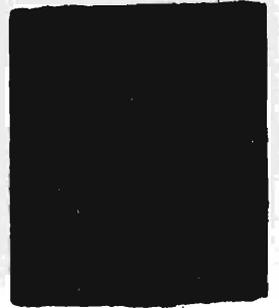


Exhibit E

PAY THIS AMOUNT	637.99	AMOUNT ENCLOSED	
-----------------	--------	-----------------	--

TO INSURE PROPER CREDIT TO YOUR ACCOUNT THIS STUB MUST ACCOMPANY PAYMENT

NO CASH DISCOUNTS

PAYMENT DUE UPON RECEIPT OF INVOICE

IF YOUR PAYMENT IS RECEIVED FROM THE ADVERTISER, PLEASE RETURN TO THE ADVERTISER. IF YOUR PAYMENT IS RECEIVED FROM THE ADVERTISER, PLEASE RETURN TO THE ADVERTISER.

UNITED TYPOS
4312 GRACE AVENUE
NEW YORK NY 10466

The New York Times
C.S. BOX 7001
UNIONDALE, NY 11553-7001

16 2000 25232561284 0000637991 112088 63327704

DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT

ACCOUNT NO.	INVOICE NO.		
16 2000 252-325-6125	11/20/88 63327704		252-325-6125

PLEASE INCLUDE YOUR ACCOUNT AND INVOICE NUMBER ON YOUR CHECK AND ALL CORRESPONDENCE

DATE	ACCOUNT NO.	INVOICE NO.	DESCRIPTION	AMOUNT	TOTAL	REMARKS
11/07/88	42804	4317	UNITED TYPOS	1.00	344.86	✓ 344.86
RE 007-002				1-1		
11/08/88	T2499	4317	UNITED TYPOS	1.00	293.13	✓ 293.13
RE 004-001				1-1		

THANK YOU FOR ADVERTISING IN THE NEW YORK TIMES

OUR FEDERAL TAX ID NUMBER IS 131102020

UNITED TYPOS **The New York Times** 637.99
ADVERTISING INVOICE

90040300617

JAMES DUFFY
4312 GRACE AVENUE
BROOKLYN, NY 10018

Enclosed to New York Times
to 4312 Grace Avenue
Brooklyn, NY 10018

DATE 11/20/88

UNITED TYPOS

637.99

252-325-6125

Exhibit D

JAMES DUFFY
4312 GRACE AVENUE
BROOKLYN, NY 10018

Enclosed to New York Times
to 4312 Grace Avenue
Brooklyn, NY 10018

DATE 11/20/88

UNITED TYPOS

637.99

252-325-6125

Exhibit H

Exhibit F

THE NEW YORK TIMES **POLITICS** MONDAY, NOVEMBER 7, 1988

9004030J618

Listen to the
Heart-Ache/Heart-Break
of America's Reach Out!
Dukakis/Bentsen!
Solid Types/812 Days Inc. NY, NY 1988
This Ad not affiliated with any Political Party

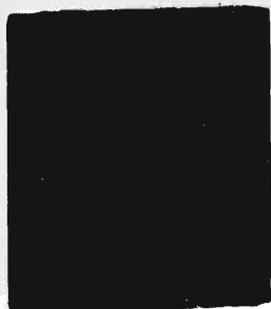


Exhibit C

THE NEW YORK TIMES NATIONAL MONDAY, NOVEMBER 7, 1988

90040300619

Listen to the
Heart-Ache/Heart-Break
of America's Reach Out
Dukakis/Bentsen!
United Types/0112 Street Ave. NY, NY 10014
This ad not affiliated with any Political Party





No. 6 Bulletin

Prohibit I

New York Typographical Union No. 6 • Communications Workers of North America, AFL-CIO

Vol. LXXXIX No. 3/4

March/April 1987

PRESIDENT'S COLUMN

ITU NPP proposal referendums. The proposal to have the ITU Negotiated Pension Plan pay the \$50 Local Special Benefit and to permanently fix our Deficit Account with the ITU NPP is reported in this Bulletin issue on page 1. Please read it carefully.

It will: 1) permanently freeze the ITU NPP deflection at the rate of 1.85%; 2) provide that the ITU NPP continue the \$50 benefit for the lifetime of the recipients; 3) turn over to New York Typographical Union No. 6 the \$2.4 million now in the Local Special Benefit reserves; 4) cancel charges formerly levied against our deficit account for Past Service Credits for New York apprentices, reducing our deficit by \$4.9 million; and 5) eliminate the 1½% dues now paid by Local 6 members. The proposal will go to referendum on May 20, 1987.

The referendum will be in two parts. One will permanently fix the ITU NPP deflection rate to our deficit account at 1.85% and authorize the ITU NPP to pay a \$50 benefit to those now receiving the Local Special Benefit.

These actions, combined with the acceptance of our position that there should be no charge for apprentice time credit, result in a reduction of our deficit account with the ITU NPP of \$4.9 million and the release

Continued on page 2

Local pension/NPP proposal:

**Deficit offset frozen at 1.85%;
\$50 benefit to be paid by NPP;
Local Six gains \$2.4 million;
\$4.9 million deficit reduction;
Local dues reduced by 1½%**

At the request of President Powers, the trustees of the ITU Negotiated Pension Plan have approved adding a \$50 benefit to the NPP pension checks of those Local 6 retirees who are now receiving the \$50 Local Special Benefit. The \$50 NPP benefit would allow termination of the Local Special Benefit without any loss to those on the rolls, and the 1½% dues that supports this benefit would be eliminated. The plan will be subject to a referendum vote of Local 6 members on May 20, 1987.

If approved, the plan would lead to several major accomplishments: 1) It would permanently freeze the ITU NPP deficit offset at 1.85%; 2) It would provide for the continuation of the Local Special Benefit for the lifetime of its recipients in the form of a supplemental ITU NPP benefit; 3) it would turn over to New York Typographical Union No. 6 the \$2.4 million now in the Local Special Benefit reserves; 4) it would cancel charges formerly levied for Past Service Credits for New York apprentices, thus reducing our ITU NPP deficit by \$4.9 million; 5) it

would eliminate the 1½% dues now being paid by working Local 6 members.

1) Freeze the Local 6 deficit account

In consideration of the ITU NPP taking on the added responsibility of providing the \$50 benefit payment for the rest of the lives of its recipients, the deflection rate — the amount that goes toward the Local 6 deficit account in the ITU NPP — will be increased by 0.1% to 1.85% from its present 1.75%, an increase of about 80 cents a week for the average working member.

In addition, Local 6 will be guaranteed that no further increase in the deflection rate to the ITU NPP will ever be required so long as contributions are continued.

The amortization date — the date when the Local 6 deficit account will be paid up — will be moved to the year 2030 from the year 2014. Of course, current contributions to the ITU NPP will have to be maintained. Members should note that the original position of the ITU NPP was to

Continued on page 3

**Notice of
Referendum
on page 3**

**PUB members:
Notice of
Referendum
on page 6**

Exhibit I

POLITICAL SECTION

Section 17 of Article V. Local By-Laws, adopted by the Union on October 24, 1982, provides: Candidates for office who have filed a certificate of nomination as provided for in Section 2 of this Article (except Election Board) shall be afforded space in the April issue of the Monthly Bulletin to make a statement in support of their candidacy. Provided, such space shall be apportioned as follows: Candidates for President and Secretary-Treasurer five hundred (500) words; candidates for Vice-President three hundred (300) words; candidates for Executive Committee and ITU Delegates two hundred and fifty (250) words; candidates for all other offices one hundred and fifty (150) words.

- (a) The editor of the Bulletin must be in receipt of the candidates statement no later than 5 p.m. on April 5.
- (b) Such section of Monthly Bulletin shall be headed "Political Section."
- (c) Statement shall be grouped under a heading designating the office.
- (d) All statements for a particular office shall be set in uniform size and style.

President

JAMES J. DUFFY

To the members of New York Typographical Union No. 6:

As an apprentice in 1949, I was impressed with the caliber of our leaders and considered union meetings living theater. Debates and parliamentary maneuvering were exciting and informative. Our local was a model of democracy and even the newest member was made to feel part of our great trade union history. Big Six was known throughout the country for its militancy, democracy, comradeship and caring. We had a law in those days that restricted a president to two consecutive terms on the theory that entrenchment meant stagnation. How wise the framers of that law were.

Our current president has been in his present office more than a quarter-century and although he may have been a militant leader early in his career he has become jaded, cynical and bitter while regarding the local as his personal fiefdom. Union meetings are fewer, shorter, and regarded as an inconvenience by our president who considers questions as attacks upon him. He has succeeded in turning off our members, something the employers attempted to do for years.

He set the union on the road to institutional death over a decade ago by giving up our jurisdiction for so-called guaranteed jobs. Today, only 1200 members are working full time in New York and that number decreases with each death and retirement. Our Bulletin is used as his personal political vehicle and the financial reporting we enjoyed in past years is gone. Our unemployed members seek work at minimum wage entry jobs. Non-union printers are multiplying in the area, but our president is too busy playing international politics. Publication dates of the Bulletin are moved around depending upon political considerations.

Our president planted family members in management positions in our industry, which at the very least is questionable practice. He sees nothing wrong in this. He has pushed people off the staff at age 62 while he remains at age 65.

Some years ago our officers reduced their salaries by 10% to establish a staff pension. This resulted in no additional cost to our members and was approved at a well-attended union meeting. Not long ago, when the staff pension fund needed additional contributions to stay afloat, our president arranged for needed money to be paid from the treasury. This time, the proposal was put to a poorly-attended union meeting and passed. The result is an open-end payment from the treasury without any reduction in staff salaries, a repudiation of the original plan, at your expense. It may be time to look at the salary of a president who represents only 1200 working members.

We are losing our market share to non-union printers. We are dwindling to nothing in the newspaper branch. We are lulled into a false sense of security by the siren song of guaranteed jobs while watching our work being done by others. We have a president who either doesn't see these things or doesn't care. We have an election in which there is no competition for any office, a certain sign of death.

Fraternally,
James J. Duffy

BERTRAM A. POWERS

Fellow members:

I have been privileged to serve as President of our Union since 1961.

From that time until now our Union has been beset with continuous strife. Battle with the employers was to be expected. But, in addition, we have had to deal with the enormous impact of an explosion of automation in our industry.

During all these years I have always found our members to be whole-hearted and steadfast in their response to every call to meet the challenges that have been thrust upon us.

I ask for your support in this election and for your continued help in the battles that lie ahead.

*"The work goes on
The cause endures
The hope still lives, and
The dream shall never die."*

Fraternally,
Bertram A. Powers

Vice-President

JAMES GROTTOLA

To the members of New York Typographical Union No. 6:

It is an honor to have been nominated for the office of Vice President of our Union. As a 30-year member, having worked in the Newspaper and Book and Job branches, I have also had the privilege to serve our Union in many capacities: Sixteen years as a Book and Job Representative and Organizer, and as Newspaper Representative since January, 1986; four years as Secretary-Treasurer of the Printing Utilities Branch, and one year as Assistant Benefit Clerk.

At the request of ITU President McMichen, I have served as a Special Representative for the ITU on several occasions, and also served as Hearing Officer in disputes between local unions and the ITU.

I served on the 1963-64 New York Post Scale Committee, and have participated in all Book and Job contract negotiations and all arbitration and NLRB hearings since 1970.

Exhibit I

I was elected to the Union's Executive Committee for two terms, and was elected Chairman of the Executive Committee during my first term. I was elected Delegate and Alternate Delegate to the ITU Convention, and have been a Delegate to the National, Eastern and Empire Typographical and Mailer Conferences. In the New York Post Chapel, I was elected Vice Chairman and Chapel Chairman for three consecutive terms.

I am presently serving as Chairman of the Laws Committee, and as Trustee of the Annuity, Book and Job Welfare, Newspaper Welfare, and Benefit And Productivity Funds.

I firmly believe our Union faces many difficult challenges ahead, requiring capable and experienced leadership. I also believe my record demonstrates that I am well qualified for the office of Vice President, and pledge to continue to serve our Union, working with and under the direction of the President.

In closing, I urge your support for the entire Progressive Club ticket in the May 20th election.

Fraternally,
James Grottola

Secretary-Treasurer

RICHARD ADLER

To the members of New York Typographical Union No. 6:

It is a privilege to be a candidate for re-election to Secretary-Treasurer. Prior to being elected at the January Union meeting, I had served as full-time Assistant Secretary for ten years.

I have been a member of Local 6 for 36 years, during which I served as Vice Chairman of the Journal American/Mirror Chapel for seven years, and as Chairman of that chapel for two terms, including the 114-day newspaper strike and lockout in 1962-63.

After the closing of the World Journal Tribune, I worked at The Daily News for a year before changing over to financial shops in the Book and Job branch.

I want to take this opportunity to urge our members to vote in favor of the referendum on the Local Special Benefit and the settlement of our NPP deficit account. I also urge all members to vote in favor of electing the President and Secretary-Treasurer as Delegates to the CWA Convention and the Sector Conference preceding it. This will be our first convention as CWA members, and it is important that we be well represented.

Fraternally,
Richard Adler

Executive Committee — Book and Job

STEPHEN BASILE

To the members of New York Typographical Union No. 6:

I am seeking re-election to the Executive Committee — Book and Job Branch.

I have served as a member of the Executive Committee for the past five and a half years.

I have been Chairman of Record Press Chapel for five terms. Chairman of Publishers CompuType Chapel for three terms.

I have also been a delegate to the Empire Typographical and Mailers Conference in April of 1978 and have served as a member of the Book and Job Scale Committee in 1978.

I would appreciate your continued support and consideration in the upcoming election.

Fraternally,
Stephen Basile



No. 6 Bulletin

Exhibit J

New York Typographical Union No. 6 • Communications Workers of North America, AFL-CIO

Vol. 2, Ill. No. 31

March/April 1988

B&J wage increases

The Consumer Price Index for the quarter ending March 31, 1988, coupled with the 3% annual wage increase, produced a wage adjustment for the quarter of \$21.36 days, \$22.85 nights, and \$23.71 lobster, resulting in a new scale of \$728.46 days, \$779.45 nights, and \$808.59 lobster, effective April 1, 1988.

Daily News member is a hero in bus fire

Robert Conrad, a Daily News Chapel member, is a hero. Unfortunately, he had to pay the price of a broken ankle in the process.

Brother Conrad was on his way to work on Thursday, March 5, when the bus he was riding caught fire. The passengers scrambled to get out of the bus, many of them jumping through broken windows. Mr. Conrad saw a pregnant woman struggling to get out through a window, and stayed behind to help her to safety. By the time she had reached safety, the flames were spreading rapidly, and there was no other exit for Conrad but to jump out the window himself, and that's how he got injured.

We are very proud of our union brother's unselfish action, and we wish him a speedy recovery!

Union demands employers pay their share of arbitrator's fees

The refusal of two non-League Book and Job employers to pay their share of arbitrator's fees has brought the arbitration process with all non-League employers to a halt. The Union is now seeking through arbitration to enforce a contract section that provides that all non-League employers pay into an account that will be used to pay the employer part of arbitration expenses.

The two non-League employers are Bowne of New York City and Corporate Printing Co. Corporate, after leaving the Printers League prior to October, 1982, did not sign the four-year extension of the contract in 1985, and does not now have a contract with Local 6. The stalled arbitration with Corporate deals with the survival of the job and wage guarantees of the contract, and challenges Corporate's sub-standard working conditions imposed since January, 1986, on Union members working there.

The refusal to pay the arbitrator appears to be another tactic.

With Bowne, the Union has a half-dozen arbitrations pending, the oldest from April, 1986. Those arbitrations concern such matters as subcontracting and assignment of composing room work. Bowne quit the League in February, 1987.

Bowne and Corporate are being represented by the same law firm, which has employed a number of delaying tactics. The refusal to pay the arbitrator appears to be another such tactic.

Historically, the practice in the industry has been that when a League

employer and the Union went to arbitration, the Printers League and the Union each paid one-half of the arbitrator's fee. In the case of a non-League employer, the employer and the Union each paid one-half.

Bowne and Corporate, in the middle of arbitration cases, suddenly refused to pay their share of the arbitrator's fees. As a consequence, the arbitrator refused to hear the remaining grievances or to decide those grievances in which the hearings were completed.

This situation left the Union no choice but to seek an Arbitrator's Award which would order that a previously unnecessary contract provision be enforced. That provision calls for an account be established and for non-League employers to make payments into the account, to pay for the non-League employers' share of arbitration expenses.

A hearing was held on March 21 before the Designated Arbitrator.

Pandick's brief asks that the arbitrator require Bowne and Corporate to pay for their share...

Pandick's position

Counsel for Pandick Inc. attended the hearing and later submitted a letter brief to support its position at the hearing. The brief pointed out testimony at the hearing which showed that past practice was that when a League member withdrew, the company would pay its share of the fees directly to the Designated

Continued on page 2



2 1 0 4 0 3 0 0 6 2 2

POLITICAL SECTION

Exhibit J

JACK GALLAGHER

Local By-Laws, Article V, Section 17, provides that candidates for office shall be afforded space in the April issue of the Bulletin to make a statement in support of their candidacy.

In view of the fact that there is only a contest for the office of one of the two Newspaper Delegates, the other candidates have agreed to waive their right to make such statements, in the interest of saving space and costs. These candidates are:

For Book and Job Delegates -

KEVIN McSHANE

ROBERT PEPLOSKI

For Book and Job Alternate Delegate -

ANGELO DI SALVO

For Alternate Newspaper Delegate -

JIM MURRAY

In addition, the President and the Secretary-Treasurer made a joint statement in support of a favorable vote on the issue of electing the President and Secretary-Treasurer delegates to the CWA Convention and the Sector Conference.

Joint Statement by President Bertram A. Powers and Secretary-Treasurer Richard Adler

"The CWA Convention and the Sector Conference will be dealing with important issues. With delegates voting on the basis of their locals' active membership strength on roll-call votes, the presence of your Union's two top officers at the convention and conference is even more important. For those reasons, we have joined together in urging you to vote in favor of having the President and Secretary-Treasurer represent you at the convention and the Sector conference."

Following below are the statements made by the candidates for the contested offices of Newspaper Delegate:

Newspaper Delegate

JOHN E. CAMPBELL

To the members of New York Typographical Union No. 6:

It is a great honor to be chosen as a Progressive Party candidate for Delegate from the newspaper branch of New York Typographical Union No. 6 to the CWA International Convention and Sector Conference.

As a member of the International Typographical Union and Local 6, I have been an active participant in our union's affairs for over 35 years.

On the chapel level I was Vice Chairman of The Morning Telegraph, and presently I am serving my second term as Chairman of The New York Times, where I have also served as Vice Chairman, Secretary and Label Representative.

In 1986 I was appointed to Local 6's Newspaper Joint Training Committee, and the following year I was elected alternate newspaper delegate to the 127th ITU Convention.

Similarly, in 1987, I was appointed delegate from the newspaper branch to the 137th Empire Typographical Conference in Syracuse, New York.

I am a graduate of Fordham University where I earned a degree in economics and United States history.

If elected I promise to work to the fullest in cooperation with our delegation from Local 6 in achieving the goals of our membership and the resolution of all other matters confronting our union.

I urge you to support my candidacy and the entire Progressive slate.

Fraternally,
John E. Campbell

JAMES J. DUFFY

To the members of New York Typographical Union No. 6:

In the Annual Report of Officers, President McMichen and Secretary-Treasurer Kopeck mention organizing.

President McMichen said, "We had many organizing successes in Canada over the past two years." No mention of any successes in the United States.

Secretary-Treasurer Kopeck said, "... More printing and publishing is produced in the United States and Canada than at any time in history, yet our involvement is less than ever before. ...

"... We are waiting for the signal to begin the mission [organizing] which we were unable to fulfill as a weaken [sic] ITU."

In New York City non-union shops are at the increase, since the '60s. Check New York Telephone Business to Business pages for 1987-1988.

Printers - Business Forms = 73 firms, Coldtype Composition = 28 firms, Financial Printers = 138 firms, Proofreading = 8 firms, Typesetting = 266 firms, Typographers = 169 firms.

By our merging with the CWA we were promised that organization would have top priority. If we don't organize another group or union will, and that will be a tragedy [sic] for this local and the CWA/Sector.

New shops organized by CWA-Sector in this city, could be a great source of work for our trained unemployed, an additional base for revenue (dues) for the Union, and a shot in the arm for the Industrial Pension Plan.

I would seek to make the question of organizing in New York City, a top priority issue.

I seek your support.

Fraternally,
Jim Duffy

To the members of New York Typographical Union No. 6:

I believe we should send the most qualified and experienced candidates to represent Local Six at the CWA International Convention and the Sector Conference.

I have been a member of Local Six for 26 years. I served my apprenticeship at the World-Telegram and Sun. In 1966 I went to the Daily News and became active in chapel affairs. I served as Chapel Teller, First Vice Chairman and have been Chapel Chairman for 11 years.

I was elected ITU Convention Alternate Delegate in 1976 and ITU Delegate in 1977, 1982, 1983, 1984 and 1986. In 1987 I was elected Delegate to the CWA Convention and the Sector Conference. In 1983 I was elected to the ITU Canvassing Board by the convention delegates. I was a Delegate to the New York State AFL-CIO Convention twice and have served eight times as Delegate to the New York State Allied Printing Trades Convention. I was a Delegate to the Empire Typographical and Mailers Conference four times and Delegate to the Union Label and Service Trades Conference once. I have been a Delegate to the New York City Central Labor Council, representing Local Six since 1977, and a member of Local Six's Laws Committee since 1980.

I have become a knowledgeable unionist by completing courses at the New York City Central Labor Council and at Cornell Labor College. I completed courses in advanced training of OSHA compliance officers at Cornell.

I was appointed to the OSHA and Labor Studies Advisory Board at Cornell, and Coordinator of Union Counselors for the New York City Central Labor Council, and elected Representative-at-Large for NYCOSH.

I would appreciate your consideration and ask you to support the entire Progressive slate.

Fraternally,
Jack Gallagher

Union demands...

Continued from page 1

Arbitrator. Pandick had done so in the past and would continue to do so, the brief stated.

Pandick's brief asked that the arbitrator require Bowne and Corporate to pay for their share of arbitration fees. If the arbitrator finds that the contract provision should be implemented, Pandick wants the arbitrator to order the League to ask non-League members if they would prefer to pay to the fund or to pay the arbitrator directly. By forcing the non-League members to pay into the fund, Pandick argued, the large user of arbitration can have other non-League members subsidize its cost.

Because of further delay caused by Bowne's attorney Braid's demand that he be allowed to file his brief only after receipt of his transcript, a decision will probably be forthcoming not sooner than two months from the date of the hearing.

90040300623



No. 6 Bulletin

Exhibit A

New York Typographical Union No. 6 • Communications Workers of North America, AFL-CIO

Vol. 15, No. 5/6

May/June 1988

PRESIDENT'S COLUMN

Sector happenings. The bitter, long and ongoing conflict among members of the Sector Executive Council was brought into the open through the officers' reports in the Spring, 1988 issue of the *Sector News*. Many local union officers believe that the progress expected from the merger with the Communications Workers of America has been sidetracked because of the infighting between those who believe the President should rule and those who believe a Council majority should rule.

Because of this I was asked by officers of many large local unions to arrange an informal conference with CWA President Morton Bahr, without any Council officers present. That conference was held on Monday, April 18, prior to the Eastern Typographical and Mailer Conference in Baltimore.

There, an overwhelming majority of local officers expressed their views that merger progress had come to a standstill because of Council bickering. President Bahr agreed with the conclusion the delegates arrived at, that the Executive Council concept is not working, and expressed his opinion that Sector members would be better served by electing one person from the Sector membership as a CWA vice president in charge of the Sector. He said the present Council members' jobs could be protected by an agreement to continue their employment.

Continued on page 2

Union wins arbitration case; employers to make payments

In an award dated May 16, Arbitrator Thomas A. Knowlton has required non-League employers to pay into an account to be established for making payments of their share of arbitration fees and

expenses incurred in arbitrations involving non-League employers and New York Typographical Union No. 6.

The award, effective March 21, 1988, enforces a contract provision that had hitherto been unnecessary. The provision calls for monthly payments of \$7.00 multiplied by the average number of Local 6 members on the payroll each month. The payments will be placed in a special bank account under the administration of the League, from which payments will be made of the non-League employers' share of arbitration fees and expenses.

The award resolves the impasse caused by the refusal of two non-League employers, Bowne of New York City and Corporate Printing Co., to pay their share of arbitration fees and expenses. A hearing was held March 21 before Arbitrator Knowlton.

The full text of the Opinion and Award follows:

Opinion and Award

In the Matter of the Arbitration
between
Printers League Section
and
New York Typographical Union No. 6
Re: Article XIV, Section 7

At a hearing held in New York City on March 21, 1988, both of the above-named parties were represented. Also present at the hearing were representatives of three Employers: Bowne of New York City, Inc., Pandick Press, and Charles P. Young, N.Y. Each of these

Continued on page 3

Campbell, Gallagher, McShane and Peploski elected as Delegates

In the contest for Newspaper Delegates in the May 18 mail ballot election, John E. Campbell of The Times Chapel and Jack Gallagher of The Daily News Chapel were the winners, according to the Election Board's tentative certification, issued immediately after the election.

Jack Gallagher was the top vote-getter with 3,397 votes, John E. Campbell received 2,800 votes, and James J. Duffy of The Times Chapel received 1,797 votes.

Other candidates were unopposed and declared elected according to Local law. They were Kevin McShane and Robert Peploski, for Book and Job Delegates, Angelo DiSalvo as Alternate Book and Job Delegate, and James Murray as Alternate Newspaper Delegate.

On the referendum question of whether the President and Secretary-Treasurer should be elected as Delegates to the CWA Convention and Sector Conference, the vote was in the affirmative, 3,798 to 262.

The five-member Election Board, elected at the April 17 regular Union meeting, are Jack Nortick, Chairman, Martin Benkowitz, Secretary, Charles Feraco, Frank Goepfert, and Benjamin Rodriguez. ■

Exhibit L

James J. Duffy
The New York Times

Dear Retiree: ~~Active~~ Members:

I have been honored by the United Typos' as their candidate for the office of Vice President and ITU Delegate, Newspaper Branch.

I was first introduced to running for office in 1965, by Tom Kopeck, then our Secretary-Treasurer. That year I was elected by the membership to the office of Executive Committee. I have been elected to that office a total of five terms since 1965. I was also honored by the membership by being elected to the office of ITU Delegate on three occasions.

It has been 30 years since our Local Union has had a Vice President from a political group other than the Progressive Party.

Since 1961 when the current President took office, we have declined in membership from a high of 11,410 to the present 7229, this includes 3033 Pensioners, for a net total active membership of 4096. We once had over 350 Chapels as compared to the present 100. In Book and Job Branch alone we have close to 1,000 members without situations. With such a small base of membership we will be hard-pressed to continue to provide contributions to our pension and welfare plans. We must have a change in leadership to stop the decline.

The measure of our success at the ITU Convention and the very future of this Union, will be determined by whom we elect to office. May I ask you to consider the United Typos' candidates.

Fraternally,
James J. Duffy

James J. Duffy
ITU# 130535
The New York Times Chapel

20040300625

PLEASE POST

OUR UNION'S FUTURE?

Dear Brother and Sister Members;

I have been honored once again as the United Typos candidate for union office of President and also for the office of ITU Delegate.

Two years ago, after my campaigning and after the election. I posted a note of thanks, on our Times Chapel bulletin board. In part it said, "Though the election is over, the issues mentioned during the campaign, are still with us." Today we find we still have these problems within our Union—only they have gotten worse.

Prog-Powers Years, 1961-1978.

In 1961 the working membership was over 9,500. Today the working membership is about 3,600. We've seen unemployment at 400 in '73; unemployment rose to 800 in '77; unemployment is now over 1,000. In 1961, we had about 1,000 members on pension. In 1978, the figure was 3,076.

In 1961 we had about 370 chapels, today we have 127 chapels—a loss of 243. In 1961 we had 19 newspaper chapels, today we have 7 newspaper chapels—a loss of 12.

In 1975, we saw the second Powers 10-year contract within our Union. This time with the Book & Job branch.

In 1975 we had 187 chapels; 11 were newspaper chapels. In 1978, we had 127 Chapels; 7 are newspaper chapels. We see a loss of 60 chapels within three years; four were newspaper chapels.

NON-UNION SHOPS ON THE INCREASE IN THE CITY

During the '60s and thereafter the non-union new-process shops have been growing in New York. One way to check is look in the New York Telephone-Classified 'yellow' pages. Start looking first under typesetting; see also Typographers, Printers, Cold Type Composition. You might find yourself surprised, at the long list of non-union plants and shops listed in the 'yellow' pages. You can compare the shops listed there with our union's list of chapels, appearing in the Bulletin of Sept. '78. Also, check Sunday's, New York Times 'Help Wanted' and see for yourself the number of jobs available for typesetters. Why aren't our trained unemployed told to make themselves available for these jobs?

I believe the ITU should come into New York and start a new organizational drive. Mr. Powers hasn't done the job that is required of him. I believe there is a danger that another union or group may come in and start organizing the non-union shops in our industry. This would be a tragedy for us, as new shops organized by the ITU could be a great source of work for our trained unemployed, an additional base for revenue (dues) for the union, and a shot in the arm for the Industrial Pension Plan.

INDUSTRIAL PENSION

In 1969, we were guaranteed \$100 per month provided we merged our 3 local pensions (union + B&J + N.P. Contractual Pensions) totaling \$16,000,000. We were also obliged to pay an additional \$4,000,000, over a period of years, to the ITU Industrial Pension Fund. That \$4,000,000 has now become \$6,343,645 that we owe the Plan. Now, ten years later, we are told the working member has no guaranteed ITU Industrial Pension, after contributing approximately 5.2% for ten years to the Plan. I question the legality of it all. Our President, by now should have done so: That is, is the fund legally liable, to the membership of this local? If in 1969 we were promised a guaranteed pension of \$100 a month—isn't the Fund now liable?

The bitterness of long-term unemployment, the enormous list of closed chapels, combined with the loss of the Fraternal Pension, and no guarantee of an ITU Industrial Pension lasts a lot longer than the initial sweetness of a wage increase, with its promised guaranteed job or guaranteed income.

The measure of our success at the ITU Convention and the very future of this Union, will be determined by whom we elect to office. May I ask you to consider the United Typos' candidates. Combined, they have held the following offices:

Chapel Officers, Union Office of Executive Committee, ITU Delegates, the Office of Secretary-Treasurer, and Office of Assistant Secretary.

Thank you for your time and your consideration.

Fraternally,
Jim Duffy
ITU #130535

VOTE FOR A CHANGE, OUR UNION'S LIFE DEPENDS UPON IT

90040300626

48

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90MAR-8 AM 9:48

OGC 5638
James J. Duffy
4312 Conace Avenue
Brooklyn, N.Y. 10466
RE: MUR 2788
March 6, 1990

Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90MAR-8 AM 11:44

Dear: Lois B. Lierner,
Mary Ann,
Associate General Counsel

20040500627

Enclosed is a statement relating to our phone conversation of last week, with (Mary Ann) your office and with the questions that did arise from that conversation.

I hope this matter can be resolved in a conciliatory way, with the Federal Election Commission.

I would ask at this time, do I have the right to appeal your decision?

Sincerely,
James J. Duffy

Before my placing the political ad in The New York Times, in November of 1988, I did the following:

a) I was in phone conversation with Democratic Campaign Headquarters in Washington, D. C. I was directed to contact the Massachusetts Democratic Headquarters of Dukakis-Bentsen.

b) I contacted by the Massachusetts Democratic Headquarters of Dukakis-Bentsen by phone.

In my conversation, I offered my slogan* and suggested that it might go in the print media (Newspapers). I was told that their print budget was exhausted and they were in their TV budget. I then suggested that the slogan* could be used on the campaign trail. That ended my conversation with the Dukakis-Bentsen Campaign Headquarters in November of 1988.

c) In the last week of the Presidential Campaign of Nov. 1988, I made two visits, to the New York State Democratic Campaign Headquarters. I suggested that the New York State Democratic Campaign Headquarters might run a political ad for Dukakis-Bentsen in the Sunday, Nov 6, 1988, New York Times. I again was told, the print budget was exhausted or finished and they were now in to the "TV" Campaign budget. That office then suggested that I may run the political ad (with slogan*) in the New York Times, at my expense. This was my last conversation with that Campaign Headquarters, in Nov. of 1988.

Sincerely,
James Duffey

30040300628



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 4, 1990

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel *LMN*

SUBJECT: MUR 2788

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. Copies of the briefs and letters notifying respondents of the General Counsel's intent to recommend to the Commission findings of no probable cause as to certain violations by respondents were mailed on June 4, 1990. Following receipt of respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Briefs
2. Letters to respondents

9004030J629



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 4, 1990

James J. Duffy
4312 Grace Avenue
Bronx, New York 10466

RE: MUR 2788
James J. Duffy

Dear Mr. Duffy:

Based on a complaint filed with the Federal Election Commission on November 22, 1988, and information supplied by you, the Commission, on May 23, 1989, found that there was reason to believe you violated 2 U.S.C. § 434(c)(1), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation of 2 U.S.C. § 434(c)(1) has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

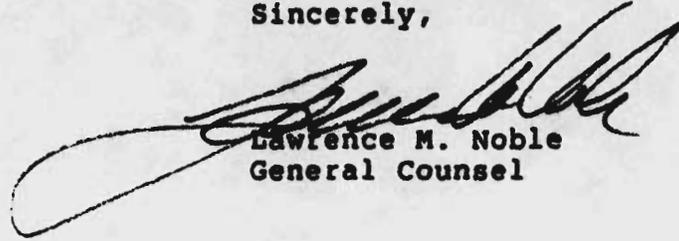
A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

99040300630

Mr. Duffy
Page 2

Should you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

90040300631

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
James J. Duffy)

MUR 2788

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On November 22, 1988, the Office of the General Counsel received a complaint from the Conservative Campaign Fund. The complaint alleged violations of the Federal Election Campaign Act ("the Act") based on a paid advertisement which allegedly appeared in the New York Times on Tuesday, November 8, 1988 (election day). The advertisement's message read: "Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print underneath this message the advertisement stated: "United Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party."

On May 23, 1989, the Commission found reason to believe that James J. Duffy had violated 2 U.S.C. § 434(c)(1) by failing to report the expenditure of \$637.99 for the New York Times advertisement.^{1/} According to Mr. Duffy, and to the

^{1/} The Commission also found reason to believe that Mr. Duffy violated 2 U.S.C. § 441d(a)(3) by not including in the advertisement the name of the person(s) who paid for the communication and by not sufficiently stating that the communication was not authorized by any candidate or candidate's committee. Mr. Duffy has requested pre-probable cause conciliation. In a separate report this Office is making a recommendation to the Commission to enter into conciliation with regard to the violation of 2 U.S.C. § 441d(a)(3).

2004030J632

invoice and copies of the paper which he has provided, the advertisement ran in two places on both November 7 and 8, 1988. Mr. Duffy asserts in his affidavit that he alone paid for the advertisement for both days.

II. LEGAL ANALYSIS

The Act defines an 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 any candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17). See 11 C.F.R. § 109.1.

The Act places no limitations on the amounts of these expenditures; however, for an expenditure to be independent all elements of this definition must be satisfied. If these elements are not satisfied, the purported independent expenditures are viewed as in-kind contributions subject to the limitations of 2 U.S.C. § 441a(a) and are reportable as such.

Further, as to independent expenditures, any person other than a political committee who makes over \$250 in independent expenditures during a calendar year must file a signed statement or report with the Commission and the Secretary of State, the Clerk of the House, or the Secretary of the Senate. 2 U.S.C. § 434(c).

The Commission's Regulations at 11 C.F.R. § 109.1(b)(4)(i)(A) and (B) define "Made with the prior consent

90040300633

of, or in consultation with, or at the request or suggestion of, a candidate or an agent or authorized committee of the candidate" to mean -

- (i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is -
 - (A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the 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, 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 agents.
- (ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

According to the evidence in hand, Mr. Duffy alone, not United Typos, was responsible for the placement of the advertisement in the New York Times. In his response to interrogatories, however, Mr. Duffy stated that he did "consult" the campaign committee offices of Dukakis/Bentsen in Washington, D.C., Boston and New York.

This Office spoke with Mr. Duffy by telephone on February 27, 1990, concerning the extent to which Mr. Duffy had consulted with the campaign committees of Dukakis/Bentsen. Mr. Duffy explained each contact he had had with the Dukakis/Bentsen campaign committees. With a letter dated March 6, 1990, Mr. Duffy enclosed a statement which set out in

9004030J634

9
0
4
0
3
0
J
5
3
5

writing each separate communication between himself and the Dukakis/Bentsen campaign committees. In this statement, Mr. Duffy explains that, before placing the political ad in the New York Times, he phoned the Democratic Campaign Headquarters in Washington, D.C. and was directed to contact the Massachusetts Democratic Headquarters of Dukakis/Bentsen. At that point, Mr. Duffy states, he phoned the Massachusetts Democratic Headquarters and offered his slogan and suggested that it might go in the "print media (newspapers)." He states that he was told at that point that the print budget was exhausted. Mr. Duffy further adds that he also suggested that the slogan be used on the campaign trail.

Mr. Duffy states that in the last week of the presidential campaign in November, 1988, he made two visits to the New York State Democratic Campaign Headquarters of Dukakis/Bentsen and each time suggested that they run a political ad (his slogan) in the Sunday, November 6, 1988, New York Times. According to Duffy's statement, at that time he was told that the print budget was exhausted, but the headquarters office suggested that he might run the political ad at his own expense.

As noted above, "Made with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate," is further explained at 11 C.F.R. § 109.1(b)(4)(i) as including any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication,

distribution, display, or broadcast of the communication. While Mr. Duffy has stated that he alone was responsible for the design and creation of the advertisement in question, he did directly communicate with the Dukakis/Bentsen committee when seeking their financial assistance in placing the advertisement. He was informed by phone and in person, in Boston and New York, that the committee's print budget was exhausted and that anything beyond that point would have to be done at his own expense. Further, he states that it was suggested to him that he run the ad in the New York Times at his own expense. Therefore, it does appear that, prior to the placement of the advertisement, there was an "arrangement" or "coordination" between Mr. Duffy and the Dukakis/Bentsen campaign committees pursuant to Section 109.1(b)(4). While Mr. Duffy apparently received no direction from the Dukakis/Bentsen campaign committees as to the design of the advertisement in question, he received direction as to its placement.

At the reason to believe stage in this matter, it appeared that the advertisement placed in the New York Times was an independent expenditure by either Mr. Duffy or United Typos. However, as discussed above, it has become apparent that there was coordination between Mr. Duffy and the Dukakis/Bentsen campaign committee, thereby resulting in an in-kind contribution from Mr. Duffy in accordance with 2 U.S.C. § 441a(a)(1)(A). Therefore, since the advertisement in

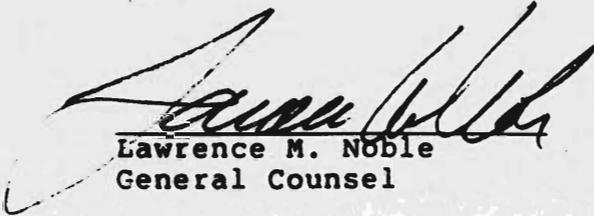
9004030J635

question was not an independent expenditure and not required to to be reported by Mr. Duffy, this Office recommends that the Commission find no probable cause to believe that James J. Duffy violated 2 U.S.C. § 434(c)(1).

III. RECOMMENDATION

1. Find no probable cause to believe that James J. Duffy violated 2 U.S.C. § 434(c)(1).

6/4/90
Date


Lawrence M. Noble
General Counsel

9004030J637



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 4, 1990

James J. Duffy
United Typos
4312 Grace Avenue
Bronx, New York 10466

RE: MUR 2788
United Typos

Dear Mr. Duffy:

Based on a complaint filed with the Federal Election Commission on November 22, 1988, and information supplied by you, the Commission, on May 23, 1989, found that there was reason to believe United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

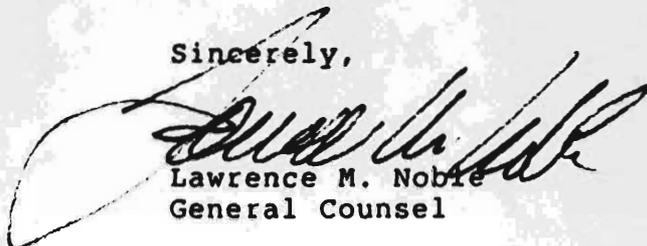
9004030J533

United Typos
Page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

9004030J639

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
United Typos)

MUR 2788

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On November 22, 1988, the Office of the General Counsel received a complaint from the Conservative Campaign Fund. The complaint alleged violations of the Federal Election Campaign Act ("the Act") based on a paid advertisement which allegedly appeared in the New York Times on Tuesday, November

8, 1988 (election day). The advertisement's message read:

"Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print underneath this message the advertisement stated: "United Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party."

On May 23, 1989, the Commission found reason to believe that United Typos had violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3). According to James J. Duffy, and to the invoice and copies of the paper which he has provided, the advertisement ran in two places on both November 7 and 8, 1988. Mr. Duffy asserts in his affidavit that he alone paid for the advertisement for both days.

9004030J640

committee. Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

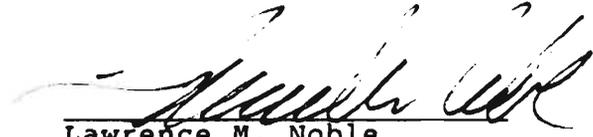
At the time of the Commission's reason to believe determinations it was unclear whether James J. Duffy had paid for the advertisement as an agent of United Typos or in his individual capacity. In his response to the Commission's interrogatories dated September 1, 1989, Mr. Duffy stated that "I, James J. Duffy paid for the advertisement placed in the New York Times on November 8, 1988. It, the cost of the advertisement, was an individual expense." Therefore, since it has become apparent that United Typos was not involved in placing or paying for the advertisement in question, this Office recommends that the Commission find no probable cause to believe that United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).

III. RECOMMENDATION

1. Find no probable cause to believe United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).

Date

6/4/90


Lawrence M. Noble
General Counsel

2004030J642

90 JUN -4 PM 4:32

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
James J. Duffy)

MUR 2788

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 22, 1988, the Office of the General Counsel received a complaint from the Conservative Campaign Fund. The complaint alleged violations of the Federal Election Campaign Act ("the Act") based on a paid advertisement which allegedly appeared in the New York Times on Tuesday, November 8, 1988 (election day). The advertisement's message read: "Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print underneath this message the advertisement stated: "United Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party."

On May 23, 1989, the Commission found reason to believe that James J. Duffy and United Typos had violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3). According to Mr. Duffy, and to the invoice and copies of the paper which he has provided, the advertisement ran in two places on both November 7 and 8, 1988. Mr. Duffy asserts in his affidavit that he alone paid for the

20040300643

advertisement for both days and has requested pre-probable cause conciliation.^{1/} (Attachment I).

II. ANALYSIS

A. Independent Expenditure

9004030J644

The Act defines an 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 any candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17). See 11 C.F.R. § 109.1. The Act places no limitations on the amounts of these expenditures; however, for an expenditure to be independent all elements of this definition must be satisfied. If these elements are not satisfied, the purported independent expenditures are viewed as in-kind contributions subject to the limitations of 2 U.S.C. § 441a(a) and are reportable as such.

The Commission's Regulations at 11 C.F.R. § 109.1(b)(4)(i)(A) and (B) define "Made with the prior consent of, or in consultation with, or at the request or suggestion

^{1/} As a result of answers to interrogatories submitted by James J. Duffy, it has become apparent that United Typos was not involved in placing or paying for the advertisement in question. Therefore, this Office is circulating a General Counsel's Brief recommending that the Commission find no probable cause to believe that United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).

of, a candidate or an agent or authorized committee of the candidate" to mean -

- (i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is -
 - (A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the 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, 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 agents.
- (ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

As noted above, Mr. Duffy, not United Typos, was responsible for the placement of the advertisement in the New York Times. In his response to interrogatories, however, Mr. Duffy stated that he did "consult" the campaign committee offices of Dukakis/Bentsen in Washington, D.C., Boston and New York.

This Office spoke with Mr. Duffy by telephone on February 27, 1990, concerning the extent to which Mr. Duffy had consulted with the campaign committees of Dukakis/Bentsen. Mr. Duffy explained each contact he had had with the Dukakis/Bentsen campaign committees. With a letter dated March 6, 1990, Mr. Duffy enclosed a statement which set out in writing each separate communication between himself and the Dukakis/Bentsen campaign committees. (See Attachment I). In

90040300645

this statement, Mr. Duffy explains that, before placing the political ad in the New York Times, he phoned the Democratic Campaign Headquarters in Washington, D.C. and was directed to contact the Massachusetts Democratic Headquarters of Dukakis/Bentsen. At that point, Mr. Duffy states, he phoned the Massachusetts Democratic Headquarters and offered his slogan and suggested that it might go in the "print media (newspapers)." He states that he was told at that point that the print budget was exhausted. Mr. Duffy further adds that he also suggested that the slogan be used on the campaign trail.

Mr. Duffy states that in the last week of the presidential campaign in November, 1988, he made two visits to the New York State Democratic Campaign Headquarters of Dukakis/Bentsen and each time suggested that they run a political ad (his slogan) in the Sunday, November 6, 1988, New York Times. According to Duffy's statement, at that time he was told that the print budget was exhausted, but the headquarters office suggested that he might run the political ad at his own expense.

As noted above, "Made with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate," is further explained at 11 C.F.R. § 109.1(b)(4)(i) as including any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. While Mr. Duffy has stated that he alone was

90040300646

responsible for the design and creation of the advertisement in question, he did directly communicate with the Dukakis/Bentsen committee when seeking their financial assistance in placing the advertisement. He was informed by phone and in person, in Boston and New York, that the committee's print budget was exhausted and that anything beyond that point would have to be done at his own expense. Further, he states that it was suggested to him that he run the ad in the New York Times at his own expense. Therefore, it does appear that, prior to the placement of the advertisement, there was an "arrangement" or "coordination" between Mr. Duffy and the Dukakis/Bentsen campaign committees pursuant to Section 109.1(b)(4). While Mr. Duffy apparently received no direction from the Dukakis/Bentsen campaign committees as to the design of the advertisement in question, he received direction as to its placement.

At the reason to believe stage in this matter, it appeared that the advertisement placed in the New York Times was an independent expenditure by either Mr. Duffy or United Typos. However, as discussed above, it has become apparent that Mr. Duffy placed the advertisement himself and that there was coordination between Mr. Duffy and the Dukakis/Bentsen campaign committee, thereby resulting in an in-kind contribution from

90040300647

Mr. Duffy in accordance with 2 U.S.C. § 441a(a)(1)(A).^{2/}
Pursuant to Section 434(b), political committees registered with the Commission are required to report all contributions received in each reporting period. Therefore, the Dukakis/Bentsen campaign committee would have been obligated to report any in-kind contribution received from Mr. Duffy. In addition, pursuant to 26 U.S.C. § 9003(b)(2), for a presidential candidate of a major party to be eligible to receive funds from the Presidential Election Campaign Fund, he or she must certify that he or she has not and will not accept contributions to defray campaign expenses. Therefore, it appears that the Dukakis/Bentsen campaign committee accepted a contribution from Mr. Duffy in violation of 26 U.S.C. § 9003(b)(2). However, based on the amount of the contribution, a total of \$637.99 for the placement of the advertisement, this Office is making no recommendation as to any violation by the Dukakis/Bentsen campaign committee.

B. Disclaimer

Any newspaper communication expressly advocating the election of a clearly identified candidate, if not authorized by a candidate, political committee or its agents, must include

^{2/} The Commission found reason to believe that Mr. Duffy violated 2 U.S.C. § 434(c)(1) by failing to report the expenditure of \$637.99 for the advertisement. Since it has been shown that the placement of the advertisement was not an independent expenditure, this Office is circulating a General Counsel's Brief recommending the Commission find no probable cause to believe that James J. Duffy violated 2 U.S.C. § 434(c)(1).

90040300648

the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

At the time of the Commission's reason to believe determinations it was unclear whether James J. Duffy had paid for the advertisement as an agent of United Typos or in his individual capacity. In his response to the Commission's interrogatories dated September 1, 1989, Mr. Duffy stated that "I, James J. Duffy paid for the advertisement placed in the New York Times on November 8, 1988. It, the cost of the advertisement, was an individual expense." (Attachment II).

In the smaller print underneath the message in the advertisement, it was stated that the advertisement was not affiliated with any political party. However, the disclaimer did not state in a clear manner whether or not it was authorized by the named candidates or their political committee. Additionally, it was not stated that Mr. Duffy had in fact paid for the advertisement. Therefore, James J. Duffy violated 2 U.S.C. § 441d(a)(3).^{3/}

^{3/} During a telephone call with this Office on February 27, 1990, Mr. Duffy asserted that when he placed the advertisement in the New York Times, he was told by an employee of the New York Times that his disclaimer was incorrect. The employee modified the disclaimer and then told Mr. Duffy that the revised disclaimer was sufficient.

90040300649

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Enter into conciliation with James J. Duffy prior to a finding of probable cause to believe.
2. Approve the attached proposed conciliation agreement and letter.

Lawrence M. Noble
General Counsel

4/1/90
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Request for conciliation dated March 6, 1990.
2. Response from Mr. Duffy dated September 1, 1989.
3. Proposed conciliation agreement and letter.

Staff Person: Mary Ann Bumgarner

90040300650



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS ^{DH}
COMMISSION SECRETARY

DATE: JUNE 6, 1990

SUBJECT: MUR 2788 - GENERAL COUNSEL'S REPORT
DATED JUNE 1, 1990

The above-captioned document was circulated to the Commission on Tuesday, June 5, 1990 at 11:00 a.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 _____
Commissioner McGarry _____
Commissioner Thomas XXXX

This matter will be placed on the meeting agenda for Tuesday, June 12, 1990.

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

9 J 0 4 0 3 0 0 6 5 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
James J. Duffy

)
) MUR 2788
)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 12, 1990, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 2788:

1. Enter into conciliation with James J. Duffy prior to a finding of probable cause to believe.
2. Approve the proposed conciliation agreement and letter attached to the General Counsel's report dated June 1, 1990.

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

Attest:

6-13-90
Date

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

20040300652



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

June 14, 1990

Mr. James J. Duffy
4312 Grace Avenue
New York, New York 10466

RE: MUR 2788
James J. Duffy

Dear Mr. Duffy:

On May 23, 1989, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441d(a)(3). At your request, on June 12, 1990, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement concerning the violation of 2 U.S.C. § 441d(a)(3) that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

You are being sent under separate cover General Counsel's Briefs concerning alleged violations of 2 U.S.C. § 434(c)(1).

93040300653

James J. Duffy
Page 2

If you have any questions or suggestions for changes in the proposed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
by LGL

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

2104030J654



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 12, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James J. Duffy
4312 Grace Avenue
New York, New York 10466

RE: MUR 2788
James J. Duffy

Dear Mr. Duffy:

On June 14, 1990, you were notified that, at your request, the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

90040300655

EBL
7082

99 JUL 26 11:55

James J. Duffey
4312 Grand Avenue
Bramley, N.Y. 10466
July 23, 1990

Federal Election Commission
Washington, D.C. 20463

Lois G. Brennan
Associate General Counsel

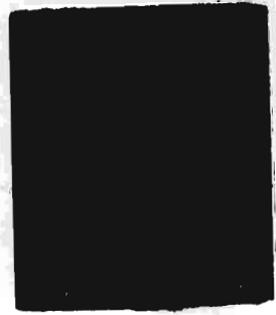
Dear Lois Brennan:

Enclosed is my signature to the
conciliation agreement, and also my
payment of \$250.00, in penalty.

My delay in responding had to do
with the amount of fine, plus I was
totally unaware of U.S.C. § 441d(a)(3). I
wasn't informed by the New York Times of such,
at the time. I placed the ad in the New York Times.

Sincerely,
James J. Duffey

9
0
0
4
0
3
0
0
6
5
6



90 AUG -9 AM 10: 24

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
James J. Duffy) MUR 2788

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by James J. Duffy.

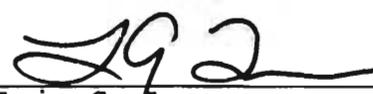
The attached agreement contains no changes from the agreement approved by the Commission on June 12, 1990. A check for the civil penalty has been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with James J. Duffy.
2. Close the file.
3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

8/8/90
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Conciliation agreement.
2. Photocopy of civil penalty check.

Staff Member: Mary Ann Bumgarner

20040300657

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2788
James J. Duffy.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 13, 1990, the Commission decided by a vote of 4-0 to take the following actions in MUR 2788:

1. Accept the conciliation agreement with James J. Duffy, as recommended in the General Counsel's Report dated August 8, 1990.
2. Close the file.
3. Approve the letters, as recommended in the General Counsel's Report dated August 8, 1990.

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

Attest:

8/14/90
Date

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

Received in the Secretariat:	Thurs., August 9, 1990	10:24 a.m.
Circulated to the Commission:	Thurs., August 9, 1990	4:00 p.m.
Deadline for vote:	Mon., August 13, 1990	4:00 p.m.

dh

20040300658



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 21, 1990

United Typos
James J. Duffy
4312 Grace Avenue
Bronx, New York 10466

RE: MUR 2788
United Typos

Dear Mr. Duffy:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Lerner
Associate General Counsel

90040300659



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 21, 1990

Mr. James J. Duffy
4312 Grace Avenue
Bronx, New York 10466

RE: MUR 2788
James J. Duffy

Dear Mr. Duffy:

On August 13, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your behalf in settlement of a violation of 2 U.S.C. § 441d(a)(3), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to you.

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

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

90040300660

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
James J. Duffy) MUR 2788

CONCILIATION AGREEMENT

This matter was initiated by a complaint filed by the Conservative Campaign Fund. The Federal Election Commission ("Commission") found reason to believe that James J. Duffy ("Respondent") violated 2 U.S.C. § 441d(a)(3).

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

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

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

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

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

1. Pursuant to 2 U.S.C. § 441d(a)(3), any newspaper communication expressly advocating the election of a clearly

1990030304000

90 JUL 27 PM 2:41

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

identified candidate, if not authorized by a candidate, political committee or its agents, must include the name of the persons who paid for the communication and state the communication is not authorized by any candidate or candidate's committee.

2. The Commission's Regulations further provide that such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

3. On November 7 and 8, 1988, Respondent placed an advertisement in the New York Times. The advertisement's message read: "Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print below this message, the advertisement stated: "United Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party."

4. The disclaimer of any party affiliation in the New York Times advertisement did not make clear whether or not the advertisement was authorized by the named candidates or their political committees. Additionally, it was not clear that Respondent had paid for the advertisement.

V. Respondent did not include the name of the person(s) who paid for the communication and did not sufficiently state

90040300662

that the communication was not authorized by any candidate or candidate's committee, in violation of 2 U.S.C. § 441d(a)(3).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of two hundred fifty dollars (\$250), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that

90040300663

is not contained in this written agreement shall be enforceable.

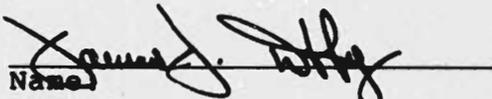
FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Date 8/20/90

FOR THE RESPONDENT:


Name:
Position:

Date 7/23/90

90040300664



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2788

DATE FILMED 9/13/90 CAMERA NO. 2

CAMERAMAN AS

90040300665



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO
THE PUBLIC RECORD IN CLOSED MUR 2788.

20040802798

90 SEP 21 PM 4:58

SENSITIVE

OCT 2 1990

EXECUTIVE SESSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
James J. Duffy and)
United Typos)

MUR 2788

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On May 23, 1989, the Commission found reason to believe that James J. Duffy and United Typos had violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3) based on a paid advertisement which appeared in the New York Times in two places on both November 7 and 8, 1988.¹ The advertisement's message read: "Listen to the Heart-Ache/Heart-Break of America/Reach Out/Vote Dukakis/Bentsen!" In smaller print underneath this message the advertisement stated: "United Typos 4312 Grace Ave. - New York, New York 10466. Ad not affiliated with any political party."

According to an affidavit by Mr. Duffy and to an invoice which he has provided, he alone paid for the advertisement for both days.

1. On August 13, 1990 the Commission accepted a signed conciliation agreement and civil penalty submitted by Mr. Duffy in settlement of the violation of 2 U.S.C. § 441d(a)(3). On that same date the Commission accepted this Office's recommendation to close the file in this matter; however, this recommendation was premature because the Commission had not yet voted regarding probable cause as to the outstanding violations by United Typos and Mr. Duffy. Therefore, this Office recommends that the Commission reopen MUR 2788 in order to vote as to the General Counsel's no probable cause recommendations.

104030 / 29

II. ANALYSIS (the General Counsel's Briefs are incorporated herein by reference)

A. THE LAW

The Act defines an 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 any candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17). See 11 C.F.R. § 109.1. The Act places no limitations on the amounts of these expenditures; however, for an expenditure to be independent all elements of this definition must be satisfied. If these elements are not satisfied, the purported independent expenditures are viewed as in-kind contributions subject to the limitations of 2 U.S.C. § 441a(a) and are reportable as such.

The Commission's Regulations at 11 C.F.R. § 109.1(b)(4)(i)(A) and (B) define "Made with the cooperation or with prior consent of, or in consultation with, or at the request or suggestion of, a candidate or an agent or authorized committee of the candidate" to mean -

- (i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is -
 - (A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

40302300

- (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 agents.
- (ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

Further, as to independent expenditures, any person other than a political committee who makes over \$250 in independent expenditures during a calendar year must file a signed statement or report with the Commission and the Secretary of State, the Clerk of the House, or the Secretary of the Senate. 2 U.S.C. § 434(c).

Pursuant to 2 U.S.C. § 441d(a)(3), any newspaper communication expressly advocating the election of a clearly identified candidate, if not authorized by a candidate, political committee or its agents, must include the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

B. RECOMMENDATIONS REGARDING UNITED TYPOS

According to the evidence in hand, Mr. Duffy alone, not United Typos, was responsible for the placement of the advertisement in the New York Times. At the time of the

1040802301

Commission's reason to believe determinations it was unclear whether James J. Duffy had paid for the advertisement as an agent of United Typos or in his individual capacity. In his response to the Commission's interrogatories dated September 1, 1989, Mr. Duffy stated that "I, James J. Duffy paid for the advertisement placed in the New York Times on November 8, 1988. It, the cost of the advertisement, was an individual expense." Therefore, since United Typos was not involved in placing or paying for the advertisement in question, this Office recommends that the Commission find no probable cause to believe that United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).

C. RECOMMENDATION REGARDING JAMES J. DUFFY

In his response to interrogatories, while Mr. Duffy states that he did in fact pay for the advertisement, he further states that he "consulted" the campaign committee offices of Dukakis/Bentsen in Washington, D.C., Boston and New York. This Office spoke with Mr. Duffy by telephone on February 27, 1990 concerning the extent to which Mr. Duffy had consulted with the campaign committees of Dukakis/Bentsen. Mr. Duffy explained each contact he had had with the Dukakis/Bentsen campaign committees. With a letter dated March 6, 1990, Mr. Duffy enclosed a statement which set out in writing each separate communication between himself and the Dukakis/Bentsen campaign committees. In this statement, Mr. Duffy explains that, before placing the political ad in the New York Times, he phoned the

2
3
0
2
3
0
2
3
0
2
4
0
9
0
2
3
0
2

Democratic Campaign Headquarters in Washington, D.C. and was directed to contact the Massachusetts Democratic Headquarters of Dukakis/Bentsen. At that point, Mr. Duffy states he phoned the Massachusetts Democratic Headquarters and offered his slogan and suggested that it might go in the "print media (newspapers)." He states that he was told at that point that the print budget was exhausted. Mr. Duffy further adds that he also suggested that the slogan be used on the campaign trail.

Mr. Duffy states that in the last week of the presidential campaign in November, 1988, he made two visits to the New York State Democratic Campaign Headquarters of Dukakis/Bentsen and each time suggested that they run a political ad (his slogan) in the Sunday, November 6, 1988 New York Times. According to Duffy's statement, at that time he was told that the print budget was exhausted, but the headquarters office suggested that he might run the political ad at his own expense.

As noted above, "Made with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate," is further explained at 11 C.F.R.

§ 109.1(b)(4)(i) as including any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. While Mr. Duffy has stated that he alone was responsible for the design and creation of the advertisement in

3
0
3
3
0
4
0
3
4
0
3

question, he did communicate directly with the Dukakis/Bentsen committee when seeking their financial assistance in placing the advertisement. He was informed by phone and in person, in Boston and New York, that the committee's print budget was exhausted and that anything beyond that point would have to be done at his own expense. Further, he states that it was suggested to him that he run the ad in the New York Times at his own expense. Therefore, it does appear that, prior to the placement of the advertisement, there was an "arrangement" or "coordination" between Mr. Duffy and the Dukakis/Bentsen campaign committees pursuant to Section 109.1(b)(4). While Mr. Duffy apparently received no direction from the Dukakis/Bentsen campaign committees as to the design of the advertisement in question, he received direction as to its placement.

At the reason to believe stage in this matter, it appeared that the advertisement placed in the New York Times was an independent expenditure by either Mr. Duffy or United Typos. However, as discussed above, it has become apparent that there was coordination between Mr. Duffy and the Dukakis/Bentsen campaign committee, thereby resulting in an in-kind contribution from Mr. Duffy in accordance with 2 U.S.C. § 441a(a)(1)(A).² Therefore, because the advertisement in question was not an independent expenditure and thus not

2. As previously noted, Mr. Duffy has signed a conciliation agreement with the Commission regarding his violation of 2 U.S.C. § 441d(a)(3).

4030304

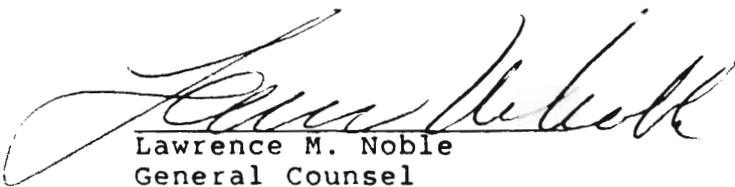
required to to be reported by Mr. Duffy, this Office also recommends that the Commission find no probable cause to believe that James J. Duffy violated 2 U.S.C. § 434(c)(1) and close the file in this matter.

III. RECOMMENDATIONS

1. Reopen MUR 2788.
2. Find no probable cause to believe that James J. Duffy violated 2 U.S.C. § 434(c)(1).
3. Find no probable cause to believe that United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).
4. Approve the attached letters.
5. Close the file.

Date

9/21/90


Lawrence M. Noble
General Counsel

Attachments

1. Letters (3)

Staff Assigned: Mary Ann Bumgarner

40302305



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *gab*
DATE: September 21, 1990
SUBJECT: MUR 2788 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of October 2, 1990

Open Session _____
Closed Session XX

CIRCULATIONS

48 Hour Tally Vote
 Sensitive
 Non-Sensitive

24 Hour No Objection
 Sensitive
 Non-Sensitive

Information
 Sensitive
 Non-sensitive

Other XX
Sensitive
Circulate on blue paper.

DISTRIBUTION

Compliance XX
Audit Matters []
Litigation []
Closed MUR Letters []
Status Sheets []
Advisory Opinions []
Other (see distribution below) []

10040302306

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2788
James J. Duffy and United Typos)

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission Executive Session of October 4, 1990, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2788:

1. Reopen MUR 2788.
2. Find no probable cause to believe that James J. Duffy violated 2 U.S.C. § 434(c)(1).
3. Find no probable cause to believe that United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).
4. Approve the letters attached to the General Counsel's Report dated September 21, 1990.
5. Close the file.

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

Attest:

Oct. 5, 1990

Date

Hilda Arnold

Hilda Arnold
Administrative Assistant

40802807



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 11, 1990

United Typos
James J. Duffy
4312 Grace Avenue
Bronx, New York 10466

CLOSED

RE: MUR 2788
United Typos

Dear Mr. Duffy:

Due to administrative inadvertence, you were notified on August 21, 1990 that the entire file in this matter had been closed. This is to advise you that on October 4, 1990 the Federal Election Commission reopened this matter and found that there is no probable cause to believe that United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3). Accordingly, at this time, the file in this matter has closed.

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. Such materials should be sent to the Office of the General Counsel.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

2004030308



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

October 11, 1990

Mr. James J. Duffy
4312 Grace Avenue
Bronx, New York 10466

RE: MUR 2788
James J. Duffy

Dear Mr. Duffy:

Due to administrative inadvertence, you were notified on August 21, 1990 that the file in this matter had been closed as it pertains to you. This is to advise you that on October 4, 1990 the Federal Election Commission reopened this matter and found that there is no probable cause to believe you violated 2 U.S.C. § 434(c)(1). Accordingly, at this time, the file in this matter has been closed.

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. Such materials should be sent to the Office of the General Counsel.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

1004000000



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 11, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peter T. Flaherty, Chairman
Conservative Campaign Fund
1156 15th Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 2788
James J. Duffy and
United Typos

Dear Mr. Flaherty:

This is in reference to the complaint you filed with the Federal Election Commission on November 22, 1988 concerning a paid advertisement which allegedly appeared in the New York Times on Tuesday, November 8, 1988.

Based on your complaint, the Commission found that there was reason to believe James J. Duffy and United Typos violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3), provisions of the Federal Election Campaign Act of 1971, as amended, and conducted an investigation in this matter. On August 13, 1990 the Commission accepted a signed conciliation agreement submitted by Mr. Duffy in settlement of the violation of 2 U.S.C. § 441d(a)(3) prior to a finding of probable cause.

Furthermore, after an investigation was conducted and the General Counsel's briefs were considered, the Commission, on October 4, 1990 found that there was no probable cause to believe that James J. Duffy had violated 2 U.S.C. 434(c)(1). On that same date, the Commission found that there was no probable cause to believe that United Typos had violated 2 U.S.C. §§ 434(c)(1) and 441d(a)(3).

Accordingly, the Commission closed the file in this matter on October 4, 1990. A copy of the conciliation agreement is enclosed for your information.

40,000,000

Mr. Flaherty
Page 2

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

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Conciliation Agreement

100-4050-311