FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 3066

DATE FILMED 10/17/90 CAMERA NO. 2

CAMERAMAN AS

6278

Bill Farrell

UNITED STATES SENATE

FEDERAL ELECTION COMMISSION

90 MAY 14 AM 10: 05

May 7, 1990

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 14 PM 3: 18

Dear Sirs:

The enclosed letter, wherein it appears campaign laws may possibly have been violated, has been brought to our attention. Does this type of fundraising comply with FEC laws?

We would appreciate your investigation into this matter.

Sincerely,

Alice Tully
Campaign Manager

Enc.

9004080027703

P.O. Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

1st Valley Bank
P.O. BOX 369 • 406/677-2464
SEELEY LAKE, MONTANA 59868

April 30, 1990

Dear Montana Banker:

As a fellow banker in Montana, I know you share my interest in the economy, jobs and the future of our state.

Because of this common bond, I am hopeful you will also share another interest with me. That interest is the opportunity we have in Montana to place a new level of experience, education and technological background in the United States Senate in 1990.

On January 23, Bruce Vorhauer filed as a Republican for the United States Senate election in Montana.

He entered this race because there is a critical need in the United States Senate -- a need I believe Bruce is almost uniquely qualified to fill.

Bruce is not a politician! He's an engineer, a scientist and a businessman. If the people of Montana give him the honor of serving them in the United States Senate, I know the changes won't come easily or fast. But, I know if we don't start today, the changes will never come.

Now, if you share my interest and beliefs in Bruce Vorhauer, I need an investment from you to help elect him. He needs your support...your time...and your dollars. Statewide elections are expensive.

Speaking of dollars, it's no secret that Bruce is financing a portion of this campaign himself. He believes in himself enough to invest in himself. And, he could not ask for anyone to do what he is not willing to do himself.

But we will need even more funds to win. Bruce is not a professional politician. And, as you can see, his message is certainly not the standard political rhetoric. So, it has to reach a lot of people several times to break through.

I'm pleased to tell you, however, it is breaking through.

(Continued)

P00408027004

Our polls are telling us that his campaign is on a fast track and gaining momentum daily.

He needs your early support to keep this momentum going. As any business person knows, early dollars and support help more than dollars and support that come later.

Truthfully, there are other fine candidates running for the nomination this year. But with equal honesty, I don't think any of them can claim the qualifications and experience we so desperately need in the U.S. Senate during this make-or-break decade to come.

By law, the most we can accept as a contribution during this primary election period is $1,000 per person, or $2,000 per couple. And, of course, we can not accept any corporate contributions.

Please think about what I have said here. Consider Bruce's background, experience and track record in the real-world of business. And, then consider a substantial contribution to Bruce Vorhauer's campaign.

Should you wish to speak with him or want additional information, please call or write me. Your personal support is critical to his efforts and to a successful campaign. But do it today!

Thank you for taking time from a very busy schedule to hear my thoughts and my dreams for Montana.

Together we can accomplish much.

Regards,

Jim Cowan

Jim Cowan
President

9 0 0 4 0 8 0 2 7 0 5

1st Valley Bank

P. O. Box 720
Seeley Lake, Montana 59868

0 0 4 0 8 0 2 7 0 6

FIRST CLASS

HELENA APR 30 '90 MONT.

U.S. POSTAGE 0.25

This is your Bank Member FDIC

WE APPRECIATE YOUR BUSINESS
AND INVITE YOU TO USE
ALL OF OUR BANKING FACILITIES

OGC 6207

Bill Farrell

UNITED STATES SENATE

RECEIVED FEDERAL ELECTION COMMISSION MAIL ROOM

90 MAY 14 AM 11:23

May 10, 1990

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL

90 MAY 14 PM 3:10

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D. C. 20463

Dear Sirs:

I have enclosed a newspaper article for your information as a follow-up to my inquiry of May 7, 1990, regarding a possible campaign fund-raising violation.

When a ruling has been determined on this matter, I would appreciate notification.

Sincerely,

Alice Tully
Campaign Manager

Enc.

9004080027 08

PO Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

ense

McDonald

Robertson's Montana

. "I think I have the rk with all kinds of

said he isn't raising issues in the cam- pointing out the advan- slative experience. He is the only candidate om either party with erience,.

o similar to that of a said. "Listen to tes- to facts and use

Farrell challenges Vorhauer fund raising

HELENA (AP) — Bill Farrell, a candidate for the Republican U.S. Senate nomination, has asked the Federal Election Commission whether a fund-raising appeal by a supporter of fellow GOP candidate Bruce Vorhauer violates federal election law.

Farrell, a state senator from Missoula, filed the query based on a fund-raising letter sent by Jim Cowan, president of the 1st Valley Bank of Seeley Lake.

The Cowan letter was sent on bank stationery and bears no disclaimer that it was not paid for by the bank's corporate funds, Farrell noted.

However, Cowan said he paid for the mailing out of his own pocket and he knows of no requirement that it carry a disclaimer.

In a letter to the commission's general counsel, Farrell asked whether the letter violates federal election law.

Cowan's letter, addressed to "Dear Montana Banker," describes Vorhauer as "an engineer, a scientist and a businessman."

It says Vorhauer needs "your support ... your time ... and your dollars. Statewide elections are expensive."

However, the letter also notes that corporate contributions will not be accepted, and individual contributions are limited by law to $1,000 per person.

Cowan said the letter was typed and reproduced at Vorhauer headquarters. He said he paid the $67 postage from his personal checking account to a friend who has a postage meter.

The only cost to the bank was a single sheet of letterhead paper upon which the original letter was typed, and "if I knew how much that cost, I would reimburse the bank the 2 cents or whatever," Cowan said.

Vorhauer, a Seeley Lake businessman, is one of four Republicans seeking the nod to challenge for the seat now held by Sen. Max Baucus, D-Mont.

In the "make or break" 90's, Montana needs a new kind of leader ...
someone with first-hand experience creating jobs for Montanans.
Someone who understands the tough high-tech challenges facing America.
Only one candidate for the U.S. Senate fills the bill.

His name is Bruce Vorhauer

"Every problem we face in Montana has a high-tech side. Where will the new jobs come from? The new industry? How can we protect and enhance the jobs we already have, whether in agriculture, or logging, or mining?"

"If you talk about health care or education ... energy or our environment ... getting our products to market ... even the food we eat ... every challenge of the 1990's requires scientific know-how. America can't compete in a high-tech world with a low-tech Senate."

"Just as important, we need leaders with the proven ability to create real world jobs. How can we expect job-creating policies, or a true understanding of the free enterprise spirit, from a Senate that lacks hands-on entrepreneurial experience?"

"With all due respect, we already have plenty of lawyers and professional politicians in Washington, D.C. I have both the scientific training and the real world business experience to meet the challenges we face in the 1990's and beyond. That's why I want to represent you in the U.S. Senate."

I SUPPORT BRUCE VORHAUER FOR U.S SENATE

☐ Here's my personal check for ☐ $1,000 ☐ $500 ☐ $250 ☐ Other _____

☐ In addition to my financial help, I'd like to volunteer some of my time & energy. Please call.

☐ I'd like to talk to you Bruce, about stands and issues that affect Montana.

Name _____

Address _____

City _____ State ____ Zip ____ Phone _____

Campaign regulations require we ask you to provide

Occupation _____

Employer _____

Political donations not considered charitable contributions for income tax purposes. Corporate checks prohibited.
Paid for by Vorhauer for Senate Committee.

VORHAUER U.S. SENATE

HANDS-ON BUSINESSMAN

- Founder and director, Basic Biosystems, a Missoula-based research lab working on biodegradable release systems for agriculture, health care and consumer products
- Director and former Chairman, Montana Naturals International, marketing food products manufactured in Arlee and sold worldwide
- Part owner, Holiday Inn in Missoula
- Founder and former director, First Valley Bank of Seeley Lake
- Founder and former CEO, VLI Corporation, acquired by American Home Products

HIGH-TECH INVENTOR

- Tested nuclear submarines for U.S. Navy
- Engineer, consultant on oil super tankers
- Developed and tested high technology medical devices such as artificial heart valves
- Former Vice President of Research & Development for one of America's most innovative high-tech medical suppliers

COMMUNITY LEADER

- Member, Montana Committee for the Humanities
- Trustee, University of Montana Foundation
- U.S. State Department missions to Asia and Europe
- Volunteer police officer
- Trustee, Missoula Community Medical Center Foundation

REPUBLICAN **REPUBLICAN**

1084 Helena Avenue • Helena, Montana 59601
1-800-735-7085 • Fax (406) 442-7117 • (406) 442-6688

Paid for by Vorhauer for Senate Committee

VORHAUER
U.S. SENATE

1084 Helena Avenue
Helena, Montana 59601

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 16, 1990

Alice Tully
P.O. Box 8305
Missoula, Montana 59807

Dear Ms. Tully:

This is to acknowledge receipt on May 14, 1990, of your letters dated May 7, 1990 and May 10, 1990. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

You must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. A statement by the notary that the complaint was sworn to and subscribed before him/her will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

If you have any questions concerning this matter, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

cc: Respondent

90040802712

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 16, 1990

Bruce Vorhauer
Vorhauer U.S. Senate
1084 Helena Avenue
Helena, Montana 59868

Dear Mr. Vorhauer:

On May 14, 1990, the Federal Election Commission received a letter alleging that you violated sections of the Federal Election Campaign Act of 1971, as amended. As indicated from the copy of the enclosed letter addressed to the complainant, those allegations do not meet certain specified requirements for the proper filing of a complaint. Thus, no action will be taken on this matter unless the allegations are refiled meeting the requirements for a properly filed complaint. If the matter is refiled, you will be notified at that time.

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

If you have any questions, please call Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner by SJR

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Improper Complaint
Copy of Letter to the Complainant

9004080271 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 16, 1990

Jim Cowan, President
1st Valley Bank
P.O. Box 369
Seeley Lake, Montana 59868

Dear Mr. Cowan:

On May 14, 1990, the Federal Election Commission received a letter alleging that you violated sections of the Federal Election Campaign Act of 1971, as amended. As indicated from the copy of the enclosed letter addressed to the complainant, those allegations do not meet certain specified requirements for the proper filing of a complaint. Thus, no action will be taken on this matter unless the allegations are refiled meeting the requirements for a properly filed complaint. If the matter is refiled, you will be notified at that time.

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

If you have any questions, please call Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Improper Complaint
Copy of letter to the Complainant

90040802714

HAND DELIVERED

OGC 6327

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 MAY 24 AM 10: 27

Bill Farrell

UNITED STATES SENATE

May 22, 1990

MUR 3066

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Lois G. Lerner
Associate General Counsel

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 MAY 24 PM 12: 52

Dear Ms. Lerner:

This is to acknowledge receipt of your letter of May 16, 1990, indicating that a notarized verification regarding the original complaint dated May 7, 1990, was excluded.

Enclosed is a verification to be added to the original complaint dated May 7, 1990, whereby, to the best of my knowledge, the complaints and information originally enclosed are true.

If you require any further information, I will comply immediately upon request.

Sincerely,

Alice M. Tully
Campaign Manager

AMT:mhu
encl.

P.O. Box 8305, Missoula, Montana 59807 (406) 5424201

Paid for by Montanans for Farrell.

V E R I F I C A T I O N

STATE OF MONTANA)
: ss.
County of Missoula)

Alice M. Tully, being first duly sworn upon her oath, deposes and says:

That she is the complainant in the above-entitled action; that she has read the foregoing Complaint, and that the same are true to the best of her knowledge, information and belief.

Alice M. Tully

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 22 day of May, 1990.

NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: Missoula, MT
My Commission Expires: 7-8-92

9004080271 6

OGC 6360

Bill Farrell

UNITED STATES SENATE

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 MAY 30 AM 9:28

MUR 3066

May 25, 1990

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Attn: Lois G. Lerner
Associate General Counsel

Dear Ms. Lerner:

This is a follow-up to our letter dated May 7, 1990 wherein we outline concerns regarding a fundraising letter sent out on behalf of U.S. Senate candidate Bruce Vorhauer.

We would like to point out that this fundraising letter was sent out on corporate letterhead, more specifically on letterhead of the 1st Valley Bank in Seeley Lake, Montana, which is a federal depository and, thus, a government contractor.

Secondly, there was not a disclaimer on or in the letter, and the author of the letter, bank president Jim Cowan, not only signed the letter as president of the bank, but has stated publicly that he paid the costs of sending the letter, indicating the letter was paid for outside of the campaign's finances.

Your investigation into the appropriateness of this type of fundraising letter is appreciated.

Sincerely,

Alice Tully
Campaign Manager

Enc.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 MAY 30 AM 11:38

2004080271 7

P.O. Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1990

Alice Tully, Campaign Manager
Montanans for Farrell
P.O. Box 8305
Missoula, Montana 59807

RE: MUR 3066

Dear Ms. Tully:

This letter acknowledges receipt on May 24, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the 1st Valley Bank, Jim Cowan, and Vorhauer for Senate committee. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3066. 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 0 4 3 0 2 7 1 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1990

Vorhauer for Senate Committee
1084 Helena Avenue
Helena, Montana 59601

RE: MUR 3066

Dear Sir/Madam:

The Federal Election Commission received a complaint which alleges that the Vorhauer for Senate Committee 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 3066. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact Jeff Long, 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

cc: Bruce Vorhauer
P.O. Box 569
Seely Lake, MT 59868

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1990

Jim Cowan, President
1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

RE: MUR 3066

Dear Mr. Cowan:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3066. Please refer to this number in all future correspondence.

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

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If you have any questions, please contact Jeff Long, 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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1990

1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

RE: MUR 3066

Dear Gentlemen:

The Federal Election Commission received a complaint which alleges that the 1st Valley Bank 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 3066. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact Jeff Long, 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

06C 6544

VORHAUER
U.S. SENATE

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 12 PM 12: 11

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

June 9, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUN 13 AM 11: 33

Greetings:

Per your request letter of May 31, 1990 by Lois G. Lerner, Associate General Counsel, I am submitting testimony on the charge against our campaign for unlawful solicitation of campaign funds: RE: MUR 3066.

The solicitation letter did have a disclaimer. As per rules from page 20 of the Campaign Guide for Congressional Candidates and Committees, July 1988, "...In the case of a mailing that contains several items, however, the notice need appear on one item only (for example, a contributor return card). See AO 1980-145." Both the contribution card and the enclosed campaign brochure had proper disclaimers for the Vorhauer for Senate Committee.

This mailing was written by campaign staff, copied from a single piece of First Valley Bank stationary by volunteers, stuffed and mailed by volunteers. The postage was provided by a friend of mine with a postage meter. As you can see from the enclosed itemized statement, I paid for the postage and reimbursed the First Valley Bank for any materials used out of my own pocket. For these expenses, I received an in-kind contribution to the campaign.

To the best of my knowledge, the Vorhauer campaign was not in violation of any FEC rules or regulations, and it asks that you dismiss this charge against the campaign's record.

Regards,

James E. Cowan
Treasurer
Vorhauer for U.S. Senate Committee

1084 Helena Avenue • Helena, Montana 59601 • 1-800-735-7085 • Fax (406) 442-7117 • (406) 442-6688
2822 1st Avenue North • Billings, Montana 59101 • Fax (406) 259-2650 • (406) 259-2808

Paid for by Vorhauer for Senate Committee

90040902725

90 4080272 6

I SUPPORT BRUCE VORHAUER FOR U.S SENATE

REPORT OF PAYMENT IN KIND (SEE OVER)

☐ Here's my personal check for ☐ $1,000 ☐ $500 ☐ $250 ☐ Other _____

☐ In addition to my financial help, I'd like to volunteer some of my time & energy. Please call.

☐ I'd like to talk to you Bruce, about stands and issues that affect Montana.

RECEIVED 5-7-90

Name Jim Cowan

Address Box 369

City Seeley Lake State Mt. Zip 59868 Phone 677-2355

Campaign regulations require we ask you to provide

Occupation Banking

Employer First Valley Bank

Political donations not considered charitable contributions for income tax purposes. Corporate checks prohibited.
Paid for by Vorhauer for Senate Committee.

9 0 0 4 0 8 0 2 7 2 7

Jim Cowan
In Kind

Postage - Letter to Bankers 268 @ .25¢ =		$ 67.00
Envelopes - Letter to Bankers 268 @ .04701¢ =		12.60
Letterhead stationary - " 1 @ .02	=	.02
Express mail postage - FEC reports to Helena & Washington, DC 2@ 8.25	=	16.50
Total this report		$ 96.12

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 15, 1990

Alice Tully, Campaign Manager
Montanans for Farrell
P.O. Box 8305
Missoula, Montana 59807

Dear Ms. Tully:

This letter acknowledges receipt on May 30, 1990, of the amendment to the complaint you filed on May 24, 1990, against 1st Valley Bank, Jim Cowan, and Vorhauer for Senate Committee. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

You must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. A statement by the notary that the complaint was sworn to and subscribed before [him] [her] will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

If you have any questions concerning this matter, please contact Jeffrey Long, the staff member assigned to this case, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner by JK

BY: Lois G. Lerner
Associate General Counsel

cc: Respondents

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 15, 1990

Vorhauer For Senate Committee
1084 Helena Avenue
Helena, Montana 59601

Dear Sir:

On May 30, 1990, the Federal Election Commission received an amendment to the complaint alleging that the Vorhauer for Senate Committee violated sections of the Federal Election Campaign Act of 1971, as amended. As indicated from the copy of the enclosed letter addressed to the complainant, those allegations do not meet certain specified requirements for the proper filing of an amendment to a complaint. Thus, no action will be taken on this amendment unless the allegations are refiled meeting the requirements for a properly filed amended complaint. However, the matter will continue on the basis of the complaint which you received notice of on May 31, 1990. If the amendment is refiled, you will be notified at that time.

The Commission reminds you that this matter remains confidential. If you have any questions, please call Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690. 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner by JSR

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Improper Complaint
Copy of letter to the Complainant

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 15, 1990

Jim Cowan, President
1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

Dear Mr. Cowan:

On May 30, 1990, the Federal Election Commission received an amendment to the complaint alleging that you violated sections of the Federal Election Campaign Act of 1971, as amended. As indicated from the copy of the enclosed letter addressed to the complainant, those allegations do not meet certain specified requirements for the proper filing of an amendment to a complaint. Thus, no action will be taken on this amendment unless the allegations are refiled meeting the requirements for a properly filed amended complaint. However, the matter will continue on the basis of the complaint which you received notice of on May 31, 1990. If the amendment is refiled, you will be notified at that time.

The Commission reminds you that this matter remains confidential. If you have any questions, please call Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690. 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Improper Complaint
Copy of letter to the Complainant

90040802730

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 15, 1990

1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

Dear Gentlemen:

On May 30, 1990, the Federal Election Commission received an amendment to the complaint alleging that the 1st Valley Bank violated sections of the Federal Election Campaign Act of 1971, as amended. As indicated from the copy of the enclosed letter addressed to the complainant, those allegations do not meet certain specified requirements for the proper filing of an amendment to a complaint. Thus, no action will be taken on this amendment unless the allegations are refiled meeting the requirements for a properly filed amended complaint. However, the matter will continue on the basis of the complaint which you received notice of on May 31, 1990. If the amendment is refiled, you will be notified at that time.

The Commission reminds you that this matter remains confidential. If you have any questions, please call Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690. 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Copy of Improper Complaint
Copy of letter to the Complainant

90040502731

OGC 6600

1st Valley Bank
P.O. BOX 720 • 406/677-2464
SEELEY LAKE, MONTANA 59868

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 18 PM 12:49

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:47

June 12, 1990

Mr. Lawrence M. Noble
General Council,
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

RE: MUR 3066

Greetings:

In response to letter dated May 31, 1990 of Lois G. Lerner, Associate General Council, I am submitting testimony on the questioning of proper campaign practices involved in the above MUR 3066. The solicitation letter did have a disclaimer per rules from page 20 of the Campaign Guide For Congressional Candidates and Committees, July 1988, "...in the case of a mailing that contains several items, however, the notice need appear on one item only (for example, a contributor return card). See AO 1980-145." Both the contribution card and the enclosed brochure had proper disclaimers for the Vorhauer for Senate Committee.

This mailing was written by campaign staff, copied from a single piece of First Valley Bank letterhead stationery by volunteers, stuffed and mailed by volunteers. The postage was applied by a friend of mine with a postage meter. As you can see from the enclosed itemized statement, I paid for the postage and reimbursed the First Valley Bank for any materials used out of my own pocket. For these expenses, I received an in-kind contribution to the campaign.

To the best of my knowledge, I was not in any way in violation of any FEC rules or regulations, and ask that you dismiss this charge and clear the records of the campaign committee, the First Valley Bank and mine personally.

Thank you.

Sincerely,

J.E. Cowan
President

Subscribed and sworn to before me
this 12th day of June 1990.

Joni Diamond
Notary Public for the State of Montana
Residing in Seeley Lake, MT
My Commission Expires: January 22,1993

FDIC

Bill Farrell

UNITED STATES SENATE

06C6612

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 18 PM 9:32

June 12, 1990

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: MUR 3066

Enclosed is another Certified Verification as per the telephone request by Jeff Long.

Also enclosed is a copy of a letter received on May 31, 1990, by Lois G. Lerner which was not signed.

Sincerely,

Alice Tully
Campaign Manager

Enc.

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUN 18 PM 3:50

P.O. Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

V E R I F I C A T I O N

STATE OF MONTANA)
: ss.
County of Missoula)

Alice M. Tully, being first duly sworn upon her oath, deposes and says:

That she is the complainant in the above-entitled action; that she has read the foregoing Complaint, and that the same are true to the best of her knowledge, information and belief.

Alice M. Tully

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 4th day of ~~May~~ June, 1990.

Cynthia L. Wade
NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: Missoula
My Commission Expires: 5-8-91

RECEIVED
JUN 4 1990

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 31, 1990

Alice Tully, Campaign Manager
Montanans for Farrell
P.O. Box 8305
Missoula, Montana 59807

RE: MUR 3066

Dear Ms. Tully:

This letter acknowledges receipt on May 24, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the 1st Valley Bank, Jim Covan, and Vorhauer for Senate committee. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3066. 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 Rethe Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure.

9 0 0 4 0 8 0 2 7 3 5

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 22, 1990

Alice Tully, Campaign Manager
Montanans for Farrell
P.O. Box 8305
Missoula, Montana 59807

RE: MUR 3066

Dear Ms. Tully:

This letter acknowledges receipt on June 18, 1990, of the amendment to the complaint you filed on May 24, 1990, against 1st Valley Bank, Jim Cowan, and Vorhauer for Senate Committee. The respondents will be sent copies of the amendment. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9004080273 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 22, 1990

Jim Cowan, Treasurer
Vorhauer For Senate Committee
1084 Helena Avenue
Helena, Montana 59601

RE: MUR 3066

Dear Mr. Cowan:

On June 15, 1990, the Committee was notified that the Federal Election Commission received a complaint from Alice Tully, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time the Committee was given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 18, 1990, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure

9 0 0 4 0 8 0 2 7 3 7

OGC 6360

Bill Farrell

UNITED STATES SENATE

RECEIVED
FEDERAL ELECTION COMMISSION

90 MAY 30 AM 9:24

MUR 3066

May 25, 1990

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Attn: Lois G. Lerner
Associate General Counsel

Dear Ms. Lerner:

This is a follow-up to our letter dated May 7, 1990 wherein we outline concerns regarding a fundraising letter sent out on behalf of U.S. Senate candidate Bruce Vorhauer.

We would like to point out that this fundraising letter was sent out on corporate letterhead, more specifically on letterhead of the 1st Valley Bank in Seeley Lake, Montana, which is a federal depository and, thus, a government contractor.

Secondly, there was not a disclaimer on or in the letter, and the author of the letter, bank president Jim Cowan, not only signed the letter as president of the bank, but has stated publicly that he paid the costs of sending the letter, indicating the letter was paid for outside of the campaign's finances.

Your investigation into the appropriateness of this type of fundraising letter is appreciated.

Sincerely,

Alice Tully
Campaign Manager

Enc.

RECEIVED
FEDERAL ELECTION COMMISSION

90 MAY 30 AM 11:38

9 0 0 4 0 8 0 2 7 3 8

P.O. Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

V E R I F I C A T I O N

STATE OF MONTANA)
: ss.
County of Missoula)

Alice M. Tully, being first duly sworn upon her oath, deposes and says:

That she is the complainant in the above-entitled action; that she has read the foregoing Complaint, and that the same are true to the best of her knowledge, information and belief.

Alice M. Tully

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 14 day of May, 1990.

NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: _____
My Commission Expires: _____

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 22, 1990

Jim Cowan, President
1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

RE: MUR 3066

Dear Mr. Cowan:

On June 15, 1990, you were notified that the Federal Election Commission received a complaint from Alice Tully, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 18, 1990, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure

Bill Farrell

UNITED STATES SENATE

RECEIVED
FEDERAL ELECTION COMMISSION
90 MAY 30 AM 9:28

MUR 3066

May 25, 1990

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Attn: Lois G. Lerner
Associate General Counsel

Dear Ms. Lerner:

This is a follow-up to our letter dated May 7, 1990 wherein we outline concerns regarding a fundraising letter sent out on behalf of U.S. Senate candidate Bruce Vorhauer.

We would like to point out that this fundraising letter was sent out on corporate letterhead, more specifically on letterhead of the 1st Valley Bank in Seeley Lake, Montana, which is a federal depository and, thus, a government contractor.

Secondly, there was not a disclaimer on or in the letter, and the author of the letter, bank president Jim Cowan, not only signed the letter as president of the bank, but has stated publicly that he paid the costs of sending the letter, indicating the letter was paid for outside of the campaign's finances.

Your investigation into the appropriateness of this type of fundraising letter is appreciated.

Sincerely,

Alice Tully
Campaign Manager

Enc.

RECEIVED
FEDERAL ELECTION COMMISSION
90 MAY 30 AM 11:38

P.O. Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

V E R I F I C A T I O N

STATE OF MONTANA)
: ss.
County of Missoula)

Alice M. Tully, being first duly sworn upon her oath, deposes and says:

That she is the complainant in the above-entitled action; that she has read the foregoing Complaint, and that the same are true to the best of her knowledge, information and belief.

Alice M. Tully

SUBSCRIBED AND SWORN TO before me, a Notary Public, this ___ day of May, 1990.

NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: _____
My Commission Expires: _____

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 22, 1990

1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

RE: MUR 3066

Dear Gentlemen:

On June 15, 1990, 1st Valley Bank was notified that the Federal Election Commission received a complaint from Alice Tully, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time 1st Valley Bank was given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 18, 1990, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure

OGC 6360

Bill Farrell

UNITED STATES SENATE

RECEIVED
FEDERAL ELECTION COMMISSION
90 MAY 30 AM 9:24

MUR 3066

May 25, 1990

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Attn: Lois G. Lerner
Associate General Counsel

Dear Ms. Lerner:

This is a follow-up to our letter dated May 7, 1990 wherein we outline concerns regarding a fundraising letter sent out on behalf of U.S. Senate candidate Bruce Vorhauer.

We would like to point out that this fundraising letter was sent out on corporate letterhead, more specifically on letterhead of the 1st Valley Bank in Seeley Lake, Montana, which is a federal depository and, thus, a government contractor.

Secondly, there was not a disclaimer on or in the letter, and the author of the letter, bank president Jim Cowan, not only signed the letter as president of the bank, but has stated publicly that he paid the costs of sending the letter, indicating the letter was paid for outside of the campaign's finances.

Your investigation into the appropriateness of this type of fundraising letter is appreciated.

Sincerely,

Alice Tully
Campaign Manager

Enc.

90 MAY 30 AM 11:38
FEDERAL ELECTION COMMISSION
OGC

P.O. Box 8305, Missoula, Montana 59807 (406) 542-0201

Paid for by Montanans for Farrell.

V E R I F I C A T I O N

STATE OF MONTANA)
: ss.
County of Missoula)

Alice M. Tully, being first duly sworn upon her oath, deposes and says:

That she is the complainant in the above-entitled action; that she has read the foregoing Complaint, and that the same are true to the best of her knowledge, information and belief.

Alice M. Tully

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 24 day of May, 1990.

NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at: _____
My Commission Expires: _____

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUL 31 PM 3:21

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 3066
DATE COMPLAINT RECEIVED
BY OGC: May 24, 19909
DATE OF NOTIFICATION TO
RESPONDENTS: May 31, 1990
STAFF MEMBER: George F. Rishel
Jeffrey D. Long

COMPLAINANT:	Alice Tully
RESPONDENTS:	Bruce Vorhauer for U.S. Senate Committee and James Cowan, as treasurer First Valley Bank and James Cowan, as president
RELEVANT STATUTES:	2 U.S.C. § 441b 2 U.S.C. § 441c 2 U.S.C. § 441d
INTERNAL REPORTS CHECKED:	None
FEDERAL AGENCIES CHECKED:	None

I. GENERATION OF MATTER

This matter was initiated on May 24, 1990, by a complaint filed by Alice Tully, campaign manager of Montanans for Farrell, the principal campaign committee of Bill Farrell. Farrell was a candidate for the Republican Party nomination for the U.S. Senate in Montana in 1990 and lost the primary election June 5, 1990, with 13 per cent of the vote. The complaint alleges that James Cowan sent out a solicitation to Montana bankers for contributions to the candidacy of Bruce Vorhauer on stationery of the First Valley Bank in Seeley Lake, Montana, in violation of the prohibition on corporate contributions and expenditures.

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Bruce Vorhauer was also a candidate for the Republican Party nomination for the U.S. Senate in Montana in 1990 and also lost the primary with 35 per cent of the vote. Vorhauer for Senate Committee is his principal campaign committee.

On June 26, Ms. Tully filed an amendment to the complaint that specifically alleged violations of the prohibition on contributions by government contractors and the required disclaimer on solicitations.

James Cowan filed a response on June 12 on behalf of the Vorhauer for Senate Committee and himself as treasurer. On June 18, 1990, he filed a response on behalf of the First Valley Bank and himself as president. Although these responses were filed before the filing of the amended complaint, they address the issues raised in the complaint and the amended complaint, except for the allegation regarding the bank as a government contractor.

II. FACTUAL AND LEGAL ANALYSIS

James Cowan, president of the First Valley Bank, signed a letter dated April 30, 1990, and addressed to "Dear Montana Banker" that solicited contributions on behalf of the campaign of Bruce Vorhauer for the U.S. Senate. Cowan states that a "single piece" of First Valley Bank stationery was provided to the campaign where campaign staff wrote the letter and volunteers stuffed and posted the mailing. The mailing consisted of the letter, a Vorhauer campaign brochure,[1] and a contributor card. The brochure states: "Paid for by Vorhauer for Senate

1. The brochure states that Vorhauer was the founder and former director of the First Valley Bank of Seeley Lake.

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Committee." It was also mailed in a First Valley Bank envelope. Cowan states that a friend's postage meter was used and that he "paid for the postage and reimbursed the First Valley Bank for any materials used out of my own pocket." He provided a copy of an itemization dated May 7, 1990, given to the campaign as evidence of his in-kind contribution. This itemization lists $67 for postage costs, $12.60 for envelopes, and $.02 for the piece of letterhead stationery. This document also indicates that 268 letters were mailed. The Vorhauer Committee reported a $67 in-kind contribution from Cowan in its Pre-Primary Report, the last report it had filed at the time this report was prepared. According to Polk's directory, the First Valley Bank is a state chartered institution, not a national bank.

a. Corporate Contribution

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no corporation whatever shall make any contribution or expenditure in connection with a Federal election and that no candidate or political committee shall knowingly accept such a contribution or expenditure. 2 U.S.C. § 441b. The Act defines contribution to include "any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services, or anything of value." 2 U.S.C. § 441b(b)(2).

The Commission has recognized, however, that a corporation may endorse a candidate for election to Federal office and make such endorsement known through a press release distributed to those to whom it customarily sends its press releases. Advisory Opinion 1984-23. The Commission has also stated that the

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identity of an individual as a corporate official in a campaign advertisement in which the individual supported a Federal candidate would not result in a corporate contribution, when the campaign paid all of the costs of the advertisement and the corporation was not compensating the individual for his time in making the advertisement. Advisory Opinions 1978-77 and 1984-43. In MUR 1261, the Commission found no reason to believe Larry Foods, Inc. had made a corporate contribution when an officer of the corporation, acting as an individual volunteer for a Federal campaign, used corporate stationery for preparing invitations to a fundraiser. In that matter, the corporation stated that the individual was acting without authorization and the corporation had been reimbursed for the costs of preparation.

As noted, Cowan states that he reimbursed the bank for any materials he used, which would include the single piece of letterhead stationery and the envelopes for a total amount of $12.62. There is no evidence to the contrary. Although Cowan states that he reimbursed the bank two cents for the "single piece" of stationery on which the letter was printed and then copied by the campaign, that reimbursement does not take into account the intrinsic value in the use of the bank's name in connection with the solicitation. Such value is readily evident because instead of using campaign or personal stationery, the bank stationery was used for this solicitation from Cowan, president of the bank, to other Montana bankers. The campaign saw value in the use of the bank's letterhead.

Moreover, this circumstance is distinguishable from that

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addressed in the advisory opinions and MUR 1261. First, there is no claim the bank endorsed Bruce Vorhauer. Second, the mailing was not one in which James Cowan was merely identified as a corporate official. Instead, the corporate letterhead itself was used for the solicitation. Finally, no claim could credibly be made that James Cowan was acting without authorization. He was the president of the bank and treasurer of Bruce Vorhauer's campaign committee. Vorhauer was the founder and former director of the bank.

Accordingly, this Office recommends that the Commission find reason to believe the First Valley Bank and James E. Cowan, as president, violated 2 U.S.C. § 441b by making a prohibited corporate contribution and that the Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, knowingly accepted such a prohibited corporate contribution in violation of 2 U.S.C. § 441b. Because of the relatively small amount involved in this situation, this Office further recommends that the Commission take no further action with respect to this violation.

b. **Government Contractor**

The Act provides that no person who is a government contractor shall directly or indirectly make any contribution to any political committee or candidate and that no person shall knowingly solicit such a contribution. 2 U.S.C. § 441c. Commission regulations define who is a government contractor. 11 C.F.R. § 115.1.

The amended complaint alleges that the First Valley Bank letterhead indicates it is a federal depository and, thus, a

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government contractor. The copy submitted with the complaint does not appear to contain any such indication. We note, however, that the bank letterhead used by Cowan in responding to the complaint does contain the "FDIC" (Federal Deposit Insurance Corporation) logo and a statement that each deposit is insured to $100,000. The envelope states that the bank is a member of the FDIC. It appears that when the solicitation letter was copied the FDIC logo may have been inadvertently cut off.

This reference to the FDIC on the letterhead is insufficient for alleging that the bank is a government contractor. Furthermore, the Act defines government contractor to include a person who has a contract with the United States or one of its departments or agencies where payment "is to be made in whole or in part from funds appropriated by the Congress." 2 U.S.C. § 441c(a)(1). According to the 1989-90 Government Manual, the FDIC is not financed with appropriated funds. Therefore, this Office recommends that the Commission find no reason to believe the First Valley Bank and James E. Cowan, as president, and the Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. § 441c.

c. **Disclaimer**

The Act provides that whenever a person makes an expenditure for the purpose of soliciting contributions through direct mail or any other type of general public political advertising, such solicitation shall state who paid for it and whether it was authorized by any candidate. 2 U.S.C. § 441d. Commission regulations require such disclaimer to be "clear and conspicuous"

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but do not require that they be on the front face or page "as long as a disclaimer appears within the communication." 11 C.F.R. § 110.11(a)(1). The Commission has stated that in a solicitation mailing consisting of several items, the disclaimer need appear on only one of the items. Advisory Opinion 1980-145.

In this instance, the solicitation mailing consisted of a letter, a brochure, and a contributor card. A copy of the brochure attached to the complaint contains the statement: "Paid for by Vorhauer for Senate Committee." Cowan states that this disclaimer also appeared on the contributor card. In these circumstances, however, Cowan paid for the mailing and treated it as an in-kind contribution to the campaign. Therefore, the disclaimer on the brochure was not the correct one. Instead, the mailing should have contained a disclaimer that said: "Paid for by James E. Cowan and authorized by Bruce Vorhauer for U.S. Senate Committee."

Moreover, the facts indicate that the mailing went to 268 Montana bankers, a number that would cover a substantial portion of the banking officials in the state. Although the precise source of the list is not provided, the facts suggest that the mailing was apparently distributed by direct mail or another type of general public political advertising. To the extent that the First Valley Bank is implicated in the disclaimer issue, the Section 441d violation would be considered subsumed within the Section 441b violation.

Accordingly, this Office recommends that the Commission find reason to believe the Bruce Vorhauer for U.S. Senate Committee

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and James E. Cowan, as treasurer, violated 2 U.S.C. § 441d. Because of the small amount involved in this violation, this Office further recommends that the Commission take no further action with respect to this violation.

III. RECOMMENDATIONS

1. Find reason to believe that First Valley Bank and James E. Cowan, as president, violated 2 U.S.C. § 441b and take no further action.

2. Find no reason to believe that First Valley Bank violated 2 U.S.C. § 441c.

3. Find reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. § 441b and 441d and take no further action.

4. Find no reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. § 441c.

5. Approve the appropriate letters.

6. Close the file.

Lawrence M. Noble
General Counsel

Date 7/31/90

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Response of 1st Valley Bank
2. Response of Vorhauer for Senate Committee

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS
COMMISSION SECRETARY

DATE: AUGUST 6, 1990

SUBJECT: MUR 3066 - GENERAL COUNSEL'S REPORT DATED JULY 31, 1990

The above-captioned document was circulated to the Commission on Wednesday, August 1, 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	xxx
Commissioner Josefiak	xxx
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	xxx

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

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

90040802754

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3066
Bruce Vorhauer for U.S. Senate Committee	)	
and James Cowan, as treasurer;	)	
	)	
First Valley Bank and James Cowan, as	)	
President.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 23, 1990, do hereby certify that the Commission took the following actions in MUR 3066:

1. Failed in a vote of 3-2 to pass a motion to find reason to believe that First Valley Bank and James E. Cowan, as president, violated 2 U.S.C. § 441b and take no further action.

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

2. Decided by a vote of 5-0 to find no reason to believe that First Valley Bank violated 2 U.S.C. § 441c.

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

(continued)

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3. Failed in a vote of 3-2 to pass a motion to find reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §§ 441b and 441d and take no further action.

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

4. Decided by a vote of 5-0 to find reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. § 441d and take no further action.

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

5. Decided by a vote of 5-0 to find no reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. § 441c.

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

(continued)

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6. Decided by a vote of 5-0 to

a) Direct the Office of General Counsel to send appropriate letters pursuant to the above-noted actions.

b) Close the file.

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

Attest:

8-28-90
Date

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

9004080027757

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alice Tully, Campaign Manager
Montanans for Farrell
P.O. Box 8305
Missoula, Montana 59807

RE: MUR 3066

Dear Ms. Tully:

This is in reference to the complaint you filed with the Federal Election Commission on May 24, 1990, concerning Bruce Vorhauer for U.S. Senate Committee and 1st Valley Bank.

Based on that complaint, on August 23, 1990, the Commission found that there was reason to believe Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer violated 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against the Committee and its treasurer. On that same date, the Commission found no reason to believe Bruce Vorhauer for U.S. Senate and James E. Cowan, as treasurer, and no reason to believe 1st Valley Bank, violated 2 U.S.C. § 441c. In addition, there was an insufficient number of votes to find reason to believe Bruce Vorhauer for U.S. Senate and James E. Cowan, as treasurer, and whether 1st Valley Bank, violated 2 U.S.C. § 441b. A copy of the Statement of Reasons will be forwarded to you at a later date.

On August 23, 1990, the Commission closed the file in this matter. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 1990

James E. Cowan, President
1st Valley Bank
P.O. Box 369
Seely Lake, Montana 59868

RE: MUR 3066
1st Valley Bank and
James E. Cowan, as President

Dear Mr. Cowan:

On May 31, 1990, the Federal Election Commission notified you and 1st Valley Bank of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On August 23, 1990, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe 1st Valley Bank and James E. Cowan, as President, violated 2 U.S.C. § 441c. On that same date, there was an insufficient number of votes to find reason to believe 1st Valley Bank violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter. A copy of the Statement of Reasons will be forwarded to you at a later date.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 1990

James E. Cowan, Treasurer
Vorhauer for U.S. Senate Committee
1084 Helena Avenue
Helena, Montana 59601

RE: MUR 3066
Vorhauer for U.S. Senate
Committee and James E.
Cowan, as treasurer

Dear Mr. Cowan:

On August 23, 1990, the Federal Election Commission found reason to believe that Vorhauer for U.S. Senate Committee and you, as treasurer ("Committee"), violated 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action. On that same date, the Commission voted to find no reason to believe the Committee violated 2 U.S.C. § 441c, and there was an insufficient number of votes to find reason to believe the Committee violated 2 U.S.C. § 441b. Accordingly, the Commission has closed its file in this matter. A copy of the General Counsel's Report is attached for your information. A copy of the Statement of Reasons will be forwarded to you at a later date.

The Commission reminds you that a mailing which does not include a disclaimer identifying the person who paid for the mailing, even if the mailing was paid for by in-kind contributions, appears to be a violation of 2 U.S.C. § 441d. You should take immediate steps to insure that this activity does not occur in the future.

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

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If you have any questions, please direct them to Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Commissioner

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF VICE CHAIRMAN

October 5, 1990

MEMORANDUM

TO: VINCENT J. CONVERY, JR.
ASST. GENERAL COUNSEL FOR LEGAL REVIEW

FROM: VICE CHAIRMAN JOHN WARREN McGARRY
COMMISSIONER DANNY L. McDONALD
COMMISSIONER SCOTT E. THOMAS

SUBJECT: MUR 3066

We understand that the Commissioners opposing the General Counsel's recommendations in this matter are expected to file the required Statement of Reasons in support of their position before the file is released to the public, but that they have not yet done so. We also understand that the case file will be made public before October 15, 1990.

We expect to file our own statement in support of the General Counsel's recommendations in this case. Unfortunately, the timing is such that we will not have the opportunity to review the opposition's required Statement of Reasons in sufficient time to have our own statement prepared and placed on the public record in the same microfilm location. Given the importance of the principles involved in this case, we want the public to have as ready access to the position of the Commissioners who supported the General Counsel's recommendations, as to the position of those Commissioners in opposition.

Please advise if there is any specific action on our part to ensure that our views are made an integral and easily accessible part of the public record in this case.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS
COMMISSION SECRETARY

DATE: OCTOBER 12, 1990

SUBJECT: STATEMENT OF REASONS FOR MUR 3066

Attached is a copy of the Statement of Reasons in MUR 3066 signed by Commissioner Josefiak. This was received in the Commission Secretary's Office on October 12, 1990 at 12:09 p.m.

cc: Commissioners
Staff Director Surina
Press Officer Fred Eiland

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BEFORE THE FEDERAL ELECTION COMMISSION

Bruce Vorhauer for U.S. Senate Committee and James Cowan, as treasurer	)	
	)	MUR 3066
First Valley Bank and James Cowan, as president	)	

STATEMENT OF REASONS

Commissioner Thomas J. Josefiak

I. OVERVIEW

On August 21, 1990, the Federal Election Commission declined to adopt the recommendation of the Office of the General Counsel to find reason to believe that First Valley Bank and James E. Cowan, as president, violated 2 U.S.C. §441b and take no further action. The Commission also declined to adopt the recommendation to find reason to believe that the Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441b and take no further action.[1]

Adoption of these recommendations would have meant the Commission was making an initial finding of violations of the Federal Election Campaign Act's prohibition against corporate contributions to Federal candidates, but closing this case without

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1. These recommendations failed by a vote of 3-2, with Commissioners McDonald, McGarry and Thomas supporting them, and Commissioners Elliott and myself opposing them (Commissioner Aikens absent). At the same time, the Commission voted 5-0 to find reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441d (improper 'disclaimer') and take no further action, no reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441c (contributions by government contractors) and no reason to believe First Valley Bank violated 2 U.S.C. §441c.

attempting to exact a conciliation agreement and civil penalty from the respondents (and without an opportunity for a full response to the Commission's legal conclusion). Even without pursuing these respondents further, however, I could not vote to find 'reason to believe' violations of §441b occurred under these circumstances. I did not want such a finding to hang out there against these respondents and, more importantly, I did not want that result to stand as a precedent for future cases.

The facts of this case are simple. James Cowan, president of First Valley Bank of Seeley Lake, Montana, signed a "Dear Montana Banker" letter soliciting contributions on behalf of the campaign of Bruce Vorhauer for U.S. Senate. The letter was sent to 268 Montana bankers, and was reproduced from letterhead stationery of First Valley Bank. One piece of stationery was provided to the campaign, whose staff wrote and reproduced the letter and whose volunteers stuffed and mailed it. The General Counsel's report described the payment of costs for the mailing, and then presented the novel (and fallacious) argument in support of the §441b recommendation:

> ... Cowan states that he reimbursed the bank for any materials he used, which would include the single piece of letterhead stationery and the envelopes for a total amount of $12.62. There is no evidence to the contrary. Although Cowan states that he reimbursed the bank two cents for the "single piece" of stationery on which the letter was printed and then copied by the campaign, that reimbursement does not take into account the intrinsic value in the use of the bank's name in connection with the solicitation. Such value is readily evident because instead of using campaign or personal stationery, the bank stationery was used for this solicitation from Cowan, president of the bank, to other Montana bankers. The campaign saw value in the use of the bank's letterhead.

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I do not believe the private use of corporate letterhead stationery under these facts constituted a violation of 2 U.S.C. §441b. I disagree with the argument that reimbursement for the corporate stationery can or must "take into account the intrinsic value in the use of the bank's name" to avoid a §441b problem. I consider the General Counsel's argument and §441b recommendations on this issue to be flatly contrary to the direction set forth in numerous prior opinions and decisions of the Commission, particularly MUR 1261.

II. COMMISSION PRECEDENT

MUR 3066 was not the first case in which the Commission was presented with the legal question of whether reimbursed use or reproduction of corporate letterhead stationery in a mailing by an individual endorsing or soliciting contributions for a Federal candidate would itself constitute an impermissible corporate contribution pursuant to 2 U.S.C. §441b. The Commission answered that question ten years ago in MUR 1261 (discussed below), finding such private use does not itself constitute a violation.

Furthermore, in its advisory opinions and enforcement cases, the Commission has repeatedly acknowledged the permissibility of corporations and corporate officials, openly identified as such, to have a 'public profile' related to elections and candidates. Those decisions have recognized the First Amendment protection attendant to rights of pure political speech and freedom of association, as distinct from corporate <u>financing</u> of activity for the purpose of influencing Federal elections -- the object of §441b's prohibition.

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1. Advisory Opinion 1978-77

In Advisory Opinion 1978-77, the campaign for a Congressman seeking re-election asked if an executive of an automobile company could provide his voice and identity for an endorsement tape to be used in a campaign radio commercial. The Commission answered:

> Since the campaign committee will pay for all costs of producing and broadcasting the advertisement, a contribution to your campaign committee would not occur in these circumstances. The fact that several minutes are required for the corporate official to make the recording and that he will be identified as an officer of AMC do not mean that a contribution of "anything of value" has been made to your campaign.

2. MUR 1261

In MUR 1261 (1980), a complaint alleged that a presidential campaign received a corporate contribution on the basis of a solicitation for contributions to the campaign that was printed on corporate letterhead stationery. The General Counsel's report recommended finding no reason to believe that the campaign or corporation violated §441b by this activity, and stated:

> ...[A]s the McGovern Campaign Committee, and not Larry's Food Products, Inc., seems to have incurred the cost of the solicitation, it is the General Counsel's view that there is no violation of the Act for which Larry's Food Products, Inc., could be held accountable.
>
> Although the solicitation letter was written on the stationery of Larry's Food Products, Inc., the Commission implicitly recognized in AO 1978-77 that under analogous circumstances the identification of a corporate officer or corporation in a partisan communication or solicitation does not in and of itself constitute anything of value from the corporation. Thus, in the General Counsel's view, neither the appearance of the corporate logo of Larry's Food Products, Inc., on the solicitation letters of the McGovern Campaign Committee or the fact that Chip Goodman's signature is prefaced by his employer's name and followed by his business title constitutes a contribution by Larry's Food Products, Inc., to the McGovern campaign. In sum,

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> since Chip Goodman appears to have acted as a volunteer agent of the McGovern Campaign Committee, and as Larry's Food Products did not incur the costs of the solicitation, the solicitation of contributions by Chip Goodman to the McGovern Campaign Committee appears to be a permissible activity under the Act.

Based on the General Counsel's rationale, the Commission decided this activity did not constitute a violation of §441b. That view was sensible, reasonable and respectful of the practical limitations upon the jurisdiction of the Act. It recognized the Commission's job is to enforce the Act's regulation of campaign finance activity on behalf of Federal candidates, not to attempt to flatten the uneven effects of the non-financial, political 'influence' of individuals who may tout their professional status.

3. Advisory Opinion 1984-23

In Advisory Opinion 1984-23, a trade association asked if it could endorse a presidential candidate and publish information about the association's endorsement in its newsletter, sent almost exclusively to its members, and in its magazine, circulated to a slightly larger audience. The Commission observed:

> In the Commission's view, a corporation or labor organization may endorse a candidate and may publicly announce its endorsement and state the reason or reasons for it. [footnote omitted] Both United States v. United Auto Workers, 352 U.S. 567 (1957), and United States v. Congress of Industrial Organizations, 335 U.S. 106 (1948), support that conclusion, at least inferentially. On the other hand, corporate or labor organization resources (PAC activities apart) may not be used for "partisan communications to the general public." 11 CFR 114.3(a); compare 11 CFR 114.5(i).

The Commission determined that the association could publish the information about its endorsement in its newsletter, for which non-member distribution was "de minimis," but not in the magazine.

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The Commission concluded that the association's "disbursement of general treasury funds to print and distribute an issue of [the magazine] that contains information about [the association's] endorsement would violate 2 U.S.C. §441b."

4. Advisory Opinion 1984-43

In Advisory Opinion 1984-43, a corporation asked if one of its officers could appear in a television commercial for a member of Congress' campaign. In the proposed advertisement, the executive was to be introduced in his capacity as a corporate officer, and would state that the Congressman's actions had benefited the company and that its employees were "extremely appreciative of that." The opinion noted that the officer "was not directed" by the corporation to make the statement, but was doing it "as an individual" and volunteering his time, that the campaign was to pay all the expenses associated with making and airing the commercial and that the corporation "made no expenditures in connection with the tape." It concluded that the proposed activity would not constitute a contribution to the Congressman's campaign. Further, the Commission observed:

> The Commission has previously stated that the endorsement of a candidate by a corporation does not by itself constitute a prohibited contribution or expenditure for purposes of 2 U.S.C. §441b. Advisory Opinion 1984-23. It thus follows that where, as here, no corporate endorsement has been made, a statement that merely identifies [the officer] as a corporate official would not implicate the company in a prohibited contribution or expenditure.

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5. MUR 2541

Recently, in MUR 2541 (1988), a complaint alleged that Farley Industries, Inc., and William Farley, Chairman, violated §441b in regards to the corporation's apparent payment for the production and broadcasting of television commercials airing in Iowa in the latter half of 1987, immediately prior to the 1988 presidential primaries. All four of the advertisements featured the corporation's chairman, William Farley, as on-camera spokesperson. Three of the ads made no mention of Federal candidates, campaigns or elections, but focused on management strategies in American manufacturing and ended with the statement "FARLEY INDUSTRIES. AMERICA'S MOST EXCITING GROWTH COMPANY."

The complaint focused upon the fourth television commercial airing at the same time. That advertisement ("the Agriculture ad") also featured William Farley, who was introduced as "Chairman of Farley Industries" and whose comments about American agriculture, the economy and foreign trade included a reference to "America's next president," a brief criticism of (then presidential candidate) Congressman Richard Gephardt's trade legislation and the conclusion "I want our presidential candidates to think about that." The Commission initially found 'reason to believe' that Farley and his company violated §441b on the basis that "the Agriculture ad" was "in connection with" a Federal election and that payment for it constituted an impermissible corporate expenditure.

In the ensuing investigation, counsel for respondents asserted that "the Agriculture ad," unlike the other three advertisements, was paid for by Farley personally rather than Farley Industries,

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Inc. The report of the General Counsel recommending a 'no probable cause' finding tracked the analysis and language of the legal brief sent to the respondents, and stated:

> Although it appears that the above ad was made and aired "in connection with" a federal election, Farley Industries, Inc., did not pay for the production and broadcasting of this ad. Respondents submitted a letter from Grey Advertising, Inc., ... stating that William Farley made an oral contract with Grey for the Agriculture ad. Pursuant to this contract, Grey stated that it billed William Farley directly for the $50,000 cost of the Agriculture ad and William Farley paid the bill from his personal funds. As the Agriculture ad appears to have been contracted and paid by William Farley personally, rather than by Farley Industries, Inc., there does not appear to have been any corporate expenditure for this ad. Therefore, there does not appear to be a violation of 2 U.S.C. §441b(a). (emphasis added)

The Commission approved the General Counsel's recommendation in MUR 2541 to find no probable cause to believe that Farley Industries, Inc., and William Farley, as Chairman, violated §441b with respect to the television advertisement.\[2] That result was reached despite the clear 'PR' link to a corporation through the featured spokesman and the actual use of corporate funds to pay for commercials in a related, simultaneous advertising program. Thus, just two years ago, the Commission reaffirmed dramatically

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2. Commissioner McGarry moved approval of the recommendation to find no probable cause to believe William Farley and Farley Industries, Inc., violated §441b(a). The motion passed unanimously, with the votes of Commissioners Aikens, Elliott, McDonald and McGarry (Commissioners Thomas and myself absent). At the time of the vote, Commissioner Aikens and Elliott stated for the record that they did not agree with the General Counsel's analysis of the 'election-related' content of the commercial and that they would have voted to find no probable cause against the corporation even if the corporation had paid for the advertisements (Commissioner Aikens subsequently filed a statement to that effect).

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the necessity for actual expenditures to be made by a corporation "in connection with" a Federal election, not just the appearance of candidate support, in order to find a violation of §441b.

6. Summary

These prior opinions and decisions of the Commission certainly do not give support to the position advanced by the General Counsel in this case, and MUR 1261 is directly contrary. Adoption of the General Counsel's recommendations in MUR 3066 regarding §441b would clearly have been a change from the Commission's direction in past related matters. From the perspective of preserving reasonable and fair enforcement of the Act and protecting individual rights of free speech, it would have been a change for the worse.

III. MUR 1690

In MUR 1690 (1986), the Commission recognized the use of corporate letterhead as relevant to a finding of a §441b violation where such use added a corporate 'imprimatur' to the utilization of corporate funds, assets, facilities and personnel in support of a candidate for Federal office. Use of corporate letterhead in those circumstances was evidence supporting the conclusion that corporate manpower and resources had been directly committed to political purposes -- the making of 'expenditures for the purpose of influencing Federal elections' by the corporation itself. See the Act's definition of "expenditure" at 2 U.S.C. §431(9)(A).

Moreover, under the facts of MUR 1690, the corporation was not reimbursed for the costs of the stationery. The consensus during discussion at the table seemed clearly to recognize that, under our prior decisions, the use of corporate letterhead by an individual

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would provide no independent basis for finding a §441b violation had the corporation been reimbursed for the use of the stationery.

MUR 1690 was a complicated and controversial case. The result in MUR 1690, and my votes to support the finding of §441b violations in that case, should not be mischaracterized in the context of this matter. The lines were drawn very deliberately in that case, after extensive discussions about its particular facts, and those lines should not get smudged by arguments that the position of the General Counsel in MUR 3066 was consistent with MUR 1690 or somehow reflects the logical next step.

The Commission's conclusion in MUR 1690 was based upon the observable dedication of tangible corporate resources to assist a Federal candidate, not the mere appearance of corporate 'support.' The General Counsel's recommendation and argument in MUR 3066, supported by my Democratic colleagues, would stretch the bounds of our prior analysis to find a §441b violation where no tangible corporate expenditure had been made. That approach would find an impermissible corporate 'imprimatur' upon entirely non-corporate expenditures. Use of corporate letterhead was a relevant factual element in MUR 1690, however, only in identifying a corporate imprint upon the broad and organized use of corporate resources and personnel to support a candidate for Federal office. That case did not alter Commission precedent regarding the private use of corporate letterhead for political purposes, unaccompanied by any expenditure of corporate funds or use of tangible resources.

IV. VALUE OF CORPORATE IDENTITY

No one would argue that use of an organization's letterhead

or logo is without any value, advantage, influence or benefit when used in a political context. And everyone is aware that other, commercial spheres of law attempt to quantify such 'good will' or 'PR' value.

The real issue in MUR 3066 is whether such intangible value of a corporate identity is identifiable or quantifiable in any sense for which the FECA can reasonably take cognizance, and whether §441b's prohibition upon corporate 'expenditures' provides a legitimate basis for denying individuals the opportunity to draw attention to their personal relationship to corporations or unions (or other organizations) where no tangible resources of the organizations are spent for political purposes.

The use of letterhead stationery symbolizing an individual's job, professional status or membership association constitutes no identifiable expenditure of any kind by the named entity under the Act, if appropriately financed. Such 'goodwill' value is intangible and incapable of meaningful calculation under the Act.\[3] Any diminishing of that 'goodwill' is miniscule: the corporation or other entity has truly not spent anything.\[4]

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3. In circumstances in which political committees have sought to trade upon their reputational 'good will' and marketing influence in commercial activities, the Commission has repeatedly declined to recognize such intangible elements as commercially justified value or 'bargained-for' consideration under the Act. See Advisory Opinions 1988-17, 1988-12, 1979-17 and 1976-50. See also MUR 1166/1180 (1982).

4. Moreover, it would make no sense to base the amount of an alleged violation under the General Counsel's theory upon the cost of the political mailing itself -- costs which the corporation in no way incurred and over which the entity likely had no control. Under even the broadest theory,

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The private use of 'company letterhead' is an incidental, personal perquisite of an official of a corporation or union. Such use, properly funded, is not the making of an impermisible corporate or union expenditure. That is not to say that good business judgment might not discourage officers or directors of corporations, or union officials, from using official stationery for political purposes -- not wanting to have the 'company name' identified with such activities. Frankly, I think use of corporate stationery for political solicitations is generally a bad idea for many reasons. But those legitimate concerns simply are not, and cannot reasonably be, reflected in any FECA cognizance of such intangible effects (regardless of whether such value is considered under specialized, commercial spheres of law). Such use is not a violation of §441b.

Here, the General Counsel and my Democratic colleagues decided corporate officers should not be permitted to do this sort of thing -- that it is contrary to the spirit of §441b -- and henceforth the Commission should call reimbursed use or reproduction of corporate letterhead stationery for political purposes a violation of the Act. But what is the rule of law such a decision would leave in its wake? That it is impermissible to use official stationery of a corporation or union? Any facsimile stationery that appears to be official? Any use of an entity's letterhead style, logo or slogan? Any mention of a corporation or union, or an individual's rank in the

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(Footnote 4 continued from previous page)
the corporate 'expenditure' is still only the intangible, one-time 'goodwill' value of the use of the corporate letterhead in that particular mailing, not the costs of the entire mailing paid with non-corporate funds.

organization, in an election-related communication to the public? Or any mention that appears to give an organizational 'imprimatur' to a request for support or contributions for a Federal candidate?

What would the Commission do when a union official, wearing a cap with the union's name and seal on it, endorses a candidate at a political rally? What if the candidate puts on such a cap himself? Who do we charge with a violation? Upon what basis -- impermissible use of the union's reputation? Upon what do we base the penalty? The 'rental' value of the union's influence and 'good will'? Its vote-getting effectiveness? Does that depend on how widely the rally was publicized? Whether it was televised?

Under the FECA's jurisdiction over campaign finance activity, the Commission cannot reasonably "take into account" the value of intangible support that does not rise to an identifiable and relatively tangible 'contribution' or 'expenditure' under the Act. I fear for the Commission (and the regulated community) if we go off on a search for the value of non-financial and intangible support, influence and clout, and then try to prevent its disparate political effects.

V. SUPPORT AND INFLUENCE UNDER §441b

Corporations and unions, and their officials, frequently show their preference for particular candidates in ways that do not violate the prohibitions against giving financial assistance. Generally, the Federal Election Campaign Act regulates campaign finance -- contributions and expenditures made for the purpose of influencing Federal elections -- not intangible endorsements or gestures of support. Oddly, there seems to be no dispute, even

from the General Counsel's office, that corporations may endorse candidates.

Presumably, even under the General Counsel's analysis, an individual who signs or sponsors a candidate-related mailing would be permitted to utilize a more personalized type of stationery with some reference to the individuals' organizational title, office or other status, or to make mention of it in the body of the letter. Apparently, the General Counsel's focus is on the 'officialness' of the letterhead and the impression of corporate or union support, not the individual's advertising of their personal status. It appears to be not so much any actual expenditure that troubles the General Counsel and the Democratic Commissioners, but the misleading impression that a corporate expenditure ('imprimatur') was made.

Such a focus on false impressions and intangible support, however, turns the FECA's fundamental definitions on their head, by instead looking at the general influencing of federal elections without making an expenditure. See 2 U.S.C. §431(9)(A). Those concerns represent worries about effects of political influence we cannot reasonably regulate -- intangible 'activity' outside our jurisdiction over campaign finance.[5]

5. Whether or not the FECA serves some policy purpose in 'leveling the playing field' (a dubious proposition), the law cannot be effectively or fairly used to wipe out the disparate advantages of support or endorsements by persons of varying influence, prestige, or rank in society. Two television commercials may cost the same to produce and air, but the one with an endorsement by a well-known celebrity, officeholder, or business figure will arguably be of more 'value' than that featuring an unknown or a paid announcer. The value of the campaign advertising 'expenditure' for the two TV commercials would, however, be the same for purposes of FECA reporting.

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If Congress wants to decide that private use of corporate letterhead for political purposes smacks of the 'appearance of corruption,' and should be prohibited or constrained, then that is Congress' legislative prerogative. The FECA and Commission regulations do not prohibit all otherwise permissible activity that might suggest the 'appearance of corruption,' nor do they empower the Commission to extrapolate beyond the law and its jurisdiction to reach all such activity.\[6] Efforts to prevent the appearance of corruption must be through rules 'on the books,' in the Act and the Commission's regulations as written, not through ad hoc and intuitive rulemaking in enforcement cases.

Any question about who sponsored and paid for an advocacy or fundraising mailing should be cured by a proper 'disclaimer,' pursuant to 2 U.S.C. §441d. Findings of violations of the FECA in circumstances of confusion or misperception about the identity of the sponsor should be based upon the absence of proper disclaimers, not upon some notion that campaign materials may be misleadingly suggestive of a §441b violation. A finding of a violation based upon a disclaimer problem does not require the Commission to speculate about the economic value of 'good will' and corporate identity to devine an identifiable 'expenditure.' A finding of a violation based upon a disclaimer problem can be legitimately linked to the actual cost of the mailing, and the persons responsible for the mailing can be held accountable.

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6. If we do engage in such an undertaking, I suggest we start with cocktail receptions on Capitol Hill during an election year paid for by corporate and union lobbyists.

The Commission should not attempt to now decide the reimbursed use of corporate letterhead violates the Act on the basis of §441b's prohibition against corporate expenditures, regardless of how broad or important that provision of the Act. That would be freelance policy-making, rather than interpreting the Act and regulations as written, and contrary to long-standing Commission precedent. This issue, and this case, involves no legally recognizable corporate expenditures under the FECA.

VI. CONCLUSION

I would guess that there are literally hundreds of mailings in any given election cycle endorsing candidates or soliciting contributions on their behalf -- signed by individuals and paid for by those individuals or by the campaigns they support -- that use or reproduce the corporate, partnership, association or union letterhead (or a close facsimile) of the entities with which these individuals are associated. Frankly, most of these individuals, and the campaign treasurers of the candidates they support, would be astonished to learn these types of mailings may not be considered permissible under the FECA, even though not a nickel of impermissible funds was used to pay for them.

Recognizing that practices are commonplace does not necessarily mean, of course, that such activity automatically passes legal scrutiny under the FECA. But it should remind us that to challenge those widespread practices now, and to say that individuals may not so openly or broadly take advantage of their affiliation with such entities, even while those entities make no 'expenditure,' is to change the rules of the game significantly.

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I do not think it is necessary or wise for the Commission to change the rules to preclude such use of 'official' stationery. I am convinced §441b as written does not demand such a result. Certainly, if we were to engraft a prohibition against individuals' use of reproduced organizational stationery for political purposes upon the Act, then the Commission's regulations implementing §441b would be a likely place to do it. But make no mistake about it, we would be tacking on something that did not naturally or rationally belong there. I do not consider the provisions of the Act to be hooks upon which the Commission is entitled to hang its creative policy choices.

I would have thought the parameters set by the Commission's prior decisions in these situations were simple, sensible and well-settled. But it seems no line is ever drawn at the FEC. No rule or guideline is ever really established. There is a constant tendency to try to extend the scope and jurisdiction of the FECA to include activity that some may consider 'just as bad as' activity that is legitimately regulated by the Act. Whether or not the use of corporate letterhead by an individual is almost as bad as (or easily mistaken for) a corporate expenditure, however, it is <u>not</u> a corporate expenditure within the meaning of the Act.

To focus on the intangible value of a corporate identity, the effect and influence of intangible support or the wrong or unfair impression created by the use of corporate or union letterhead -- in the context of political mailings that are completely funded from permissible sources -- is to fret about political advantage or clout over which the FECA has no meaningful control. It trivializes and

dilutes the importance of §441b in campaign finance regulation to attempt to apply it to activity that does not involve a recognizable corporate or union expenditure.

The Commission should stick to campaign finance regulation. We should uphold our clear and sensible precedent in MUR 1261.

October 12, 1990

Thomas J. Josefiak
Commissioner

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3066

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3066.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS
COMMISSION SECRETARY

DATE: OCTOBER 15, 1990

SUBJECT: STATEMENT OF REASONS FOR MUR 3066

Attached is a copy of the Statement of Reasons in MUR 3066 signed by Commissioner Elliott. This was received in the Commission Secretary's Office on Friday, October 12, 1990 at 3:29 p.m.

cc: Commissioners
Staff Director Surina
Press Officer Eiland

BEFORE THE FEDERAL ELECTION COMMISSION

Bruce Vorhauer for U.S. Senate Committee and James Cowan, as treasurer	)	
	)	**MUR 3066**
First Valley Bank and James Cowan, as president	)	

Statement of Reasons

CHAIRMAN LEE ANN ELLIOTT

On August 21, 1990, I voted to oppose the recommendations of the General Counsel to find reason to believe that First Valley Bank and James E. Cowan, as president, and the Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441b. I strongly agree with the arguments advanced by Commissioner Josefiak in his Statement of Reasons in MUR 3066 regarding the gross misapplication of §441b in the General Counsel's analysis of this matter.*

In my view, the position argued by the General Counsel in MUR 3066 indicates another effort to over-regulate entirely appropriate and permissible individual political activity. Most persons are part of peer groups through their occupation or by membership in associations or other groups. The use of stationery representing their professional and organizational ties in letters recommending support for political candidates

* Although Commissioner Josefiak and I did not support the same result in MUR 1690, the distinctions drawn regarding that matter in his Statement in MUR 3066 reinforce the conclusion that the General Counsel's recommendations in this case went well beyond any prior Commission decisions in imposing §441b penalties upon individual political activity.

is an entirely natural, benign and Constitutionally protected form of free speech. Such private use, paid with personal or campaign funds, does not constitute an "expenditure" under the Act by the corporation, union or other organization with which those persons may be affiliated.

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Lee Ann Elliott

CHAIRMAN LEE ANN ELLIOTT

Convery

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS
COMMISSION SECRETARY

DATE: OCTOBER 15, 1990

SUBJECT: STATEMENT OF REASONS FOR MUR 3066

Attached is a copy of the Statement of Reasons in MUR 3066 signed by Commissioner Aikens. This was received in the Commission Secretary's Office on Friday, October 12, 1990 at 4:42 p.m.

cc: Commissioners
Staff Director Surina
Press Officer Eiland

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BEFORE THE FEDERAL ELECTION COMMISSION

Bruce Vorhauer for U.S. Senate Committee and James Cowan, as treasurer	)	
	)	MUR 3066
First Valley Bank and James Cowan, as president	)	

STATEMENT OF REASONS

Commissioner Joan D. Aikens

Unfortunately, I was unable to attend the Executive Session of August 21, 1990, at which the votes were taken regarding the General Counsel's recommendations in MUR 3066. Had I been there, I would have voted with Commissioners Elliott and Josefiak to oppose the recommendations to find probable cause to believe that the use of corporate letterhead under these facts constituted a violation of 2 U.S.C. §441b's prohibition against corporate expenditures in connection with Federal elections.

I concur with the analysis of the legal issues in MUR 3066 as presented in Commissioner Josefiak's Statement of Reasons, except I do not share his view of the corporate nature of the individual activity in MUR 1690, and did not vote to find 'probable cause' that violations of §441b occurred in those circumstances. I am otherwise in full agreement that reimbursed use or reproduction of corporate stationery, paid for with wholly permissible funds, does not itself constitute a violation of §441b. In fact, I thought the Commission had settled any argument about that issue ten years ago, when I voted with the majority in MUR 1261.

October 12, 1990

Joan D. Aikens
JOAN D. AIKENS
Commissioner

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3066.

7/26/91

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of	)	
	)	
Bruce Vorhauer for U.S.	)	
Senate Committee and	)	
James E. Cowan, as treasurer	)	MUR 3066
	)	
First Valley Bank and	)	
James E. Cowan, as president	)	

STATEMENT OF REASONS

Chairman John Warren McGarry
Commissioner Danny L. McDonald
Commissioner Scott E. Thomas

On August 23, 1990, the Federal Election Commission failed to approve the General Counsel's recommendation to find reason to believe that the First Valley Bank and James E. Cowan, as president, violated 2 U.S.C. §441b, but take no further action in light of the small amounts involved. The Commission also failed to approve the General Counsel's recommendation to find reason to believe that the Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441b and take no further action. Three Commissioners supported the General Counsel's recommendations and two Commissioners opposed the

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recommendations.[1] We write this statement of reasons to explain why we supported the General Counsel's recommendations.

In Matter Under Review ("MUR") 3066, the complainant stated that James Cowan, President of the First Valley Bank, sent out a fundraising letter soliciting contributions to the Bruce Vorhauer for U.S. Senate Committee. Mr. Cowan sent the solicitation, which was written on bank letterhead and mailed in bank envelopes, to approximately 268 Montana bankers--a figure representing a large portion of the bankers in the state. Mr. Cowan was also the treasurer of the Vorhauer Campaign Committee and Mr. Vorhauer was the bank founder and former director. In pertinent part, the complaint raised the issue of whether the solicitation violated the Act's prohibition on corporate contributions and expenditures.

2 U.S.C. §441b prohibits corporations from making any contribution or expenditure in connection with any election to Federal office. Similarly, the Act prohibits candidates and political committees from accepting such corporate contributions. The Act defines the term "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, <u>or anything of value</u>...to any

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1. The Commission accepted by a vote of 5-0, however, the remainder of the General Counsel's recommendations: (1) find no reason to believe that First Valley Bank violated 2 U.S.C. §441c; (2) find reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441d and take no further action; and (3) find no reason to believe that Bruce Vorhauer for U.S. Senate Committee and James E. Cowan, as treasurer, violated 2 U.S.C. §441c. Commissioner Aikens was absent.

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candidate, campaign committee, or political party or organization, in connection with" any Federal election. 2 U.S.C. §441b(b)(2) (emphasis added). Commission regulations specifically indicate that: "the provision of any goods or services without charge...is a contribution." 11 C.F.R. §100.7(a)(1)(iii)(A).

Based on our review of the facts presented in the complaint, there are at least two apparent violations of §441b. First, in light of the large number of bankers solicited (268), it appears that the bank's mailing list was used in this solicitation, rather than a personal individual mailing list. In defining the term "anything of value," Commission regulations specifically include the use of a mailing list. 11 C.F.R. §100.7(a)(1)(iii)(A). Because it appears that the campaign used the bank's mailing list and there is no indication that the bank was paid for it by the campaign, there is reason to believe that the bank and the campaign violated §441b.

Second, we would agree with the General Counsel and find a §441b violation based upon the campaign's use of the bank's letterhead at no charge. It is hornbook law that the corporate name may be one of a corporation's most valued assets. It serves to identify a business and its products or services, to create demand for those products and services, and to protect the

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company's goodwill.[2] See J. McCarthy, Trademarks and Unfair Competition, §9.1 at 304 (2d ed. 1984). Indeed, "as a matter of accounting, goodwill is an essential element to be considered in arriving at the valuation of a business. Therefore, for many purposes, not the least of which is taxation valuation, good will and trademarks must have a dollar value placed on them." Id., §2.9 at 78. There can be little question that the use of a corporate letterhead and corporate name is "something of value."

In this matter, the bank's name and goodwill were used to solicit contributions for the Vorhauer Senate campaign. Indeed, it appears that Mr. Cowan deliberately chose to use the bank's stationery for the solicitation rather than his own personal stationery or the campaign's stationery which surely was available since Mr. Cowan also served as the campaign's treasurer. Clearly, as the General Counsel's Report observed,

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2. Goodwill includes "public confidence in the quality of the product and in the warranties made on behalf of the product, and the 'name recognition' of the product by the public that differentiates that product from others." Premier Dental Products v. Darby Dental Supply Co., 794 F.2d 850, 853 (3rd Cir. 1986). As a leading commentator explains, goodwill is:

> a business value which reflects the basic human propensity to continue doing business with a seller who has offered goods and services which the customer likes and has found adequate to fulfill his needs.... It is that which makes tomorrow's business more than an accident,...all that good disposition which customers entertain towards the house of business identified by the particular name or firm and which may induce them to continue giving their custom to it.

J. McCarthy, Trademarks and Unfair Competition, §2.8 at 72-73 (2d ed. 1984) (footnotes omitted) (emphasis added).

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"[t]he campaign saw value in the use of the bank's letterhead." General Counsel's Report, MUR 3066 at 4. Moreover, as President of First Valley Bank, Mr. Cowan's use of the bank's stationery appears to have been well within the scope of his actual authority and, as such, authorized by the bank. In our opinion, the bank provided something of value to the campaign when it allowed its corporate letterhead to be used for soliciting contributions on behalf of the campaign. This use of the corporate stationery resulted in a violation of §441b by both the bank and the campaign.

Nor do we think that this result is changed by Commission precedent. In MUR 1261, the Commission found no reason to believe that Larry Foods, Inc. had made a corporate contribution when an officer of the corporation used corporate stationery for preparing invitations to a candidate fundraiser. That case, however, is readily distinguishable from the present matter. As the General Counsel's Report in MUR 3066 explains, "[in MUR 1261], the corporation stated that the individual was acting without authorization." General Counsel's Report, MUR 3066 at 4. Here, by contrast, Mr. Cowan had sufficient authority as bank president to sanction the use of the bank's stationery.

In Advisory Opinion 1984-23, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5768, the Commission stated that under United States v. United Auto Workers, 352 U.S. 567 (1957) and United States v. Congress of Industrial Organizations, 335 U.S. 106 (1948), a

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corporation "may endorse a candidate and may publicly announce its endorsement and state the reason or reasons for it." In so finding, the Commission specifically limited the release of a corporate endorsement to traditional press entities:

> Corporate or labor organization resources (PAC activities apart) may not be used for "partisan communications to the general public." 11 C.F.R. §114.3(a); compare 11 C.F.R. §114.5(i). The conflict between these principles may, we think, be minimized by permitting corporate or union endorsements, and the announcement thereof through press releases, so long as the expenditures related thereto are de minimis and the announcement is not made a pretext for general electioneering. In this situation, the Commission will presume that [the corporation's] expenditures for the press releases are de minimis if the press releases are distributed only to those press entities that [the corporation] customarily contacts.

Advisory Opinion 1984-23 (emphasis added). The opinion further recognized that an endorsement may also be sent as a partisan communication to its restricted class. See 11 C.F.R. §114.8(h).

By contrast, the solicitation for political contributions sent on First Valley Bank stationery was more than a mere endorsement. Moreover, it was distributed neither to the press nor the bank's restricted class. Rather, it was specifically sent to a large portion of the Montana banking industry. This sort of general electioneering runs plainly outside the permissible boundaries of corporate endorsement staked out in Advisory Opinion 1984-23.

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There have been instances where the Commission has allowed a corporate official to make reference to his or her corporate title as identification when speaking on behalf of or against a particular candidate. Advisory Opinion 1984-43, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5783; and Advisory Opinion 1978-77, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5365. In these situations, however, it appeared that the individual was acting in an individual capacity and not in any official corporate capacity. Nor was there any indication that the corporation itself was attempting to make an official candidate endorsement or solicitation.

By providing the Vorhauer campaign with both a corporate mailing list and the use of First Valley Bank's corporate name for soliciting political contributions, someone plainly gave something of value to the Vorhauer Senate Campaign. Since it was the bank's president, acting within the scope of his actual authority, who gave these corporate assets to the campaign, these actions are properly attributable to the bank. Accordingly, we agree with the General Counsel's recommendations to find reason to believe that First Valley Bank and the Bruce Vorhauer for U.S. Senate Committee violated 2 U.S.C. §441b.

Finally, we believe a few words about the Commission's enforcement process are in order. The "reason to believe" vote is designed to be a very low threshold. Our colleagues' reluctance to make this very minimal preliminary finding, even

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with respect to such apparent violations as the campaign's use of the bank's mailing list, reflects an unwarranted quiescence. The Commission is entrusted at this stage with evaluating whether a set of circumstances might amount to a violation. We cannot be expected to have all the relevant facts at the "reason to believe" stage, nor can we be expected to commit our limited resources to pursuing what appear to be miniscule violations. The General Counsel's recommendations struck the right balance, in this regard.

It is also important to note that what may only be a strong suspicion based on limited evidence at the "reason to believe" stage, might prove to be a certainty when the facts are known. In MUR 1690, for example, which involved possible corporate expenditures in connection with the 1984 presidential election, the basis for the threshold reason to believe findings was a pattern of contributions suggesting unlawful corporate facilitation of contributions to the candidate. These suspicious patterns were uncovered during routine checks of contribution information by the Commission's Audit Division. Standing alone, these facts would have formed an insufficient basis on which to find probable cause that violations of the corporate prohibition occurred. The resulting investigation, however, provided ample facts on which at least four members of the Commission could find probable cause to believe that the corporate prohibitions were violated.

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If the instant matter had been more substantial, warranting a full investigation, the facts might have revealed clear cut, significant, official corporate involvement from beginning to end. A vote for "reason to believe" reflects a willingness to keep an open mind not only regarding the facts before us, but also regarding other facts that would shed further light on the issue before us.

7/24/91
Date

John Warren McGarry
Chairman

7-24-91
Date

Danny L. McDonald
Commissioner

7/24/91
Date

Scott E. Thomas
Commissioner

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