FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2790

DATE FILMED 2/7/89 CAMERA NO. 4

CAMERAMAN AS

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REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: June 3, 1988

ANALYST: Robert B. DiNardo

I. COMMITTEE: Massachusetts Republican State Committee
(C00042622)
James L. Edholm, Treasurer
20 East Street, 4th Floor, Room 526
Boston, MA 02111

II. RELEVANT STATUTE: 2 U.S.C. §441a(f)
11 CFR 102.5(a)(1)(i)

III. BACKGROUND:

The Receipt of an Apparent Impermissible and Excessive Contribution From an Unregistered Organization

The Massachusetts Republican State Committee ("the Committee") reported a receipt totalling $8,500 from an unregistered organization on October 29, 1987 (Attachment 2).

On March 23, 1988, a Request for Additional Information ("RFAI") was sent to the Committee. The RFAI notified the Committee that an excessive contribution was received from an unregistered organization and requested clarification regarding the permissibility of the funds used to make the contribution. If the contribution was composed of permissible funds, $3,500 would need to be refunded to the donor, and/or transferred, with the donor's consent, to the Committee's non-federal account. If the contribution was not permissible, the entire amount would need to be refunded to the donor, and/or transferred to the non-federal account (Attachment 3).

No response was received, and a Second Notice was sent to the Committee on April 14, 1988. The Second Notice referenced a response received from the unregistered organization that indicated the organization intended the contribution be made to the Committee's non-federal account. The Second Notice therefore, directed the Committee to refund and/or transfer out the entire amount of the contribution to its non-federal account (Attachment 4).

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On April 26, 1988, Mr. Robert Ruzzo, an attorney representing the Committee, contacted the Reports Analysis Division ("RAD") analyst. Mr. Ruzzo asked for advice on how to respond to the RFAI. The RAD analyst told Mr. Ruzzo to refund the contribution to the donor, and/or transfer the contribution to the Committee's non-federal account. Mr. Ruzzo was also instructed to supply photocopies of the refund/transfer check(s) to the Commission (Attachment 5).

On April 28, 1988, Mr. Ruzzo again contacted the RAD analyst. Mr. Ruzzo said the Committee probably would transfer $3,500 to its non-federal account, and refund $5,000 to the donor. He also asked if the Committee could keep $5,000 in its federal account. The RAD analyst told Mr. Ruzzo the Committee would need written notification verifying the permissibility of the $5,000 from the donor, which still would be required to register with the Commission (Attachment 6).

On April 29, 1988, the Committee notified the Commission in writing that $3,500 had been transferred to its non-federal account, with $5,000 to be refunded to the donor. The Committee included a note from the unregistered organization (donor) that authorizes the $3,500 transfer of funds to the Committee's non-federal account. The Committee's letter further requested the Party/Non-Party Branch Chief ("the Branch Chief") call Mr. Ruzzo to verify the propriety of the proposed refund. The Committee also mentioned that photocopies of the checks would be mailed to the Commission (Attachment 7).

On May 4, 1988, the Branch Chief contacted Mr. Ruzzo, and told him to proceed with the refund and forward copies of the refund/transfer checks to the Commission (Attachment 8). Also on the same day, the Committee notified the Commission in writing that a response was being prepared by general counsel, and would be sent shortly (Attachment 9).

On May 16, 1988, the RAD analyst contacted Ms. Beth Lindstrom, administrative director of the Committee. The RAD analyst told Ms. Lindstrom the Commission had not received the photocopies of the checks. She said Mr. Ruzzo was preparing the photocopies, which would be mailed to the Commission (Attachment 10).

On May 20, 1988, the Committee mailed to the Commission a photocopy of the $5,000 refund check, dated March 2, 1988, and a photocopy of the $3,500 transfer check, dated February 9, 1988 (Attachment 11).

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

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Attachment #1

FEDERAL ELECTION COMMISSION
1987-1988
COMMITTEE INDEX OF DISCLOSURE DOCUMENTS - (C)

DATE 3JUN88

COMMITTEE DOCUMENT	RECEIPTS		DISBURSEMENTS		COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
					TYPE OF FILER		
MASSACHUSETTS REPUBLICAN STATE COMMITTEE							
CONNECTED ORGANIZATION:					ID #C00042622	PARTY QUALIFIED	
1987 STATEMENT OF ORGANIZATION - AMENDMENT					23MAR87	3	87FEC/463/3762
MID-YEAR REPORT	309,921		255,977		1JAN87 -30JUN87	51	87FEC/481/3989
MID-YEAR REPORT - AMENDMENT	-		-		1JAN87 -30JUN87	3	88FEC/512/0635
REQUEST FOR ADDITIONAL INFORMATION					1JAN87 -30JUN87	5	88FEC/501/0584
REQUEST FOR ADDITIONAL INFORMATION 2ND					1JAN87 -30JUN87	6	88FEC/509/4360
YEAR-END	133,288		187,093		1JUL87 -31DEC87	32	88FEC/508/2151
YEAR-END - AMENDMENT	-		-		1JUL87 -31DEC87	5	88FEC/524/0414
YEAR-END - AMENDMENT	-		-		1JUL87 -31DEC87	6	88FEC/524/1307
YEAR-END - AMENDMENT	-		-		1JUL87 -31DEC87	2	88FEC/524/1305
YEAR-END - AMENDMENT	-		-		1JUL87 -31DEC87	2	88FEC/526/2654
YEAR-END - AMENDMENT	-		-		1JUL87 -31DEC87	5	88FEC/526/2649
YEAR-END - AMENDMENT	-		-		1JUL87 -31DEC87	5	88FEC/526/3993
REQUEST FOR ADDITIONAL INFORMATION					1JUL87 -31DEC87	3	88FEC/515/1006
REQUEST FOR ADDITIONAL INFORMATION 2ND					1JUL87 -31DEC87	2	88FEC/518/5033
1988 APRIL QUARTERLY	86,457		71,037		1JAN88 -31MAR88	20	88FEC/521/0250
TOTAL	529,666	0	514,107	0		150	TOTAL PAGES

All reports have been reviewed.

Ending cash-on-hand as of 3/31/88: $16,381.75

Outstanding debts and obligations owed by the committee as of 3/31/88: $6,397.47

89040075015

Attachment #2

SCHEDULE A — **ITEMIZED RECEIPTS** — 1987 Year End Report

This expense schedule is for each category of the Detailed Summary Page

PAGE 1 OF 1

FOR LINE NUMBER 11 C

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

NAME OF COMMITTEE (In Full): Massachusetts Republican State Congressional Committee

Full Name, Mailing Address and ZIP Code	Receipt For	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
A. Dentists Interested in Legislation, 31 Washington Street, Wellesley, MA 02181	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $ 500.00	11/12/87	500.00
B. Committee for Political Choice, 26 Mt. Vernon Street, Boston, MA 02106	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $ 8500.00	10/29/87	8500.00
C.	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $		
D.	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $		
E.	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $		
F.	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $		
G.	☐ Primary ☐ General ☐ Other (specify)	Aggregate Year-to-Date > $		

SUBTOTAL of Receipts This Page (optional) > 9000.00

TOTAL This Period (last page this line number only) >

3873309921 53

Attachment #3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 23

Jim L. Edholm, Treasurer
Massachusetts Republican State Committee
20 East Street, 4th Floor, Rm. 326
Boston, MA 02111

Identification Number: C00042622

Reference: Year End Report (7/1/87-12/31/87)

Dear Mr. Edholm:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule A of your report discloses a contribution(s) from an organization which is not a political committee registered with the Commission (pertinent portion(s) attached). In addition, the contribution appears to exceed the limits set forth in the Act. The Act precludes a political committee from receiving contributions from a person or another committee in excess of $5,000 in a calendar year. (2 U.S.C. §441a(f)) Also, in order to make contributions to your committee, organizations which are not political committees must either: 1) establish a separate account which contains only those funds permitted under the Act, or 2) demonstrate through a reasonable accounting method that the organization has received sufficient funds subject to the limitations and prohibitions in order to make the contribution. (11 CFR 102.5(b))

If your committee does not finance non-federal activity, the receipt of the referenced contribution(s) may violate the limitations and prohibitions of the Act. (2 U.S.C. §§441a(f) and 441b) If your committee engages in both federal and non-federal activity, either through a separate non-federal account, or one account that finances activity in connection with both federal and non-federal elections, your committee may be in violation of 11 CFR 102.5(a).

RD

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

1) refund to the donor, or transfer-out to a non-federal account, the amount in excess of $5,000; and

2) determine the extent to which your committee received funds that are not permissible, and refund or transfer-out the prohibited funds.

If you choose to transfer the funds to an account not used to influence federal elections, the Commission advises that you inform the contributor in writing and provide the contributor with the option of receiving a refund. You may wish to seek a written authorization (either before or after the transfer-out) from the donor for any transfer-out to protect the donor's interests.

Please inform the Commission immediately in writing and provide a photocopy of your check for the refund or transfer-out. Refunds and transfers-out should be disclosed on a supporting Schedule B for Line 26 or 20 of the report covering the period during which they are made.

Although the Commission may take further legal steps concerning the acceptance of prohibited and excessive contribution(s), your prompt refund or transfer-out will be taken into consideration.

RD

-Please clarify all expenditures made for political advertisement, and advertisement for fundraising event. If a portion or all of these expenditures were made on behalf of specifically identified federal candidates, they should be disclosed on Schedule B or F for Line 21 or 23 and include the amount, name, address and office sought by each candidate. 11 CFR 104.3(b) and 106.1.

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 376-2480.

Sincerely,

Ivonne Cotto

Ivonne Cotto
Reports Analyst
Reports Analysis Division

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Attachment #4

RQ-3

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 14, 1988

Jim L. Edholm, Treasurer
Massachusetts Republican State
Committee
20 East Street, 4th Floor, Rm. 526
Boston, MA 02111

Identification Number: C00042622

Reference: Year End Report (7/1/87-12/31/87)

Dear Mr. Edholm:

On March 23, 1988 you were notified that a review of the above-referenced report(s) raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act.

Although the Commission has not received a response from your Committee, a response has been received from the Committee for Political Choice indicating that its contribution was intended for your non-federal account. Your committee must refund the contribution to the donor or transfer-out the contribution to your non-federal account.

Please inform the Commission immediately in writing and provide a photocopy of your check for the refund or transfer-out. Refunds and transfers-out should be disclosed on a supporting Schedule B for Line 26 or 20 of the report covering the period during which they are made.

Although the Commission may take further legal steps concerning the acceptance of prohibited and excessive contribution(s), your prompt refund or transfer-out will be taken into consideration.

In addition, please clarify all expenditures made for political advertisement, newsletter, and advertisement for fundraising event. If a portion or all of these expenditures were made on behalf of specifically identified federal candidates, they should be disclosed on Schedule F for Line 23 and include the amount, name, address and office sought by each candidate. 11 CFR 104.3(b) and 106.1.

If this information is not received by the Commission within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

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

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

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Attachment #5

MEMORANDUM TO THE FILES:

COMMITTEE: Massachusetts Republican State Committee

I.D. NUMBER: C00042622

CONTACT: Bob Ruzzo, Attorney

DATE: April 26, 1988

ANALYST: Robert B. DiNardo

SUBJECT: 1987 Year End RFAI

Mr. Ruzzo called at 3:30 P.M. in regard to the 1987 Year End RFAI. He asked for advice concerning the contribution received from the unregistered organization. Mr. Ruzzo said he spoke with the treasurer from the unregistered organization, and the treasurer would do what was needed. I told Mr. Ruzzo he could either transfer the contribution to the Committee's non-federal account and/or refund it to the unregistered organization. In both cases, a photocopy of the check would need to be sent to the Commission. If the Committee decided to keep the contribution, the unregistered organization would be required to register with the Commission. Mr. Ruzzo said he would talk with the unregistered organization's treasurer, and send the Commission a written response.

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Attachment #6

MEMORANDUM TO THE FILES:

COMMITTEE: Massachusetts Republican State Committee

I.D. NUMBER: C00042622

CONTACT: Bob Ruzzo, Attorney

DATE: April 28, 1988

ANALYST: Robert B. DiNardo

SUBJECT: 1987 Year End RFAI

Mr. Ruzzo called at 10:30 A.M. He said the Committee probably would transfer $3500 to its non-federal account and refund $5000 to the unregistered organization. I told him to provide photocopies of both checks with the Committee's written response. Mr. Ruzzo asked if the Committee could keep $5000 of the original contribution in its federal account. I told him the Committee would need a written notification from the unregistered organization that the money was permissible according to federal laws and regulations. I also told him the unregistered organization would then be required to register with the Commission. Mr. Ruzzo said a decision would be made, and the Commission notified in writing.

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HAND DELIVERED

Attachment #7

88 APR 2 10:13

Massachusetts Republican Party

Donald B. Wheeler
General Counsel

Massachusetts Republican State Committee
Suite 2600, 100 Summer St., Boston, MA 02110. Telephone (617) 426-5720

April 28, 1988

FEDERAL EXPRESS

Ms. Lisa J. Stolaruk
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Massachusetts Republican State Committee
Your Identification No: C00042622
(Year End Report July 1, 1987 - June 31 1987)

Dear Ms. Stolaruk:

The purpose of this letter is to respond to the April 14 1988 letter of John D. Gibson Assistant Staff Director of the Reports Analysis Division of the Federal Election Commission ("FEC"), which was addressed to Mr. Jim L. Edholm, the Treasurer of the Massachusetts Republican State Committee (the "State Committee"). A copy of this letter is enclosed for your reference. At issue is an $8,500 contribution by the Greater Boston Committee for Political Choice (the "Greater Boston Committee") to the federal account of the State Committee.

As directed by Mr. Gibson in his letter, I have spoken with Robert DiNardo regarding the best resolution of this situation. As a result of my consultations with Mr. DiNardo and with members of the State Committee, I wish to inform the FEC at this time that it is the intention of the State Committee to refund $5,000.00 of this contribution to the Greater Boston Committee Three Thousand Five Hundred ($3,500.00) Dollars of the original

contribution has already been transferred to the non-federal account of the State Committee. A letter from Mr. Morgan Palmer, the Treasurer of the Greater Boston Committee consenting to the transfer of the $3,500.00 to the non-federal account and acknowledging the intention of the State Committee to make a $5,000.00 refund is enclosed. I have directed the State Committee to disclose this transaction on a supporting Schedule B on its next report to the Commission.

For your own information, it appears that the Greater Boston Committee intends to register with the FEC and to again contribute to the State Committee in accordance with the provisions of the Federal Election Campaign Act.

If the course of action described in this letter is in accordance with FEC practices, I will forward, by Federal Express, copies of the checks described above. Please contact me by telephone. My direct dial number is (617) 573-5839. If there is any reason why we should not undertake the transaction as proposed, please let me know as soon as possible.

Very truly yours,

Robert M. Ruggiero

Robert M. Ruggiero

RMR:mfh
Enclosures
cc: Mr. Robert DiNardo
Beth Lindstrom
Dan Winslow, Esq.

3 8 7 3 3 2 4 0 4 1 5

GREATER BOSTON COMMITTEE FOR POLITICAL CHOICE
ROOM [illegible] TEN TREMONT STREET
BOSTON, MASSACHUSETTS 02108

April 29, 1988

TO WHOM IT MAY CONCERN,

I, Morgan Palmer, the Treasurer of the Greater Boston Committee for Political Choice (the "Committee"), do hereby acknowledge that I, on behalf of the Committee, have consented to the transfer of $3,500.00 of the funds contributed by the Committee to the non-federal account of the Massachusetts Republican State Committee (the "State Committee"). I also acknowledge that the remaining $5,000.00 contributed is to be refunded to the Committee.

Very truly yours,

Morgan Palmer

Morgan Palmer, Treasurer
Greater Boston Campaign for
Political Choice

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Attachment #8

TELECON

ANALYST: Lisa J. Stolaruk

CONVERSATION WITH: Mr. Robert Ruzzo

COMMITTEE: Massachusetts Republican State Committee

DATE: May 3rd and May 4th

SUBJECT(S): Response to RFAI for Year End Report

I received a letter from Mr. Ruzzo on the 3rd of May which indicated the committee's intention to refund the remaining $5,000 to the Greater Boston Committee. The $3,500 has already been transferred to the state committee's non-federal account. Mr. Ruzzo's letter requested that I call him regarding the propriety of the proposed refund.

Following several attempts to reach one another by phone, I spoke with Mr. Ruzzo on May 4th and advised that he proceed with the refund and forward copies of the refund/transfer checks to the Commission. Mr. Ruzzo stated that he would do this as soon as possible.

89040754026

Attachment #9

Massachusetts Republican Party

Fran Tully Shields
State Chairman

Massachusetts Republican State Committee
30 East Street Boston Massachusetts 02111 Telephone (617) 350-5619

April 29, 1988

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

Dear Mr. Gibson,

After receiving notice about our year-end report (7/1/87 - 12/31/87), I forwarded a copy of your letter to our general counsel. In the meantime, we contacted the Committee for Political Choice and discussed this matter with them. The Committee for Political Choice was then going to register with the Federal Elections Commission and our problem would be solved.

I called the Election Commission and let them know that they would not have a written response within the required fifteen days because general counsel had not yet responded. The gentleman I spoke with told me not to worry about the next letter we would be receiving. General counsel still has these letters and will be responding to your office.

I, at this time, would like to communicate to you that we are in the process of resolving this problem.

If you have any questions in regard to this letter, please call me at 617/350-5619.

Sincerely,

Beth Lindstrom
Administrative Director

BL/fs

PAID FOR BY THE MASSACHUSETTS REPUBLICAN STATE COMMITTEE

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Attachment #10

MEMORANDUM TO THE FILES:

COMMITTEE: Massachusetts Republican State Committee

I.D. NUMBER: C00042622

CONTACT: Beth Lindstrom, Administrative Director

DATE: May 16, 1988

ANALYST: Robert B. DiNardo

SUBJECT: 1987 Year End RFAI

I called Ms. Lindstrom at 11:40 A.M. I told her that I had been in contact with Bob Ruzzo concerning the Committee's 1987 Year End RFAI. She said she was aware of this, and was also working with Mr. Ruzzo. I told her that the Commission had not received the photocopies of the checks, nor the response clarifying the disbursements for advertisements. Ms. Lindstrom said she mailed the photocopies of the checks to Mr. Ruzzo, who was preparing to mail them to the Commission. She also said a response to the advertising disbursements would be sent as soon as possible.

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Attachment # 11

FEDERAL ELECTION COMMISSION

88 MAY 20 AM 9:16

[redacted]

May 18, 1988

Ms. Lisa J. Stolaruk
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Massachusetts Republican State Committee
Your Identification No: C00042622
(Year End Report July 1, 1987 - June 31, 1987)

Dear Ms. Stolaruk:

In accordance with my letter to you dated April 28, 1988, I am enclosing copies of the following checks:

1. Check evidencing transfer of $3,500.00 from the Massachusetts Republican Congressional Committee to the non-federal account of the Massachusetts Republican State Committee;

2. Check in the amount of $5,000.00 made payable to the Committee for Political Choice, which constitutes a reimbursement of the contribution made by the Committee for Political Choice.

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[redacted], POWERS & NEEDHAM

I believe that the Massachusetts Republican State Committee has now complied with your directions regarding this matter. If you require anything further, please contact me at any time.

Very truly yours,

Robert M. Ruggiero

RMR:mfh
Enclosures
cc: Mr. Robert DiNardo
Beth Lindstrom
Dan Winslow, Esq.
Morgan Palmer

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MASSACHUSETTS REPUBLICAN
STATE CONGRESSIONAL COMMITTEE
20 EAST STREET
BOSTON, MA 02111

⑆011000390⑆ 517 52680⑈

☒ GENERAL ☐ FUND RAISING	SPECIFIC PURPOSE (MANDATORY)	check deposited incorrectly

1393

PAY Three thousand five hundred & 00/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
2/9/88	Massachusetts State Committee 20 East St Boston, Ma 02111	receipts deposited incorrectly	1393	$ 3500.00

CAMPAIGN ACCOUNT
MASSACHUSETTS REPUBLICAN
STATE CONGRESSIONAL COMMITTEE

BANK OF BOSTON
THE FIRST NATIONAL BANK OF BOSTON

⑈001393⑈ ⑆011000390⑆ 517 52680⑈

FEC Letter

3 of Attachment #11

4 of Attachment #11

RECEIVED
MAY 1988

MASSACHUSETTS REPUBLICAN
STATE CONGRESSIONAL COMMITTEE
20 EAST STREET
BOSTON, MA 02111

REMITTANCE ADVICE
Correction funds sent
☒ GENERAL ☐ FUND RAISING
SPECIFIC PURPOSE (MANDATORY)

5-39/110

1526

PAY Five Thousand DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
3/88	Committee for Political Choice	reimbursement	1526	$ 5000.00

CAMPAIGN ACCOUNT
MASSACHUSETTS REPUBLICAN
STATE CONGRESSIONAL COMMITTEE

Lawrence P. Moore

BANK OF BOSTON
THE FIRST NATIONAL BANK OF BOSTON

⑈001526⑈ ⑆011000390⑆ 517⑈52680⑈

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
88 OCT 28 AM 11:22

SENSITIVE
EXECUTIVE SESSION
NOV 15 1988

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

FIRST GENERAL COUNSEL'S REPORT

RAD Referral #88L-14
Staff Member: Deborah Curry

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: Massachusetts Republican State Committee and James L. Edholm, as treasurer

RELEVANT STATUTES: 2 U.S.C. §441a(f)
2 U.S.C. §441b
11 C.F.R. §102.5(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by the Reports Analysis Division ("RAD") after a review of the disclosure reports of Massachusetts Republican State Committee ("Federal Account"). The RAD review revealed that the Federal Account received an apparent impermissible and excessive contribution totalling $8,500 from an unregistered organization during the 1987 Year-End reporting period. On March 2, 1988, the Federal Account refunded $5,000 to the unregistered committee and on February 9, 1988, $3,500 was transferred by the Federal Account to the Non-Federal Account.

II. FACTUAL AND LEGAL ANALYSIS

A. FACTS

The Federal Account reported a receipt totalling $8,500 from an unregistered organization (Greater Boston Committee for Political Choice) on October 29, 1987. (Attachment 1, page 5).

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On March 23, 1988, a Request for Additional Information ("RFAI") was sent to the Federal Account. The RFAI notified the Federal Account that an excessive contribution was received from an unregistered organization and requested clarification regarding the permissibility of the funds used to make the contribution. If the contribution was composed of permissible funds, $3,500 would need to be refunded to the donor, or transferred, with the donor's consent to the Committee's Non-Federal Account. (Attachment 1, pages 6-7).

No response was received, and a Second Notice was sent to the Federal Account on April 14, 1988. The Second Notice referenced a response received from the unregistered organization that indicated the organization intended the contribution to be made to the Committee's Non-Federal Account.1/ The Second Notice therefore, directed the Committee to refund and/or transfer out the entire amount of the contribution to its Non-Federal Account. (Attachment 1, pages 8-9).

On April 26, 1988, Mr. Robert Ruzzo, an attorney representing the Federal Account, contacted the RAD Analyst. Mr. Ruzzo asked for advice on how to respond to the RFAI. The RAD Analyst told Mr. Ruzzo to refund the contribution to the donor, or transfer the contribution to the Committee's Non-Federal Account. Mr. Ruzzo was also instructed to supply photocopies of the refund/transfer check(s) to the Commission. (Attachment 1, page 10).

1/ A telephone conversation with a RAD Analyst along with correspondence from Greater Boston Committee for Political Choice seems to indicate that the $8,500 contribution was intended for the Non-Federal Account. See Attachment 2, pages 22-25.

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On April 28, 1988, Mr. Ruzzo again contacted the RAD Analyst. Mr. Ruzzo said the Federal Account would probably transfer $3,500 to its Non-Federal Account, and refund $5,000 to the donor. He also asked if the Federal Account could keep $5,000 in its Federal Account. The RAD Analyst told Mr. Ruzzo the Federal Account would need written notification verifying the permissibility of the $5,000 from the donor who still would be required to register with the Commission. (Attachment 1, page 11).

On April 29, 1988, the Committee notified the Commission in writing that $3,500 had been transferred to its Non-Federal Account, with $5,000 to be refunded to the donor. The Committee included a note from the unregistered organization (donor) that authorized the $3,500 transfer of funds to the Committee's Non-Federal Account. The Federal Account's letter further requested the Party/Non-Party Branch Chief ("the Branch Chief") call Mr. Ruzzo to verify the propriety of the proposed refund. The Federal Account also mentioned that photocopies of the checks would be mailed to the Commission. (Attachment 1, page 12-14).

On May 4, 1988, the Branch Chief contacted Mr. Ruzzo, and told him to proceed with the refund and forward copies of the refund/transfer checks to the Commission. (Attachment 1, page 15). Also on the same day, the Federal Account notified the Commission in writing that a response was being prepared by its general counsel, and would be sent shortly. (Attachment 1, page 16).

On May 16, 1988, the RAD Analyst contacted Ms. Beth Lindstrom, administrative director of the Federal Account. The

R 9 0 4 0 7 5 4 0 3 5

RAD Analyst told Ms. Lindstrom the Commission had not received the photocopies of the checks. She said Mr. Ruzzo was preparing the photocopies, which would be mailed to the Commission. (Attachment 1, page 17). On May 20, 1988, the Committee mailed to the Commission a photocopy of the $5,000 refund check, dated March 2, 1988, and a photocopy of the $3,500 transfer check, dated February 9, 1988. (Attachment 1, pages 18-21).

B. ANALYSIS

1. Acceptance of Excessive Contributions under 2 U.S.C. §441a(f).

Under the Act no person shall make contribution to a political committee in excess of $5,000. 2 U.S.C. §441a(a)(1)(C). Consequently, no political committee may knowingly accept contributions from such person or political committee in excess of $5,000. 2 U.S.C. §441a(f). Pursuant to 11 C.F.R. § 103.3, committees that deposit facially excessive contributions are allowed sixty days in which to obtain a redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. § 110.1 or 110.2. If a redesignation or reattribution is not obtained, the treasurer must refund the contribution to the contributor within 60 days of receipt of the contribution. The issue here is whether the Federal Account knowingly accepted a contribution that exceeded the contribution limits of the Act.

It appears from the facts in this matter that the Federal Account accepted contributions that exceeded the limits of the Act. The Federal Account received a $8,500 contribution from an unregistered committee. The Federal Account did not rectify its

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receipt of the facially excessive contribution within the 60 day time period prescribed by 11 C.F.R. § 103.3. According to the record, the Federal Account made a $5,000 refund to the unregistered committee and transfered $3,500 to the Non-Federal Account between 103-125 days after receipt of the contribution. Additionally, it also appears from correspondence with the unregistered committee that the $8,500 contribution was intended for the Non-Federal Account.2/

Accordingly, this Office recommends that the Commission find reason to believe the Federal Account and James L. Edholm, as treasurer, violated 2 U.S.C. § 441a(f).3/

2. Financing Political Activity In Connection With Federal Elections Under 11 C.F.R. § 102.5(a)

11 C.F.R. § 102.5 prescribes certain requirements for organizations that intend to finance both federal and non-federal activity. Pursuant to 11 C.F.R. § 102.5(a)(1)(i), when an organization elects to establish a separate federal account that is treated as a separate federal political committee, only funds subject to the prohibitions and limitations of the Act may be deposited into the federal account. 11 C.F.R. § 102.5(a)(1)(i).

2/ Since it appears that the unregistered committee intended this contribution to be for the Non-Federal account, this Office makes no recommendations with respect to possible violations of 2 U.S.C. §433 and 434 at this time.

3/ Greater Boston Committee for Political Choice was not separately referred because it did not meet RAD's referral threshold for unregistered committees.

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Additionally, pursuant to 11 C.F.R. § 102.5(a)(2), all contributions deposited in such federal account must be designated for the federal account, any solicitations for contributions to the federal account must expressly state that the contributions will be used in connection with a federal election, and contributors must be informed that all contributions are subject to the prohibitions and limitations of the Act.

The funds deposited into the Federal Account originated with an unregistered organization that could accept prohibited funds. Furthermore, the unregistered organization has indicated that it intended that the funds go to the Non-Federal Account. Thus it appears that the transaction in question constitutes a violation of 11 C.F.R. § 102.5(a). Therefore, the Office of the General Counsel recommends that the Commission find reason to believe the Federal Account and James L. Edholm, as treasurer violated 11 C.F.R. § 102.5(a).

3. Contributions From Banks, Corporations and Labor Unions Under 2 U.S.C. § 441b.

Another issue raised by this referral is whether the $8,500 contribution received by the Federal Account from the unregistered committee contained funds prohibited under the Act. Pursuant to 2 U.S.C. § 441b contributions or expenditures by national banks, corporations and labor organizations in connection with federal elections are prohibited.

Under Massachusetts law, state political committees may receive contributions of an unlimited amount from labor

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organizations. There is no indication that the Federal Account made any efforts to determine whether the $8,500 contribution from the unregistered committee contained labor organization funds. The deposit of the $8,500 received from the unregistered committee may have contained contributions prohibited by 2 U.S.C. § 441b. Accordingly, this Office recommends that the Commission find reason to believe the Federal Account and James L. Edholm, as treasurer, violated 2 U.S.C. § 441b. Additionally, the Office of General Counsel submits for Commission approval interrogatories and a request for production of documents to the Federal Account on this issue, so that the permissibility of the contribution received by the Federal Account can be determined. 4/ Since it is possible that the Federal Account may not know whether the contribution was permissible under the Act, the Office of General Counsel also submits for Comission approval interrogatories and a request for documents concerning this question to the contributor (Greater Boston Committee for Political Choice) as a non-respondent witness in the matter.

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III. RECOMMENDATIONS

1. Open a Matter Under Review

2. Find reason to believe the Massachusetts Republican State Committee and James L. Edholm, as treasurer, violated 2 U.S.C. §§ 441a(f) and 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a).

4/ Pursuant to 11 C.F.R. § 103.3, it is the treasurer's responsibility to determine the legality of contributions received and deposited by the Committee.

3. Approve the attached Letter, Factual and Legal Analysis, Interrogatories and Request For Production of Documents to Massachusetts Republican State Committee and James L. Edholm, as treasurer.

4. Approve the attached Letter, Interrogatories and Request for Production of Documents to Greater Boston Committee for Political Choice.

Lawrence M. Noble
General Counsel

10-28-88
Date

By: Lois G. Lerner
Associate General Counsel

Attachments
1. Referral Material
2. Unregistered Committee Correspondance
3. Letter, Factual and Legal Analysis, Interrogatories and Request for Production of Documents
4. Letter, Interrogatories and Request for Production of Documents to Greater Boston Committee for Political Choice.

Staff Member: Deborah Curry

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: NOVEMBER 2, 1988

SUBJECT: OBJECTIONS TO RAD Ref. 88L-14: FIRST G.C. REPORT SIGNED OCTOBER 28, 1988

The above-captioned document was circulated to the Commission on Friday, October 28, 1988 at 2:00 p.m.

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

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

This matter will be placed on the meeting agenda for November 15, 1988.

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

8904075540 41

BEFORE THE FEDERAL ELECTION COMMISSION

(MUR 2790)

In the Matter of)
)
Massachusetts Republican State) RAD Referral #88L-14
Committee and James L. Edholm,)
as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 15, 1988, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to the above-captioned referral:

1. Open a Matter Under Review.

2. Find reason to believe the Massachusetts Republican State Committee and James L. Edholm, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a).

3. Approve the Letter, Factual and Legal Analysis, Interrogatories and Request for Production of Documents to Massachusetts Republican State Committee and James L. Edholm, as treasurer, as recommended in the General Counsel's report dated October 28, 1988, subject to amendment to conform with action 2 noted above.

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

Attest:

Nov. 17, 1988
Date

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

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1988

James L. Edholm, Treasurer
Massachusetts Republican State Committee
20 East Street, 4th Floor, Room 526
Boston, MA 02111

RE: MUR 2790

Dear Mr. Edholm:

On November 15, 1988, the Federal Election Commission found that there is reason to believe Massachusetts Republican State Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(f) a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. § 102.5(a) of Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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

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

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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 investigation to be made public.

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

Sincerely,

Danny McDonald
for
Thomas J. Josefiak
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Interrogatories and Request for Production of Documents

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SHERBURNE, POWERS & NEEDHAM
COUNSELLORS AT LAW

JOHN H. SHERBURNE (1910-1988)
WALTER POWERS (1910-1977)
DANIEL NEEDHAM (1910-1971)
F STANTON DELAND (1940-1988)

ROBERT F WHITE
DANIEL NEEDHAM, JR.
WILLIAM D. WEEKS
JOHN T. COLLINS
STEPHEN A. HOPKINS
MASON M. TABER, JR.
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SHARYLA DODEK DEUTCH
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M. CHRYSA LONG
LAWRENCE D. BRADLEY
CYNTHIA M. HERN
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DAVID B. BRODY
PETER A. PALMER
SPENCER M. COWAN, JR

COUNSEL
JOHN J. FINNEGAN
WINSLOW H. MACDONALD
JOHN J. NOLAN

OF COUNSEL
F WILLIAM ANDRES
JOHN BARR DOLAN
NEAL HOLLAND

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108

TELEPHONE (617) 523-2700
TELECOPIER (617) 523-6850
TELEX 948067

WRITER'S DIRECT DIAL NUMBER

December 7, 1988

Thomas J. Josefiak, Chairman
Federal Election Commission
Washington, D.C. 20463

88 DEC 13 AM 11:08

Re: Massachusetts Republican State Committee
James L. Edholm, Treasurer
MUR 2790

Dear Mr. Josefiak:

I want to acknowledge receipt of your letter of November 30, 1988 on the above-captioned matter. Please be advised that this office is acting as counsel to the Massachusetts Republican State Committee. I enclose herewith for your records the Statement of Designation of Counsel signed by Ray Shamie, Chairman of the Republican State Committee.

I wish to advise you that James L. Edholm ceased to be the Treasurer of the Massachusetts Republican State Committee on or about April 1, 1988. I would appreciate hearing from you as to whether he is still properly a respondent in his proceeding, or should his successor be substituted for him?

We will review our file on this matter, and will be in touch with you within the time limit set forth in your communication.

Very truly yours,

Daniel Needham, Jr.

DN,JR.:mam
Enclosure

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2790

NAME OF COUNSEL: Daniel Needham, Jr., Esquire

ADDRESS: Sherburne, Powers & Needham
One Beacon Street
Boston, MA. 02108

TELEPHONE: (617) 523-2700

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

December 7, 1988
Date

Ray Shamie
Signature Ray Shamie, Chairman

RESPONDENT'S NAME: Massachusetts Republican State Committee

ADDRESS: 20 East Street
Boston, MA. 02111

HOME PHONE:

BUSINESS PHONE:

9904075540046

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88 DEC 19 AM 10: 32

SHERBURNE, POWERS & NEEDHAM
COUNSELLORS AT LAW

JOHN H. SHERBURNE (1919-1988)
WALTER POWERS (1919-1977)
DANIEL NEEDHAM (1919-1971)
F. STANTON DELAND (1949-1988)

ROBERT F. WHITE
DANIEL NEEDHAM, JR.
WILLIAM D. WEEKS
JOHN T. COLLINS
STEPHEN A. HOPKINS
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KARL J. HIRSHMAN
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ROBERT M. RUZZO
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JOHN J. FINNEGAN
WINSLOW H. MACDONALD
JOHN J. NOLAN

OF COUNSEL
F. WILLIAM ANDRES
JOHN BARR DOLAN
NEAL HOLLAND

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108

TELEPHONE (617) 523-2700
TELECOPIER (617) 523-6850
TELEX 948067

WRITER'S DIRECT DIAL NUMBER

88 DEC 19 PM 1:43

December 16, 1988

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Federal Election Commission
Washington, D.C. 20463
Attention: Ms. Debbie Curry

Re: Massachusetts Republican State Committee (the "Committee")
James Edholm, Treasurer - MUR 2790

Dear Ms. Curry:

Daniel Needham, Jr., of this office, has indicated to me that you were in telephone contact with him on Thursday, December 15, 1988. During the course of your telephone conversation with Mr. Needham, you indicated that the Committee has until Wednesday, December 21, 1988 to reply in the above captioned matter.

You also indicated to Mr. Needham that, upon request with sufficient reasons stated, an extension of up to 20 days could be made available to the Committee. Please treat this letter as a request for such an extension of the time for response through and including January 10, 1989.

In support of this request, I wish to indicate that I was away on vacation when the Factual and Legal Analysis of the Federal Election Commission was received on this matter. Furthermore, Mr. James Edholm, the Treasurer of the State Committee at the time the contribution in question was received, will be in Indiana during the course of the upcoming week. Accordingly, the Committee seeks the above described extension in order to allow counsel to the Committee and the Treasurer for the Committee to

have sufficient time to coordinate a proper response to the FEC Factual Legal Analysis.

I would appreciate it if you could telephone me upon the receipt of this letter in order to indicate the FEC's response to this request.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

Robert M. Ruzzo

Robert M. Ruzzo

RMR:mfh
cc: Daniel Needham, Jr., Esquire
Mr. James Edholm

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 28, 1988

Daniel Needham, Jr., Esquire
Sherburne, Powers & Needham
One Beacon Street
Boston, MA 02108

RE: MUR 2790
Massachusetts Republican
State Committee and James
L. Edholm, as treasurer

Dear Mr. Needham:

This is in response to Mr. Ruzzo's letter dated December 16, 1988, which we received on December 19, 1988, requesting an extension of 20 days to respond to the Commission's notification of reason to believe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on January 10, 1988.

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

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner
Associate General Counsel

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SHERBURNE, POWERS & NEEDHAM
COUNSELLORS AT LAW

JOHN H. SHERBURNE (1919-1988)
WALTER POWERS (1919-1977)
DANIEL NEEDHAM (1919-1971)
F. STANTON DELAND (1940-1988)

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TELEPHONE (617) 523-2700
TELECOPIER (617) 523-6850
TELEX 948067

WRITER'S DIRECT DIAL NUMBER

89 JAN 10 PM 2:44

January 9, 1989

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FEDERAL EXPRESS

Federal Election Commission
Washington, D.C. 20463
Attention: Ms. Debbie Curry

Re: Massachusetts Republican State Committee (the "Committee")
MUR 2790

Dear Ms. Curry:

Enclosed please find the response of the Massachusetts Republican State Committee in the above captioned matter. This response is submitted in accordance with the extension granted by the letter of Lawrence M. Noble, dated December 28, 1988, and is being forwarded so that it shall be received by your office prior to the close of business on January 10, 1989.

You will note that the State Committee also, in its submission, requests to enter into pre-probable cause conciliation negotiations pursuant to 11 C.F.R. §111.18(d). Please contact my associate, Robert M. Ruzzo, with respect to negotiations.

Very truly yours,

Daniel Needham, Jr.

DN:mfh
Enclosure
cc: Sandy Tenant (w/enc.)
Beth Lindstrom (w/enc.)
Robert M. Ruzzo, Esquire

SUBMISSION OF MASSACHUSETTS REPUBLICAN STATE COMMITTEE

MUR: 2790
CONTRIBUTION FROM THE COMMITTEE FOR POLITICAL CHOICE (the "CPC")
TO THE MASSACHUSETTS REPUBLICAN STATE COMMITTEE (the "State Committee")

I. INTRODUCTION

On or about December 5, 1988, the State Committee received a letter from Mr. Thomas J. Josefiak, the Chairman of the Federal Elections Commission ("FEC"), indicating that the FEC was investigating the facts and circumstances surrounding the above captioned contribution. The FEC letter indicated that the State Committee had an opportunity to demonstrate that no action should be taken against either the State Committee or Mr. James L. Edholm, as Treasurer.

By letter dated December 28, 1988, from Lois G. Lerner, Associate General Counsel of the FEC, the time for the State Committee's response was extended through January 10, 1989. This Submission constitutes the response of the State Committee.

II. FACTUAL ALLEGATIONS

The FEC alleges that the State Committee's Federal Account and James L. Edholm violated 2 U.S.C. §441a(f) by accepting a contribution from the CPC in excess of $5,000.00. According to the FEC, "the issue here is whether the Federal Account knowingly accepted a contribution that exceeded the contribution limits of the Act."

In addition, the FEC alleges that the Federal Account and James L. Edholm, as Treasurer, violated 11 C.F.R. §102.5(A), which restricts the financing of political activity in connection with federal elections. The $8,500.00 contribution by the CPC was made on October 29, 1987.

III. RESPONSE OF THE STATE COMMITTEE

A. The State Committee did not commit an intentional violation of 2 U.S.C. §441a(f).

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits any person from making a contribution to a political committee in excess of $5,000.00. The FEC has stated that the issue is whether the Federal Account of the State Committee knowingly accepted a contribution that exceeded the contribution limit of the Act. Based upon the Affidavits of James L. Edholm and Alexander Tennant, it is evident that the

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$8,500.00 contribution from the CPC was inadvertently deposited into the wrong account of the State Committee by an inexperienced part-time employee. At that time, the contribution of the CPC would have been a permissible one under Massachusetts law.

The State Committee reported the contribution in its year-end report for 1987 and while the State Committee did not redesignate or reattribute the contribution within the sixty day time period provided under the Regulations, it did undertake to remedy this mistake after taking steps to ensure that its remedial response was in compliance with state law. Prior to the first notification from the FEC of a possible violation - the Request for Additional Information dated March 23, 1988 - the State Committee transfered $3,500.00 to its State Account and refunded $5,000.00 to the CPC. The State Committee's response in correcting its mistake was complicated by a change in Massachusetts Campaign Finance Law in the form of a new restriction on contributions by committees such as the CPC to committees such as the State Committee. A new $1,000.00 limitation on such contributions was enacted November 24, 1987 (amending M.G.L. c.55, §6). In reviewing its options with respect to the redesignation and reattribution of the inadvertantly deposited contribution, the State Committee had to consult with counsel to ensure that its proposed $3,500.00 transfer to its State Account did not violate the new law. The State Committee determined that the $3,500.00 transfer to its State Account was proper if undertaken prior to the February 22, 1988 effective date of the new statute.

Given the circumstances surrounding the mistaken deposit of the CPC contribution, and given the special complications surrounding the State Committee's reattribution and redesignation efforts, the State Committee believes that it cannot be found to have committed a "knowing and willful" violation of the Act. Such a violation connotes "defiance or such reckless disregard of the consequences as to be equivalent to a knowing, conscious and deliberate flaunting of the act." American Federation of Labor and Congress of Industrial Organizations v. Federal Election Commission, 628 F.2d 97, 101 (D.C. Cir. 1980) cert. den 449 U.S. 982. The facts in the instant situation indicate nothing more than an inadvertant mistake which was corrected as soon as practicable.

B. The State Committee did not intentionally finance federal political activity with State Funds.

The FEC's factual and legal analysis in MUR 2790 also alleges that the State Committee violated the prohibitions on financing political activity in connection with federal elections. This allegation is not based upon any specific statutory section, but rather, is based upon the FEC's regulations found at 11 C.F.R. §102.5(a).

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11 C.F.R. §102.5(a)(1)(i) provides: "When an organization elects to establish a separate federal account, only funds subject to the prohibitions and limitations of the act may be deposited into the account." Furthermore, 11 C.F.R. §102.5(a)(2) provides that all contributions deposited in the Federal Account must be designated for the Federal Account and that any solicitations for contributions to the Federal Account must expressly state that the contributions will be used in connection with the federal election, and all contributors must be informed that all contributions are subject to the prohibitions and limitations of the act.

Mr. Josefiak's letter also noted that the unregistered organization in this case (the CPC) has indicated that it intended the funds to be used for the non-federal account.

The State Committee has no reason to believe that, beyond contribution limitations, the funds constituting the total of the CPC contribution are in any way in violation of the Act. As noted above, the State Committee undertook to correct its own mistake, an effort which was complicated by the recent change in Massachusetts Campaign Finance Law. Moreover, as a further indication of the good faith of the State Committee, it should be noted that the State Committee elected to refund $5,000.00 of the contribution to the CPC. Therefore, while the State Committee inadvertently deposited the $8,500.00 in the incorrect account, its mistake "is not in the nature of intentional disregard" of the rights of others such as the CPC. Federal Election Commission v. National Education Association, 457 F.Supp. 1102, 1112 (U.S.D.C. 1978). Indeed, the State Committee had such a high regard for the wishes of the CPC that it elected to refund the majority of the contribution to the CPC for use at the CPC's discretion. Thus, it cannot be said that the State Committee was using the CPC contributions in a manner inconsistent with the desires of the CPC.

IV. CONCLUSION

Based upon the foregoing, the State Committee submits that it cannot be viewed as having committed a "knowing and willful" violation of the Act, or in any way having intentionally violated either the Act or the Regulations promulgated thereunder. The State Committee, on its own initiative, undertook to remedy its mistake, a process that was somewhat complicated by recent changes in Massachusetts law. Ultimately, the entire contribution in question was either applied to the non-federal account in accordance with the apparant intent of the CPC, or returned to the CPC itself.

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The State Committee wishes to enter into pre-probable cause concilliation discussions pursuant to 11 C.F.R. §111.18(d).

Respectfully submitted,
MASSACHUSETTS REPUBLICAN STATE COMMITTEE
By its General Counsel

By: _____

DANIEL NEEDHAM, JR., ESQUIRE
ROBERT M. RUZZO, ESQUIRE
SHERBURNE, POWERS & NEEDHAM
One Beacon Street
Boston, MA 02108
(617) 523-2700

Dated: January 9, 1989

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AFFIDAVIT
OF JAMES L. EDHOLM

MUR: 2790
CONTRIBUTION FROM THE COMMITTEE FOR POLITICAL CHOICE (the "CPC") TO THE MASSACHUSETTS REPUBLICAN STATE COMMITTEE (the "State Committee")

I, James L. Edholm, do hereby depose and say:

1. I was the Treasurer of the State Committee at the time the contribution totaling $8,500.00 was made by the CPC to the State Committee;

2. During my tenure as Treasurer, I customarily did not make deposits into the bank accounts of the State Committee;

3. Deposits of the type at issue in this matter were routinely made by State Committee personnel operating out of the State Committee Headquarters at 20 East Street, Boston, Massachusetts.

4. I did not learn about the deposit in question until after it had been made, when the contribution was discussed at Executive Committee meetings.

5. I am no longer the Treasurer of the State Committee.

EXECUTED under the pains and penalties of perjury this day of January, 1989.

James L. Edholm
JAMES L. EDHOLM

89040754055

AFFIDAVIT OF
ALEXANDER TENNANT

MUR: 2790
CONTRIBUTION FROM THE COMMITTEE FOR POLITICAL CHOICE (the "CPC")
TO THE MASSACHUSETTS REPUBLICAN STATE COMMITTEE (the "State Committee")

I, Alexander Tennant, do hereby depose and say:

1. I am the Executive Director of the Massachusetts Republican Party.

2. A portion of my official duties include oversight and review of Federal Elections Law compliance.

3. To the best of my knowledge and recollection, the contribution in question was deposited by a part-time employee who had been hired within six weeks of the incident in question.

4. To the best of my knowledge and recollection, this contribution was inadvertently deposited in the Federal Account, rather than the non-federal account of the State Committee.

EXECUTED under the pains and penalties of perjury this __ day of January, 1989.

January 9, 1989

Alexander T. Tennant
ALEXANDER TENNANT

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RECEIVED
FEDERAL ELECTION COMMISSION
89 MAR 20 AM 10:54

BEFORE THE FEDERAL ELECTION COMMISSION

EXECUTIVE SESSION
MAR 28 1989

In the Matter of)
)
Massachusetts Republican State)
Committee and Lawrence Novak, as)
treasurer)

MUR 2790

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 15, 1988, the Federal Election Commission found reason to believe Massachusetts Republican State Committee ("Mass. Rep. Committee") and James L. Edholm, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a) by accepting an excessive contribution from an unregistered organization. Respondents requested and were granted an extension of time until January 10, 1989 to answer the Commission's notification of reason to believe. Respondents' request for an extension of time also indicated that the treasurer of the committee had changed from James L. Edholm to Lawrence Novak and Mr. Novak has been substituted as treasurer in this matter. (Attachment 1). On January 10, 1989, the Office of the General Counsel received a response requesting settlement of the matter prior to a finding of probable cause to believe. (Attachment 2).

II. ANALYSIS

A. 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a).

The response of the Mass. Rep. Committee argues that it did not commit an intentional violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a). Mass. Rep. Committee explains that the $8,500 contribution from an unregistered organization (Greater Boston Committee for Political Choice) "was inadvertently

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deposited into the wrong account of the committee by an inexperienced part-time employee." (Attachment 2, pages 5, 8-9).

The Mass. Rep. Committee's response indicates that steps were taken to rectify the matter. On February 9, 1988, 103 days after the October 29, 1987 deposit into the federal account, the Mass. Rep. Committee transferred $3,500 of the $8,500 contribution to its non-federal account. On March 2, 1988, 125 days after the deposit, the Mass. Rep. Committee refunded the remaining portion of the contribution ($5,000) to the unregistered organization. According to the Mass. Rep. Committee, the delay in actually remedying the transaction was due to a change in state law that necessitated consultation with counsel to ensure that the remedial response would not be violative of the new state law. (Attachment 2, page 5). The Mass. Rep. Committee also states that beyond the contribution limitation issue, there is no reason to believe the funds constituting the $8,500 contribution otherwise violated the Act.

The Mass. Rep. Committee acknowledges that a violation occurred due to a mistake which was corrected, according to the Committee, on its own initiative. The Mass. Rep. Committee concludes, therefore, that the committee did not intentionally or knowingly and willfully violate the Act or Commission regulations.

B. 2 U.S.C. § 433(c)

Pursuant to 2 U.S.C. § 433(c), political committees are required to notify the Commission of a change in treasurer within 10 days after the date of the change. Here, the Mass. Rep. Committee changed their treasurer on or about April 1, 1988

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(Attachment 1), but did not amend its statement of organization until December 27, 1988. The Mass Rep. Committee failed to notify the Commission of the change in treasurer in a timely manner in violation of 2 U.S.C. § 433(c). Therefore, the Office of the General Counsel recommends that the Commission find reason to believe the Mass. Rep. Committee and Lawrence Novak, as treasurer, violated 2 U.S.C. § 433(c). The Mass. Rep. Committee has made an oral request that this violation also be included in its request for pre-probable cause conciliation. Accordingly, the Office of the General Counsel also recommends that the Commission accept the Mass. Rep. Committee's request for pre-probable cause conciliation on these issues.

II. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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III. RECOMMENDATIONS

1. Find reason to believe the Massachusettts Republican State Committee and Lawrence Novak, as treasurer, violated 2 U.S.C. § 433(c).

2. Enter into conciliation with the Massachusetts Republican State Committee and Lawrence Novak, as treasurer, prior to a finding of probable cause to believe.

3. Approve the attached proposed conciliation agreement and letter.

Lawrence M. Noble
General Counsel

Date 3/17/89

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Extension of Time Request
2. Request for Conciliation
3. Proposed Conciliation Agreement and Letter

Staff Person: Debby Curry

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: MARCH 22, 1989

SUBJECT: OBJECTIONS TO MUR 2790 - General Counsel's Report Signed March 17, 1989

The above-captioned document was circulated to the Commission on Monday, March 20, 1989 at 4:00 p.m.

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

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

This matter will be placed on the meeting agenda for March 28, 1989.

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

89040754061

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Massachusetts Republican State Committee and Lawrence Novak, as treasurer	)	MUR 2790

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session on March 28, 1989, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2790:

1. Find reason to believe the Massachusetts Republican State Committee and Lawrence Novak, as treasurer, violated 2 U.S.C. §433(c).

2. Enter into conciliation with the Massachusetts Republican State Committee and Lawrence Novak, as treasurer, prior to a finding of probable cause to believe.

3. Approve the proposed conciliation agreement and approve the letter as recommended in the General Counsel's report dated March 17, 1989.

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

Attest:

3/29/89
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 6, 1989

Daniel Needham, Jr., Esquire
Sherburne, Powers & Needham
One Beacon Street
Boston, MA 02108

Re: MUR 2790
Massachusetts Republican State Committee and
Lawrence Novak, as treasurer

Dear Mr. Needham:

On November 15, 1988, the Federal Election Commission found reason to believe that Massachusetts Republican State Committee and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a). On March 28, 1989, the Commission also found reason to believe that Massachusetts Republican State Committee and Lawrence Novak, as treasurer, violated 2 U.S.C. § 433(c). Also on this date, at your request 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 that the Commission has approved in settlement of this matter. If your clients 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.

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

Sincerely,

Lawrence M. Noble
General Counsel

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

Enclosure
Conciliation Agreement

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06 C 2 20D

SHERBURNE, POWERS & NEEDHAM

COUNSELLORS AT LAW

RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

89 MAY -5 AM 10: 08

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108

TELEPHONE (617) 523-2700
TELECOPIER (617) 523-6850
TELEX 948067

ROBERT F. WHITE
DANIEL NEEDHAM, JR.
WILLIAM D. WEEKS
JOHN T. COLLINS
STEPHEN A. HOPKINS
MASON M. TABER, JR.
KARL J. HIRSHMAN
THEODORE L. TILLOTSON
ROBERT E. MAHALTER
C. THOMAS SHAW
JAMES POLLOCK
WILLIAM V. TRIPP III
STEPHEN S. YOUNG
ANTHONY B. BATTELLE
WILLIAM F. MACHEN
JACOB C. DEWERT
SAMAYLA DODEK DEUTCH
W. ROBERT ALLISON
PHILIP J. NOTOPOULOS
HAROLD W. POTTER, JR.
JOHN L. DALY
PAUL E. TROY
MARK SCHONFELD
JAMES D. SMEALLIE

PAUL KILLEEN
RICHARD M. SMOPSKY
JAMES E. McDERMOTT
CYNTHIA A. OLAFF
ROBERT V. LIZZA
ROBERT M. RUZZO
MIRIAM GOLDSTEIN ALTMAN
GINA B. BAILEY
JOHN J. MONAGHAN
MARGARET J. PALLADINO
MARK C. MICHALOWSKI
DAVID SCOTT SLOAN
M. CHRYSA LONG
LAWRENCE D. BRADLEY
CYNTHIA M. HIRN
MIRIAM J. McKENDALL
RICARDO R. CALDERON
DAVID S. BRODY
PETER A. PALMER
SPENCER M. CORAN, JR.
DIANNE R. PHILLIPS
PAUL M. JAMES
THEODORE F. HANSELMAN
JOSHUA C. KRUMHOLZ

COUNSEL
WINSLOW H. MACDONALD
JOHN J. FINNEGAN
JOHN J. NOLAN

OF COUNSEL
F. WILLIAM ANDRES
JOHN BARR DOLAN
NEAL HOLLAND

WRITER'S DIRECT DIAL NUMBER

89 MAY -9 AM 11: 32

May 4, 1989

FEDERAL EXPRESS

Federal Election Commission
999 "E" Street N.W.
Washington, D.C. 20463

Attn: Debra Curry, Attorney

Re: MUR2790 Massachusetts Republican State Committee and and Lawrence Novak, as Treasurer

Dear Ms. Curry:

Enclosed please find an executed Conciliation Agreement in the above-captioned matter. A check in the amount of $500.00 made payable to the Federal Election Commission is also enclosed.

If you require anything further in this matter or if you have any questions, please feel free to contact me.

Very truly yours,

Robert M. Ruzzo

Robert M. Ruzzo

RMR:mec

Enclosure

cc Daniel Needham, Jr., Esq.
Mr. Raymond Shamie
Mr. Alexander Tenant

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
89 JUN 20 PM 1:31

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Massachusetts Republican State Committee and Lawrence Novak, as treasurer	)	MUR 2790
	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Daniel Needham, Jr., on behalf of Massachusetts Republican State Committee and Lawrence Novak, as treasurer.

The attached agreement contains no changes from the agreement approved by the Commission on March 28, 1989. A check for the civil penalty ($500) has been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Massachusetts Republican State Committee and Lawrence Novak, as treasurer.

2. Close the file.

3. Approve the attached letter.

Lawrence M. Noble
General Counsel

6-19-89
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachments
1. Conciliation Agreement
2. Photocopy of civil penalty check
3. Letter to Respondent

Staff Assigned: Deborah Curry

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Massachusetts Republican State Committee and Lawrence Novak, as treasurer	)	MUR 2790

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 23, 1989, the Commission decided by a vote of 5-0 to take the following actions in MUR 2790:

1. Accept the conciliation agreement with Massachusetts Republican State Committee and Lawrence Novak, as treasurer, as recommended in the General Counsel's report signed June 19, 1989.

2. Close the file.

3. Approve the letter, as recommended in the General Counsel's report signed June 19, 1989.

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

Attest:

June 23, 1989
Date

Hilda Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary:	Tues.,	6-20-89,	1:31
Circulated on 48 hour tally basis:	Wed.,	6-21-89,	11:00
Deadline for vote:	Fri.,	6-23-89,	11:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 29, 1989

Daniel Needham, Jr., Esquire
Sherburne, Powers & Needham
One Beacon Street
Boston, MA 02108

RE: MUR 2790
Massachusetts Republican State Committee and Lawrence Novak, as treasurer

Dear Mr. Needham:

On June 23, 1989, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 433(c) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 102.5(a) of Commission Regulations. Accordingly, the file has been closed in this matter as it pertains to your clients. 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 Deborah Curry, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Massachusetts Republican State Committee and Lawrence Novak, as treasurer	)	MUR 2790

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Massachusetts Republican State Committee ("Mass. Rep. Committee") and its treasurer ("Respondents") violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive $8,500 contribution from Greater Boston Committee for Political Choice, an unregistered organization. The Commission also found reason to believe Mass. Rep. Committee and its treasurer, violated 11 C.F.R. § 102.5(a) because the contribution in question was not intended for the federal account and may not have been subject to the prohibitions and limitations of the Act. Additionally, the Commission found reason to believe Mass. Rep. Committee and Lawrence Novak, as treasurer, violated 2 U.S.C. § 433(c) by failing to notify the Commission in a timely manner of a change in the Committee's treasurer.

NOW, THEREFORE, the Commission and the Respondents, 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 Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

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§ 437g(a)(4)(A)(i).

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

III. Respondents enter voluntarily into this agreement with the Commission.

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

1. The Mass. Rep. Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Lawrence Novak is treasurer of Mass. Rep. Committee.

3. Greater Boston Committee for Political Choice is an organization not registered as a political committee pursuant to 2 U.S.C. § 433.

4. Pursuant to 2 U.S.C. § 441a(a)(1)(C), no person shall make a contribution to a political committee in excess of $5,000.

5. Title 2 U.S.C. § 441a(f) makes unlawful the knowing acceptance of contributions in excess of $5,000 by a political committee.

6. 11 C.F.R. § 102.5 permits organizations that intend to finance both federal and non-federal activity to set up a separate federal account.

7. Pursuant to 102.5(a)(1)(i), only funds subject to the prohibitions and limitations of the Act may be deposited into the federal account.

8. Additionally, pursuant to 11 C.F.R. § 102.5(a)(2), all contributions deposited into a federal account must be designated for the federal account, any solicitations for

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contributions to the federal account must expressly state that the contribution will be used in connection with a federal election, and contributors must be informed that contributions are subject to the prohibitions and limitations of the Act.

9. Respondents were required by 2 U.S.C. § 433(c) to notify the Commission of a change in treasurer within 10 days after the date of the change.

10. On October 29, 1987, the Mass. Rep. Committee received a $8,500 contribution from Greater Boston Committee for Political Choice, an unregistered organization.

11. The Mass. Rep. Committee's acceptance of the $8,500 from an unregistered organization exceeded the contribution limits of the Act.

12. On February 9, 1988, the Mass. Rep. Committee transferred $3,500 of this contribution to its state account.

13. On March 2, 1988, the Mass. Rep. Committee refunded the remaining $5,000 of the contribution to the unregistered organization.

14. Respondent changed its treasurer on April 1, 1988, but did not notify the Commission of the change in treasurer until December 27, 1988.

V. Respondents knowingly accepted an excessive contribution ($8,500) from an unregistered organization, in violation of 2 U.S.C. § 441a(f).

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VI. Respondents deposited excessive and possibly impermissible funds intended for its state account into its federal account, in violation of 11 C.F.R. § 102.5(a).

VII. Respondents also failed to notify the Commission in a timely manner of the change in treasurer, in violation of 2 U.S.C. § 433(c).

VIII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Five Hundred dollars ($500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

IX. 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.

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

XI. Respondents 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.

XII. The 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,

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made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner — Date: June 29, 1989
Lois G. Lerner
Associate General Counsel

FOR THE RESPONDENTS:

Daniel Needham, Jr. — Date: May 2, 1989
Daniel Needham, Jr.
Counsel for Respondents

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2790

DATE FILMED 7/7/89 CAMERA NO. 4

CAMERAMAN AS

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