FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3191

DATE FILMED 7/27/95 CAMERA NO. 1

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KEEFE CONGRESS

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Doc 8515

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

Dear Counsel: October 31, 1990

The Keefe for Congress 1990 committee, 120 Lexington Avenue, Manchester, New Hampshire 03104, Petitioner, hereby institutes a complaint against the following respondents: Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire 03101; William Zeliff, Jr., Route 16B, Box cc, Jackson, New Hampshire 03846, individually; and Richard H. Kirk, c/o Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, NH 03846 in his capacity as Treasurer of the Friends of Bill Zeliff Committee.

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

In support of this complaint, the Petitioner states as follows:

According to William H. Zeliff, Jr.'s federal Financial Disclosure statements dated July 10, 1990 and October 10, 1990, Mr. Zeliff had very limited resources available to him for legal loans to his campaign as of April 30, 1990. Nevertheless, his FEC reports indicated that he has loaned his campaign approximately $301,500.

A. The Petitioner asserts and alleges that upon information and belief the Respondents have violated 11 CFR Sec. 110.1(b)(1) and 110.10 (b)(3) in that the assets and income of Sydna T. Zeliff have been the source of contributions in excess of $1,000 made to the Friends of Bill Zeliff Committee in both the primary and general elections.

William H. Zeliff, Jr. has stated that the $164,000 in net proceeds from the sale of two condominiums in Sea Isle City, NJ were loaned to his campaign. See September 22, 1990 Union Leader article by John Distaso attached hereto as Exhibit A and October 3, 1990 press statement of William H. Zeliff, Jr. attached hereto as Exhibit B. However, Sydna T. Zeliff had a one-half interest in these two condos. Attached hereto as Exhibits C and D are copies of the recorded deeds dated August 25, 1989 and November 27, 1989, evidencing Sydna Zeliff's one-half interest at the time of sale. By law, therefore, Mr. Zeliff was only entitled to loan one half (1/2) of the sale proceeds to his campaign.

B. The Petitioner asserts and alleges that upon information and belief the Respondents have violated 11 CFR Sec. 114.2(b) and (c) by accepting illegal corporate contributions in the form of loan proceeds from White Mountain Bank earmarked for business purposes and capital improvements to real estate.

On May 17, 1989, Bill and Sydna Zeliff received a loan of $562,380.67 from White Mountain Bank, which loan was

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guaranteed by Christmas Farm Inn, Inc. On the same day, Christmas Farm Inn, Inc., a Subchapter S corporation owned by the Zeliffs, received a loan from said bank in the amount of $1,287,000. Said loans were made partly to refinance existing obligations and partly for the purpose of "capital improvements". Attached hereto as Exhibit E is a letter dated September 29, 1990 from White Mountain Bank to Mr. and Mrs. William H. Zeliff, Jr. Attached hereto as Exhibits F and G are confirmatory mortgages dated October 1, 1990. See also, Exhibit B, wherein Mr. Zeliff states that said loans were for "major renovations" or capital improvements.

It should be noted that the above letter from White Mountain Bank dated September 29, 1990, alleging that an "error" had been made did not appear until one month ago, and said mortgages were not recorded until one month ago, some 16 months after the credit was extended by the bank. A review of Jackson, New Hampshire Town records on October 29, 1990 revealed that no building permits were issued by the Town of Jackson Building Department for any capital improvements to real estate owned by the Zeliffs or Christmas Farm Inn, Inc. during 1988, 1989 or 1990.

The diversion of funds from said loan proceeds to the Friends of Bill Zeliff Committee would constitute an illegal campaign contribution under federal law as cited above. Petitioner requests an investigation and ruling with respect to this potential diversion of funds.

C. The Petitioner asserts and alleges upon information and belief that the Respondents have violated 11 CFR Sec. 110.1 (b)(1) and 110.10 (b)(3) and have failed to report proceeds on sale of stocks as "holdings" or assets in Financial Disclosure Statements filed with the Clerk of the U.S. House of Representatives dated July 10, 1990 and October 1, 1990. Copies of said Financial Disclosure Statements are attached hereto as Exhibits H and I, respectively.

Proceeds from said stock sales were not disclosed as "holdings" or assets owned by William H. Zeliff, Jr. as of April 30, 1990, and in fact Mr. Zeliff only reported "holdings" or assets with value in the range of $3,000 to $15,000 as of that date. Nevertheless, Mr. Zeliff loaned his campaign approximately $192,000 after April 30, 1990. Moreover, a spokesman for the Respondents has admitted that (1) the stock proceeds were used to finance the campaign, and (2) "some stocks" were held jointly by Mr. and Mrs. Zeliff. Attached hereto as Exhibit J is a Boston Globe article dated Wednesday, October 31, 1990.

D. The Petitioner asserts and alleges that upon information and belief the Respondents have violated 11 CFR Sec. 114.2 (b) in that Christmas Farm Inn, Inc. may have paid Mr. Zeliff an excessive salary in 1990, unrelated to business purposes, and that motor vehicles owned by this corporation have been used by the Friends of Bill Zeliff Committee for campaign purposes. See

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Exhibit I, wherein salary paid to Respondent William H. Zeliff, Jr. through April 30, 1990 appears to equal or exceed annual salary paid during 1988 and 1989.

Based upon the above information, Petitioners assert and allege upon information and belief that reported loans by William H. Zeliff, Jr. to the Friends of Bill Zeliff Committee in the approximate amount of $301,500.00 came from four possible sources:

1) Illegal personal (spousal) contributions in excess of amounts allowed under federal law; and/or

2) Illegal corporate contributions; and/or

3) Diversion of proceeds from bank loans intended for "capital improvements" to the Zeliffs' real estate; and/or

4) "Holdings" or assets that were not reported on his federal Financial Disclosure statements.

The Petitioner asserts and alleges upon information and belief that the Respondents have violated federal law as cited above, and requests rulings as to whether said violations occurred in an intentional, willful and knowing manner. The Petitioner further requests expedited investigation and hearing on these allegations, as the Respondents have failed to cease and desist from use of said illegal campaign contributions and have refused to account for said funds when questioned by the press.

Respectfully submitted,

Keefe for Congress 1990
FEC ID NO. C00238915

By: _____
Joseph F. Keefe

State of New Hampshire
County of Hillsborough, SS.

October 31, 1990

Personally appeared the above-named Joseph F. Keefe being authorized so to do, and executed the foregoing instrument for the purposes therein contained as his and the Keefe for Congress 1990 committee's voluntary act and deed, before me

Katherine A. Cady
Notary Public
My commission expires: 6/27/95

9504366196 0

KEEFE CONGRESS

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

November 3, 1990

Petitioner herein is the Keefe for Congress 1990 Committee, 120 Lexington Avenue, Manchester, New Hampshire 03104. The Respondents are the Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire 03101; William H. Zeliff, Jr., Route 16B, Box cc, Jackson, New Hampshire 03846, individually; and Richard H. Kirk, c/o Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire 03846, in his capacity as Treasurer of the Friends of Bill Zeliff Committee.

Enclosed please find the original and three copies of an article in the November 3, 1990 edition of the Union Leader newspaper of Manchester, New Hampshire. These have been marked as Exhibit K and are being submitted in further evidence of allegations contained in Petitioner's complaint dated October 31, 1990.

The Petitioner asserts and alleges upon information and belief that statements by William H. Zeliff, Jr. contained in the enclosed article, to wit, "Everything I have, including personal and business, is mixed together," and "My wife and I share the same piggy bank," constitute admissions with respect to certain violations of federal law alleged in Petitioner's complaint. Specifically, the Petitioner alleges upon information and belief that such admissions constitute further evidence that the Respondents have violated 11 CFR Sec. 110.1 (b)(1), 11 CFR Sec. 110.10 (b)(3) and 11 CFR Sec. 114.2(b).

Respectfully submitted,

KEEFE FOR CONGRESS
FEC ID No. C00238915

By: _____
Joseph F. Keefe

State of New Hampshire
County of Hillsborough, SS.

November 3, 1990

Personally appeared the above-named Joseph F. Keefe being authorized so to do, and executed the foregoing instrument for the purposes therein contained as his and the Keefe for Congress 1990 committee's voluntary act and deed, before me

_____
Notary Public
My commission expires: 1-22-93

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WASHINGTON, D.C. 20463

November 8, 1990

Joseph F. Keefe
Keefe for Congress 1990 Committee
120 Lexington Avenue
Manchester, NH 03104

Dear Mr. Keffe:

This is to acknowledge receipt on November 5, 1990, of your letters dated October 31 and November 3, 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 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: Respondents

95043661962

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 8, 1990

Richard H. Kirk, Treasurer
Friends of Bill Zeliff Committee
815 Elm Street
Manchester, NH 03846

Dear Mr. Kirk:

On November 5, 1990, the Federal Election Commission received a letter alleging that the Friends of Bill Zeliff Committee and you, as treasurer, 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

95043661963

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 8, 1990

William Zeliff, Jr.
Route 16B
Box CC
Jackson, NH 03846

Dear Mr. Zeliff:

On November 5, 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

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MUR 3191

COMPLAINT - NOVEMBER 30, 1990

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KEEFE CONGRESS

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November 26, 1990

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 NOV 30 AM 12:39

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

Dear Mr. Noble:

Thank you for yours of November 8, 1990.

I enclose herewith a revised four page Complaint dated November 26, 1990 and two page Amendment to Complaint dated November 26, 1990. Said enclosures are identical to the original Complaint dated October 31, 1990 and Amendment to Complaint dated November 3, 1990 except that dates have been altered, a paragraph has been added, swearing to the truth of the allegations contained therein, and the notarization has also been altered to reflect the fact that said allegations have been sworn to per your letter of November 8, 1990.

Per telephone conversation with Retha Dixon, Docket Chief, dated November 20, 1990, I have been informed that there is no need for Petitioner to re-file the Exhibits, as the original Exhibits are still in your possession.

I hope and trust that the statutory requirements have now been met and that the Federal Election Commission can proceed with the appropriate compliance action.

Thank you for your attention to this matter.

Very truly yours,

Joseph F. Keefe

JFK/ncb
Enclosures

cc: Respondents

Copy

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KEEFE CONGRESS

COMPLAINT

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

Dear Counsel: November 26, 1990

The Keefe for Congress 1990 committee, 120 Lexington Avenue, Manchester, New Hampshire, 03104, Petitioner, hereby institutes a Complaint against the following respondents: Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire, 03101; William Zeliff, Jr., Route 16B, Box cc, Jackson, New Hampshire, 03846, individually; and Richard H. Kirk, c/o Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire, 03846, in his capacity as Treasurer of the Friends of Bill Zeliff Committee.

In support of this Complaint, the Petitioner states as follows:

According to William H. Zeliff, Jr.'s Federal Financial Disclosure Statements dated July 10, 1990 and October 10, 1990, Mr. Zeliff had very limited resources available to him for legal loans to his campaign as of April 30, 1990. Nevertheless, his FEC reports indicated that he has loaned his campaign approximately $301,500.

A. The Petitioner asserts and alleges that upon information and belief, the Respondents have violated 11 CFR Sec. 110.1(b)(1) and 110.10(b)(3) in that the assets and income of Sydna T. Zeliff had been the source of contributions in excess of $1,000 made to the Friends of Bill Zeliff Committee in both the primary and general elections.

William H. Zeliff, Jr. has stated that the $164,000 in net proceeds from the sale of two condominiums in Sea Isle City, New Jersey were loaned to his campaign. See September 22, 1990 Union Leader article by John Distaso attached hereto as Exhibit A and October 3, 1990 press statement of William H. Zeliff, Jr. attached hereto as Exhibit B. However, Sydna T. Zeliff had a one-half interest in these two condos. Attached hereto as Exhibits C and D are copies of the recorded deeds dated August 25, 1989 and November 27, 1989, evidencing Sydna Zeliff's one-half interest at the time of sale. By law, therefore, Mr. Zeliff was only entitled to loan

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one half (1/2) of the sale proceeds to his campaign.

B. The Petitioner asserts and alleges that upon information and belief the Respondents have violated 11 CFR Sec. 114.2(b) and (c) by accepting illegal corporate contributions in the form of loan proceeds from White Mountain Bank earmarked for business purposes and capital improvements to real estate.

On May 17, 1989, Bill and Sydna Zeliff received a loan of $562,380.67 from White Mountain Bank, which loan was guaranteed by Christmas Farm Inn, Inc. On the same day, Christmas Farm Inn, Inc., a Subchapter S corporation owned by the Zeliffs, received a loan from said bank in the amount of $1,287,000. Said loans were made partly to refinance existing obligations and partly for the purpose of "capital improvements". Attached hereto as Exhibit E is a letter dated September 29, 1990 from White Mountain Bank to Mr. and Mrs. William H. Zeliff, Jr. Attached hereto as Exhibits F and G are confirmatory mortgages dated October 1, 1990. See also, Exhibit B, wherein Mr. Zeliff states that said loans were for "major renovations" or capital improvements.

It should be noted that the above letter from White Mountain Bank dated September 29, 1990, alleging that an "error" had been made did not appear until two months ago, and said mortgages were not recorded until two months ago, some 16 months after the credit was extended by the bank. A review of Jackson, New Hampshire Town records on October 29, 1990, revealed that no building permits were issued by the Town of Jackson Building Department for any capital improvements to real estate owned by the Zeliffs or Christmas Farm Inn, Inc. during 1988, 1989 or 1990.

The diversion of funds from said loan proceeds to the Friends of Bill Zeliff Committee would constitute an illegal campaign contribution under federal law as cited above. Petitioner requests an investigation and ruling with respect to this potential diversion of funds.

C. The Petitioner asserts and alleges upon information and belief that the Respondents have violated 11 CFR Sec. 110.1(b)(1) and 110.10 (b)(3) and have failed to report proceeds on sale of stocks as "holdings" or assets in Financial Disclosure Statements filed with the Clerk of the U.S. House of Representatives dated July 10, 1990 and October 1, 1990. Copies of said Financial Disclosure Statements are attached hereto as Exhibits H and I, respectively.

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Proceeds from said stock sales were not disclosed as "holdings" or assets owned by William H. Zeliff, Jr. as of April 30, 1990, and in fact Mr. Zeliff only reported "holdings" or assets with value in the range of $3,000 to $15,000 as of that date. Nevertheless, Mr. Zeliff loaned his campaign approximately $192,000 after April 30, 1990. Moreover, a spokesman for the Respondents has admitted that (1) the stock proceeds were used to finance the campaign, and (2) "some stocks" were held jointly by Mr. and Mrs. Zeliff. Attached hereto as Exhibit J is a Boston Globe article dated Wednesday, October 31, 1990.

D. The Petitioner asserts and alleges that upon information and belief the Respondents have violated 11 CFR Sec. 114.2(b) in that Christmas Farm Inn, Inc. may have paid Mr. Zeliff an excessive salary in 1990, unrelated to business purposes, and that motor vehicles owned by this corporation have been used by the Friends of Bill Zeliff Committee for campaign purposes. See Exhibit I, wherein salary paid to Respondent William H. Zeliff, Jr. through April 30, 1990, appears to equal or exceed annual salary paid during 1988 and 1989.

Based upon the above information, Petitioners assert and allege upon information and belief that reported loans by William H. Zeliff, Jr. to the Friends of Bill Zeliff Committee in the approximate amount of $301,500.00 came from four possible sources:

1) Illegal personal (spousal) contributions in excess of amounts allowed under federal law; and/or

2) Illegal corporate contributions; and/or

3) Diversion of proceeds from bank loans intended for "capital improvements" to the Zeliffs' real estate; and/or

4) "Holdings" or assets that were not reported on his Federal Financial Disclosure Statements.

The Petitioner asserts and alleges upon information and belief that the Respondents have violated federal law as cited above, and requests rulings as to whether said violations occurred in an intentional, willful and knowing manner. The Petitioner further requests expedited investigation and hearing on these allegations, as the Respondents have failed to cease and desist from use of said illegal campaign contributions and have refused to account for said funds when questioned by the press.

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I, the undersigned, Joseph F. Keefe, further swear that the contents of the within Complaint are true and correct, to the best of my knowledge and belief.

Respectfully submitted,

Keefe for Congress 1990
FEC ID NO. C00238915

By: Joseph F. Keefe

State of New Hampshire
County of Hillsborough, SS. November 26, 1990

Personally appeared the above-named Joseph F. Keefe being authorized so to do, and executed the foregoing instrument for the purposes therein contained as his and the Keefe for Congress 1990 committee's voluntary act and deed, subscribed to and sworn to before me this 26th day of November, 1990.

Louise Murphy
Notary Public
My commission expires:

9504366197 0

KEEFE CONGRESS

AMENDMENT TO COMPLAINT

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

November 26, 1990

Petitioner herein is the Keefe for Congress 1990 Committee, 120 Lexington Avenue, Manchester, New Hampshire, 03104. The Respondents are the Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire, 03101; William H. Zeliff, Jr., Route 16B, Box cc, Jackson, New Hampshire, 03846, individually; and Richard H. Kirk, c/o Friends of Bill Zeliff Committee, 815 Elm Street, Manchester, New Hampshire 03846, in his capacity as Treasurer of the Friends of Bill Zeliff Committee.

Enclosed please find the original and three copies of an article in the November 3, 1990 edition of the Union Leader newspaper of Manchester, New Hampshire. These have been marked as Exhibit K and are being submitted in further evidence of allegations contained in Petitioner's revised Complaint dated November 26, 1990.

The Petitioner asserts and alleges upon information and belief that statements by William H. Zeliff, Jr. contained in the enclosed article, to wit, "Everything I have, including personal and business, is mixed together," and "My wife and I share the same piggy bank," constitute admissions with respect to certain violations of federal law alleged in Petitioner's Complaint. Specifically, the Petitioner alleges upon information and belief that such admissions constitute further evidence that the Respondents have violated 11 CFR Sec. 110.1 (b)(1), 11 CRF Sec. 110.10(b)(3) and 11 CFR Sec. 114.2(b).

I, the undersigned, Joseph F. Keefe, further swear that the contents of the within Amendment to Complaint are true and correct to the best of my knowledge and belief.

Respectfully submitted,

KEEFE FOR CONGRESS
FEC ID NO. C00238915

By: Joseph F. Keefe

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State of New Hampshire
County of Hillsborough, ss.

Personally appeared the above-named Joseph F. Keefe being authorized to so do, and executed the foregoing instrument for the purposes therein contained as his and the Keefe for Congress 1990 committee's voluntary act and deed, subscribed and sworn to before me this 26th day of November, 1990.

Janice Murphy
Notary Public
My commission expires:
Janice Murphy, Notary Public
My Commission Expires July 7, 1991

9504366192

THE UNION LEADER, Manchester, N.H. — [redacted]

EXHIBIT A

Brady: Zeliff Misled FEC On Financial Disclosure

Files Official Complaint With Commission

By JOHN DISTASO
Union Leader Staff

■ Recount increases Zeliff lead. Page 4

Larry Brady, refusing to heed calls for GOP unity, yesterday filed a complaint with the Federal Election Commission alleging apparent Republican congressional primary winner William Zeliff "has willfully misled federal authorities" on his personal finances.

Brady charged that Zeliff has provided the FEC with "incomplete reporting of his personal finances on his financial disclosure form."

Zeliff denied the charges and said he answered them when Brady raised them during the primary election campaign.

Zeliff said that with a recount of the 1st Congressional District Republican primary showing that his lead is increasing, rather than shrinking, "now Larry is really playing the sore loser."

In a letter to the FEC, Brady said that Zeliff has repeatedly stated that he is financing his campaign with the proceeds of a sale of a condominium in Sea Isle City, N.J.

He said that as of Aug. 22, Zeliff loaned his campaign $184,000, "yet he sold his New Jersey property for $133,000. Moreover, with a $50,300 mortgage still owed on the property, Zeliff could not have realized more than $77,000 from the sale of the condominium. This leaves a discrepancy of $107,000 between the profit from the sale

BRADY'S COMPLAINT, Page 10

and what he has loaned his campaign.

"Finally, on his financial disclosure form, Zeliff reported a net loss on the property's sale," Brady wrote.

Brady also said Zeliff's financial disclosure form "indicates that he paid off $1,011,457 in mortgages on July 5, 1989. He did not report where that money came from on his financial disclosure form nor did he record any new mortgages."

Zeliff said that regardless of Brady's charges, he refinanced the $1 million-mortgage to finance capital improvements at the Christmas Farm Inn in Jackson, which he owns.

"Really," Zeliff said, "it wasn't drug money or whatever else he may think it was."

Zeliff said the New Jersey condominium sale shows up in two separate FEC disclosure forms. He said home was a duplex sold in two separate sales.

"The first one was sold for $129,000 and the second, for $135,000," Zeliff said. "That adds up to $264,000 and we had mortgages of about $100,000 leaving about $164,000." That figure, said Zeliff, is the bulk of the $184,000 he loaned his campaign.

Zeliff said he is growing tired of Brady's attacks. "At this point, I think we have to remind Larry that he is a Republican, too, and the race is on with (Democratic nominee) Joe Keefe. The primary race is behind us, really."

Zeliff said he will make all figures, documents, and his accountant and banker available to the FEC to answer any questions.

"I've been very, very patient with Larry, but it [illegible] it looks like he wants [illegible] Keefe campaign [illegible] on board with [illegible] the balony."

Brady's move yesterday was a continuation of [illegible] since losing the Sept. 5 primary by 814 votes. Earlier this week, Brady termed "the big lie of the campaign" Zeliff's statement that his campaign [illegible] oriented.

Brady said Zeliff's negative ads, which [illegible] their [illegible] disgrace of [illegible] Republican party [illegible]

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EXHIBIT B

SELIFF FOR CONGRESS PRESS STATEMENT

October 1, 1990

Thank you all for coming. I have called this press briefing today to clear up one issue that has lingered since the primary campaign.

As you know, one of my opponents questioned my FEC filings and suggested that there was a deliberate attempt to mislead the FEC about my campaign finances. That is patently untrue. I wanted to have this briefing today to clear up any misconceptions and answer any questions you have so that this is not an issue in the weeks ahead.

In response to the allegations, I asked my accountants and attorneys to review my FEC filings in detail. They did so and in the course of that review discovered a number of mis-spelled words, a few typographical errors, and a number of items which should be reclassified. None, and I repeat, none of these in any way substantially alters the reports or the accuracy of the reports. I am filing an amended disclosure with the FEC to correct those errors. I am providing you all with a copy of my letter to the Clerk of the United States House, along with a list of the changes.

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In addition, one of my opponents made a number of other allegations relating to my campaign finances that, while inaccurate and wrong, should be cleared up.

First, my opponent said that I paid off a mortgage of over $1 million with no apparent source of repayment. The fact is that in 1989, I refinanced the mortgage on my properties in Jackson, New Hampshire in order to undertake a capital improvements program. The old mortgage was paid off with the new mortgage proceeds, a common business practice. At the time of the refinancing, my bank filed the new mortgage and covered all of my properties except the Christmas Farm Inn. As a result of my opponent's allegation, the bank rechecked its documents and in fact found out that the new mortgage failed to list my Inn as part of the collateral. This was a bank error which they have since corrected. I have a letter for you here from the bank indicating that it was an error by their attorneys, and not by me. In short, the original mortgage was refinanced; not paid off. It only appeared that it had been paid off because of the bank's failure to include my Inn property in the collateral description. There was no mystery source of money. I simply refinanced my properties.

The second allegation made was that the sale from my duplex was a loss and thus, did not yield any funds to put into my

9504366197 5

campaign. The fact is that both halves of the duplex were sold for an approximate total of $264,000 and a mortgage of approximately $100,000 was paid off. That yielded a substantial gain and I used these funds in my campaign. My original FEC report indicated a sale of only one-half of the duplex. My opponent surmised that because the sale of one of the halves was for $132,000 and the mortgage was for $100,000, that I yielded only approximately $32,000. The two halves of the duplex were not sold at the same time, and the funds were not received at the same time, but in total there was a substantial profit.

The third question he raised was how could I have only made approximately $18,000 in 1989. That one is easy. If you look at my FEC form you will see that that was my stated salary. In addition, I also have substantial other income from rental properties, interest and dividends, and investments. Taken together, these comprise my total income. While I feel it is my right to not disclose my income, I can assure you that it was greater than just the salary figure. That is evident from even a cursory reading of the forms.

Finally, the last allegation made was that I couldn't be much of a businessman because my Inn showed a net loss in 1989 and 1990. The loss, stated to comply with the FEC reporting format, is a combination of three circumstances.

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1. During these years we were paying for new management team to replace me while I was on the campaign trail. That increased our expenses.

2. We had additional financing and interest costs because of the major renovation program we undertook during this two-year period.

3. The tax treatment of depreciation, which is a non-cash item, is a deduction from operating income but does not really take any money out of pocket. I can tell you that in both years the Inn and my other businesses had a positive net operating income before depreciation. In fact, in both years we were able to make a significant contribution to my employees' profit sharing plans.

I trust this has answered those questions. I would be glad to answer any other you may have in order that there not be any lingering questions about the accuracy of either my FEC filings or the source of my campaign funds.

9 5 0 4 3 6 6 1 9 / 7

EXHIBIT C

M81453 (B3924)

103—DEED - BARGAIN AND SALE (Covenant as to Grantor's Acts) AND TO IND. OR CORP. — Plain Language 6 VS -1

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Prepared by: (Print signer's name below signature)

DONALD A. WILKINSON, ESQUIRE

DEED

This Deed is made on August 25, 1989.

BETWEEN WILLIAM H. ZELIFF, JR. and SYDNA T. ZELIFF, his wife

whose address is Route 16-B, Box 176; Jackson, New Hampshire 03846
referred to as the Grantor,

AND JOSEPH M. CORVINO and DIANNE F. CORVINO, his wife

whose post office address is 943 Linda Vista Drive; West Chester, Pennsylvania 19380
referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the sum of ONE HUNDRED TWENTY-NINE THOUSAND AND NO/100 ($129,000.00) DOLLARS. The Grantor acknowledges receipt of this money.

COUNTY OF CAPE MAY
CONSIDERATION 129,000
RECEIVED FOR RECORD 1:34 PM
DATE 8-24-89 BY
FEE 193.50

124-CO £ 64.50-F

Tax Map Reference. (N.J.S.A. 46:15-2.1) Municipality of Sea Isle City
Block No. 77.02 Lot No. 463 Account No.

☐ No property tax identification number is available on the date of this deed. (Check box if applicable.)

Property. The property consists of the land and all the buildings and structures on the land in the City of Sea Isle City County of Cape May and State of New Jersey. The legal description is:

BEING known and designated as Unit A in the 38 77th Street Condominium created and established by Master Deed executed by William H. Zeliff, Jr. and Sydna T. Zeliff, his wife, of even date and intended to be recorded simultaneously herewith; TOGETHER with a 50% interest in and to the common elements appertaining to said Unit A.

UNDER AND SUBJECT to all covenants, conditions, rights, reservations, restrictions, and easements of record, if any.

DB1957P0156

9504366197 8

RC 1040—AFFIDAVIT OF CONSOLIDATION
RTN-1 (Rev. 11/88)

ALL STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N. J. 07016
(R V 7—)

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION OR EXEMPTION
(c. 49, P.L. 1968)
OR
PARTIAL EXEMPTION
(c. 176, P. L. 1975)

To Be Recorded With Deed Pursuant to c. 49, P.L. 1968, as amended by c. 225, P.L. 1985 (N.J.S.A. 46:15-5 et seq.)

STATE OF NEW JERSEY }
COUNTY OF CAPE MAY } ss.

FOR RECORDER'S USE ONLY
Consideration $ 129,000
Realty Transfer Fee $ 129.50 = 130-00
Date 8-28-89 By pb
*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3, 4 and 5 on reverse side)

Deponent, WILLIAM M. ZELIFF, JR. (Name), being duly sworn according to law upon his/her oath deposes and says that he/she is the GRANTOR (Grantor, trustee, legal representative, designee, officer, agent or title for holding representative, etc.)

in a deed dated AUGUST 25, 1989 transferring real property identified as Block No. 77.02

Lot No. 463 located at 38 77th Street Condominium; Sea Isle City, Cape May (Street address, Municipality, County)

County and annexed hereto.

(2) CONSIDERATION (See Instruction #6)

Deponent states that, with respect to deed hereto annexed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the grantee and any other lien or encumbrance thereon not paid, satisfied or assumed in connection with the transfer of title is $ 129,000.00

(3) FULL EXEMPTION FROM FEE Deponent claims that this deed transaction is fully exempt from the Realty Transfer Fee imposed by c.49, P.L. 1968, for the following reason(s): Explain in detail. (See Instruction #7.) Mere reference to exemption symbol is not sufficient.

(4) PARTIAL EXEMPTION FROM FEE *NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. (See Instructions #8 and #9)*

Deponent claims that this deed transaction is exempt from the increased portion of the Realty Transfer Fee imposed by c.176, P.L. 1975 for the following reason(s).

a) SENIOR CITIZEN (See Instruction #8)
- ☐ Grantor(s) 62 yrs. of age or over.*
- ☐ One or two-family residential premises
- ☐ Owned and occupied by grantor(s) at time of sale.
- ☐ No joint owners other than spouse or other qualified exempt owners.

b) BLIND (See Instruction #8)
- ☐ Grantor(s) legally blind.*
- ☐ One or two-family residential premises.
- ☐ Owned and occupied by grantor(s) at time of sale.
- ☐ No joint owners other than spouse or other qualified exempt owners.

DISABLED (See Instruction #8)
- ☐ Grantor(s) permanently and totally disabled.*
- ☐ One or two-family residential premises.
- ☐ Receiving disability payments.
- ☐ Owned and occupied by grantor(s) at time of sale.
- ☐ Not gainfully employed.
- ☐ No joint owners other than spouse or other qualified exempt owners.

*IN THE CASE OF HUSBAND AND WIFE, ONLY ONE GRANTOR NEED QUALIFY.

c) LOW AND MODERATE INCOME HOUSING (See Instruction #8)
- ☐ Affordable According to H.U.D. Standards.
- ☐ Meets Income Requirements of Region.
- ☐ Reserved for Occupancy.
- ☐ Subject to Resale Controls.

d) NEW CONSTRUCTION (See Instruction #9)
- ☒ Entirely new improvement.
- ☒ Not previously used for any purpose.
- ☒ Not previously occupied.

Deponent makes this Affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of c. 49, P.L. 1968.

Subscribed and Sworn to before me this 25th day of August, 1989

WILLIAM M. ZELIFF, JR.
Rt. 168, P.O. Box 176
Jackson, New Hampshire 03846
(Address of Deponent)

WILLIAM M. ZELIFF, JR.
(Name of Grantor, trustee, legal representative, etc.)
same
(Address of Grantor or Place of Sale)

Notary Public of New Jersey
My Commission expires Sept. 26, 1989

FOR OFFICIAL USE ONLY This space for use of County Clerk or Register of Deeds.
Instrument Number _____ County _____
Deed Number _____ Book _____ Page _____
Deed Dated _____ Date Recorded _____

IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE HEREOF.
This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the approval of the Director.
ORIGINAL — White copy to be retained by County.
DUPLICATE — Yellow copy to be forwarded by County to Division of Taxation on partial exemption from fee (N.J.A.C. 18:16—8.12).
TRIPLICATE — Pink copy in your file copy.

WHITE AND YELLOW COPIES MUST BE SUBMITTED WITH DEED TO COUNTY RECORDING OFFICE

DB1957P0157

9509436612

Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed someone else to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Signature. The Grantor signs this Deed as of the date at the top of the first page.

Witnessed by:

(Seal)
WILLIAM H ZELIFF, JR., Individually and as Attorney-in-Fact for Sydna T. Zeliff

(Seal)
SYDNA T. ZELIFF, by her Attorney-in-Fact William H. Zeliff, Jr.

STATE OF NEW JERSEY, COUNTY OF CAPE MAY SS.:

I CERTIFY that on August 25, 1989,

WILLIAM H ZELIFF, JR., Individually and as Attorney-in-Fact for Sydna T. Zeliff personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this Deed;
(b) signed, sealed and delivered this Deed as his or her act and deed; and
(c) made this Deed for $129,000.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

NOTARY PUBLIC OF NEW JERSEY
My Commission expires Sept. 26, 1990

DB1957P0158

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DEED

Dated: August 25, 1989

WILLIAM H. ZELIFF, JR. and
SYBRA T. ZELIFF, his wife

Grantor.

TO

JOSEPH M. CORVINO and
BEANNE F. CORVINO, his wife

Grantee.

Record and return to:

SHORE TITLE AGENCY, INC.
4218 Landis Ave.
Sea Isle City, N.J. 08243

017169

RECORDED
Cape May County
89 AUG 29 AM 9:00

County Clerk

R017695

DB1957P0159

Mod
DW-2
103 50-104

EXHIBIT D

11136 (D4032) jk

WD—Spec. - Bargain and Sale deed with covenant as to Grantor's Acts
Sale to and Gift Gift — Plain Language 6 V8 -1

Copyright 1988 by ALL STATE LEGAL SUPPLY CO
One Commerce Drive, Cranford, N.J. 07016

DEED

Prepared by: (Print signer's name below signature)
DONALD A. WILKINSON, ESQUIRE

This Deed is made on November 27, 19 89.

BETWEEN WILLIAM H. ZELIFF, JR. and SYDNA T. ZELIFF, his wife

whose address is Box CC Route 16B; Jackson, New Hampshire 03846
referred to as the Grantor,

AND JOSEPH M. CORVINO and DIANNE P. CORVINO, his wife

whose post office address is 943 Linda Vista Drive; West Chester, Pennsylvania 19380
referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the sum of ONE HUNDRED THIRTY-THREE THOUSAND FIVE HUNDRED AND NO/100 ($133,500.00) DOLLARS. The Grantor acknowledges receipt of this money.

Tax Map Reference. (N.J.S.A. 46:15-2.1) Municipality of Sea Isle City
Block No. 77.02 Lot No. 463 & 461.02 Account No.
☐ No property tax identification number is available on the date of this deed. (Check box if applicable.)

Property. The property consists of the land and all the buildings and structures on the land in the City of Sea Isle City
County of Cape May and State of New Jersey. The legal description is:

ALL THE FOLLOWING described parcel lying, and being in the City of Sea Isle City, County of Cape May, and State of New Jersey, including the appurtenances thereto in fee simple, subject to the provisions of the New Jersey Condominium Act (N.J.S.A. R.S. 46:8B-1 et seq.), its amendments and supplements and to the provisions of that Master Deed of 38 77th Street Condominium, a Condominium dated August 25, 1989 and recorded August 29, 1989 in Deed Book 1957, page 0137; more particularly described as being Unit B, in said Condominium, and and undivided 50% interest in fee in the Common Elements of said Condominium, which Unit and Common Elements have been more specifically defined in the Master Deed aforesaid, as same may be lawfully amended from time to time to said Master Deed in conformity with N.J.S.A. R.S. 46:8B-11.

IN compliance with chapter 157, Laws of 1977 premises herein are known as Unit B, of Lots 461.02 & 463, in Block 77.02, on the Official Tax Map of the above mentioned.

BEING part of the same premises which Donald F. Speir and Margaret F. Speir, his wife, by a deed dated February 22, 1986 and recorded March 3, 1986 in Cape May County in Deed Book 1629 page 740 granted and conveyed unto William H. Zeliff, Jr. and Sydna T. Zeliff, his wife, in fee.

UNDER AND SUBJECT to all covenants, conditions, rights, reservations, restrictions, and easements of record to the extent valid and enforceable.

County Clerk's Recording Stamp

95043

DB1987P0296

Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Signatures. The Grantor signs this Deed as of the date at the top of the first page.

Witnessed by:

Anita Justice

WILLIAM H. ZELIFF, JR. (Seal)

STORA T. ZELIFF (Seal)

STATE OF FLORIDA, COUNTY OF Sarasota SS.:

I CERTIFY that on November 27, 1989

WILLIAM H. ZELIFF, JR. and STORA T. ZELIFF, his wife

personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this Deed;
(b) signed, sealed and delivered this Deed as his or her act and deed; and
(c) made this Deed for $ 133,500.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

Brooks C. Newton

BROOKS C. NEWTON
(Print name and any title required)

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: DEC. 8, 1990.
(Print name of notary public underneath)

DB1987P0297

9504366193

DEED

Dated: November 27, 1989

WILLIAM B. SELLIFF, JR. and
SIDNA T. SELLIFF, his wife

Grantor.

TO

JOSEPH N. CORVINO and
DIANNE P. CORVINO, his wife

Grantee.

Record and return to:

SHORE TITLE AGENCY, INC.
4210 Landis Ave.
Sea Isle City, N.J. 08243

RECORDED
OCEAN COUNTY
89 DEC -5 AM 9:50

COUNTY CLERK

R023908

DB1987P0298

0223475

9504366199 04

EXHIBIT E

FirstNHBanks

First NH - White Mountain Bank
North Conway, N.H. 03860

September 20, 1990

Mr. & Mrs. William H. Zeller Jr.
P.O. Box 176
Jackson, New Hampshire 03846

Dear Mr. & Mrs. Zeller:

Please be advised that an error was made by Cooper, Fauver & Deane, P.A., relative to the documents of your May 1989 Capital Improvement Financing. Specifically, the mortgage deed was not prepared in accordance with the other loan documents. Although, the note and amount of the mortgage is accurate, the collateral description was incomplete because the Inn real estate was inadvertently not included in the collateral description.

You will be receiving a Corrective Mortgage Deed prepared by Cooper, Fauver & Deane, P.A. for your signature. Upon our receipt of the executed corrective mortgage, we will record the same at the registry of deeds. This is the only action necessary to correct the law firm mistake.

We sincerely regret that the mistake occured, and also that we did not detect the error when the documents were presented to you for your signature. If you have any questions, please give me a call.

Sincerely,

Matthew W. Nastasia
Vice President
Senior Loan Officer

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EXHIBIT F

CONFIRMATORY MORTGAGE DEED

MORTGAGE DEED between CHRISTMAS FARM INN, INC., with its principal place of business in the Town of Jackson, New Hampshire by (hereinafter referred to as Mortgagor), and FIRST NH-WHITE MOUNTAIN BANK, a banking corporation with its principal place of business in North Conway, Carroll County and State of New Hampshire (hereinafter referred to as Mortgagee)

WITNESSETH:

That the Mortgagor, in consideration of the promise of the Mortgagee to loan the Mortgagor, ONE MILLION TWO HUNDRED EIGHTY SEVEN THOUSAND DOLLARS ($1,287,000.00), and to loan to William H. Zeliff, Jr. and Sydna T. Zeliff, FIVE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED EIGHTY AND 67/100 DOLLARS ($562,380.67) both in accordance with a Loan Agreement of even date, in order to secure the payment of Notes of even date in the amount of ONE MILLION TWO HUNDRED EIGHTY SEVEN THOUSAND DOLLARS ($1,287,000.00) and in order to secure the Morgagor's Guaranty of the William H. Zeliff, Jr. and Sydna T. Zeliff loan of even date in the amount of FIVE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED EIGHTY AND 67/100 DOLLARS ($562,380.67), and also to secure the payment and performances of all other obligations of Mortgagor to Bank, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, grants to the Mortgagee, with MORTGAGE COVENANTS, the real estate situated in Jackson, County of Carroll and State of New Hampshire, as more particularly described in Schedule A, attached hereto and made a part hereof.

TOGETHER with all the privileges, hereditaments, leases, licenses and appurtenances thereto in anywise appertaining or belonging and all fixtures; and

TOGETHER with all buildings and improvements of any and all kind and description now or hereafter erected or placed thereon, and all fixtures, utilities, and all renewals or replacements thereof, whether or not the fixtures or utilities are or shall be attached to any buildings or to the real estate in any manner, said fixtures and utilities are to be considered as part of the real estate to the extent permitted by law.

TO HAVE AND TO HOLD the said granted premises with all the privileges and appurtenances to the same belonging to the said Mortgagee and its successors and assigns to its own proper use and benefit forever. And it, the said Mortgagor, and its successors and assigns, does hereby covenant, grant and agree, to and with the said Mortgagee, and its successors and assigns, that until the delivery hereof it is the lawful owner of said premises, seized and possessed thereof in its own right in fee simple, except as hereinabove stated; in the manner aforesaid; that the said premises are free and clear from all and every encumbrance whatsoever, except as hereinabove stated; and that it will, and its successors and assigns shall and will, warrant and defend the same to the said

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BK1427 PG 999

Mortgagee, and its successors and assigns, against the lawful claims and demands of any person or persons whomsoever.

PROVIDED, NEVERTHELESS, that if the said Mortgagor, its successors and assigns, shall faithfully perform the following covenants and conditions, this Mortgage shall be void, otherwise to remain in full force.

The Mortgagor, for its successors and assigns, covenants and agrees as follows:

That it will pay the indebtedness at the time and in the manner as provided in the Note of even date, and will perform all covenants and conditions of the Loan Agreement and Note of even date.

That it will pay all ground rents, taxes, assessments, water rates and other governmental or municipal charges, fines or impositions, arising in connection with said premises for which provision has not been made by payment as hereinabove provided, and in fault thereof the Mortgagee may pay the same, charging such sums to the principal of this Mortgage.

That it will provide the Mortgagee with such financial information including balance sheets and profit and loss statements, as the Mortgagee may from time to time require.

That it will keep the premises above conveyed in good order and condition and will not commit or permit any waste thereof, reasonable wear and tear excepted.

That it will keep the structures and improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and other hazards, casualties and contingencies, as may be required by the Mortgagee, and all such insurance shall be carried in such companies and be for such periods as may be required by the Mortgagee. Such policies shall be endorsed with standard Mortgagee clause, with loss payable to the Mortgagee and Mortgagor, as its interests may appear, and shall be deposited with the Mortgagee.

That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinbefore provided, the amounts paid by any insurance company pursuant to the contract of insurance shall, to the extent of the indebtedness then remaining unpaid, be paid to the Mortgagee, and at its option may be applied to the debt or released for the repairing or rebuilding of the premises.

That if the Mortgagor fails to make any payment provided for in this Mortgage for taxes, insurance premiums, repair of the premises, or the like, then the Mortgagee may pay the same, and all sums so advanced, with interest thereon at the same rate as the Note hereby secured from the date of such advance, shall be payable on demand and shall be secured hereby.

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BK 1427 PG 1000

That it will not allow this Mortgage to be assumed by any subsequent purchaser without the prior written consent of the Mortgagee and failure to comply with this provision shall constitute a default under this Mortgage.

That it will allow the Mortgagee to come on the premises at reasonable times for the purposes of inspecting the mortgaged premises.

That in the event the premises or any part thereof shall be taken or condemned for public or quasi public purposes, the Mortgagor shall have no claim against the award for damages, or be entitled to any portion of the award until the within Mortgage shall be paid, and all rights to damages of the Mortgagor are hereby assigned to the Mortgagee to the extent of any indebtedness that remains unpaid, the Mortgagor, however, having the right to appeal said award to a Court of competent jurisdiction.

That it will not voluntarily create or permit to be created against the mortgaged premises any lien or liens superior to the lien of this Mortgage, and that it will not engage in any secondary financing not expressly permitted by the Mortgagee.

AND, IT IS AGREED, that on failure of performance of any of said covenants or conditions, or of the statutory conditions, or upon the occurrence of an Event of Default in the Loan Agreement between the Mortgagor and Mortgagee, the full sum of any unpaid balance of the mortgage debt hereby secured shall become due and payable and the Mortgagee or its successors and assigns shall have the STATUTORY POWER OF SALE, and upon compliance with the requirements of New Hampshire law respecting a Power of Sale mortgage foreclosure of real estate may sell the mortgaged property, or any part thereof, at public auction at some place in the town where the land is situated, in one or more lots, at one or several sales, to the highest bidder, and the Mortgagor hereby appoints any officer of the Mortgagee, its agents and attorney-in-fact to sell and convey the property so sold to the purchaser by indefeasible title discharged of all rights of redemption by the Mortgagor or its successors and assigns or any other person claiming under it.

It is also agreed that the Mortgagee may authorize bidders at any foreclosure sale of the real estate which is held in combination with a sale of personal property, pursuant to a foreclosure sale of a Security Interest to submit one combined, lump sum bid for the real estate described herein and secured by this mortgage deed and for the personal property located thereon secured by such Security Agreement. Such combined bid for the real estate and person property will be effective to pass title to both. The proceeds of such sale shall be accounted for in one account without distinction between the items of security and without assigning to them any proportion of the proceeds, and the Mortgagor hereby waives the application of any doctrine of marshalling.

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BK1427 PG1001

The Mortgagee shall apply the proceeds of said sale or sales in payment of said mortgage debt and all costs and expenses incurred by it in the sale, including reasonable attorney's fees and pay over the balance, if any, to the Mortgagor or its legal representative, and the Mortgagor hereby, for itself and for its successors and assigns, covenants with the said Mortgagee, and its successors and assigns, that in case a sale or sales shall be made under the foregoing power, it or they will, upon request, execute, acknowledge and deliver to the purchasers a deed or deeds of release confirming such sale.

It is agreed that the said Mortgagee, its successors and assigns, or any person in their behalf, may purchase at any sale or sales made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase money.

The Mortgagor does hereby assign to the Mortgagee all rents due and to become due under all existing leases and under all leases which may be entered into in the future; provided, however, until default by the Mortgagor in the performance of any of the terms or conditions of this Mortgage, the Note or any other loan document secured thereby, the Mortgagor shall have the right to collect and receive the rents accruing from any such leases prior to default.

The Mortgagor hereby authorizes the Mortgagee, without waiving or affecting its right to foreclose or any other right hereunder, to take possession of the premises at any time there is a default in the payment of the Mortgage debt or in the performance of any of the obligations herein contained, and, if feasible or desirable, to rent the premises on account of the Mortgagor. The expenses incurred by the Mortgagee in connection with its taking possession and its maintenance or operation of the mortgaged premises shall become a part of the indebtedness secured by this Mortgage.

The covenants herein contained shall bind, and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

This Confirmatory Mortgage Deed is to confirm a Mortgage Deed of May 17, 1989 and recorded at Book 1377, Page 082.

IN WITNESS WHEREOF, CHRISTMAS FARM INN, INC. has caused this Mortgage to be signed and sealed by its duly authorized President this 1st day of October, 1990.

CHRISTMAS FARM INN, INC.

WITNESS

William H. Zeliff, Jr., President

9504366199 89

BK 1427 PG 1002

STATE OF NEW HAMPSHIRE
CARROLL, SS

October 1, 1990

Personally appeared the above-named William H. Zeliff, Jr. and acknowledged that he is the duly authorized President of Christmas Farm Inn, Inc. and being authorized so to do, executed the foregoing instrument for the purposes therein contained as his and the corporation's voluntary act and deed.

Before me,

Notary Public/~~Justice of the~~
Peace
My Comm. Expires: _____

MATTHEW W NASTASIA, Notary Public
My Commission Expires December 6, 1994

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BK 1427 PG 1003

SCHEDULE A

A certain tract or parcel of land situate in Jackson, County of Carroll and State of New Hampshire, bounded and described as follows, to wit:

Beginning at an iron bar at the South side of a large rock maple tree, at the East end of a stone wall, 33 feet West of the center of the Thorn Mt. (Dundee) Road, said iron bar being at the northeast corner of land of Richard F. and Doris E. Welch, formerly of grantor, and said iron bar being the Southeast corner of land herein conveyed:

Bearing North 75 degrees West, by said stone wall, 208 feet to end of the wall;

Thence same course, 221 feet to a maple post and stone slab marked "A.B.S.", near a maple tree, at the Northwest corner of land of said Welch;

Thence North 21 degrees 30' East, by land of grantor, 77 feet to an iron pipe at the South side of Valley Cross Road, so-called;

Thence South 80 degrees 15' East, by said Valley Cross Road, 177 feet;

Thence South 70 degrees 45' East, still by said Road, 65 feet;

Thence South 52 degrees 30' East, still by said Road, 188 feet to junction of said Valley Cross Road and said Thorn Mt. Road;

Thence South 39 degrees 30' West, by said Thorn Mt. Road, approximately 16 feet to the bound begun at.

Being the same premises conveyed to Christopher B. Johnson and Mary Janet Johnson by deed of George W. Morton dated September 6, 1951, Book 281, Page 153.

Mary Janet Johnson died on September 21, 1985.

Meaning and intending to convey the same premises conveyed to the within Borrower by deed of Christopher B. Johnson dated October 9, 1986 recorded at Carroll County Registry of Deeds Book 1156, Page 150.

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BK 1427 PG 100

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EXHIBIT G

CONFIRMATORY MORTGAGE DEED

MORTGAGE DEED between WILLIAM H. ZELIFF, JR. and SYDNA TAYLOR ZELIFF, husband and wife, of Town of Jackson, County of Carroll and State of New Hampshire (hereinafter referred to as the "Mortgagors"), and FIRST NH-WHITE MOUNTAIN BANK, a banking corporation with its principal place of business in North Conway, Carroll County and State of New Hampshire (hereinafter referred to as the "Mortgagee")

WITNESSETH:

That the Mortgagors, in consideration of the promise of the Mortgagee to loan the Mortgagors FIVE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED EIGHTY AND 67/100 DOLLARS ($562,380.67) and to loan to Christmas Farm Inn, Inc. ONE MILLION TWO HUNDRED EIGHTY SEVEN THOUSAND DOLLARS ($1,287,000.00), both in accordance with a Loan Agreement of even date, in order to secure the payment of a Promissory Note of even date in the amount of FIVE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED EIGHTY AND 67/100 DOLLARS ($562,380.67) and in order to secure the Morgagors' Guaranty of the Christmas Farm Inn, Inc. loan of even date in the amount of ONE MILLION TWO HUNDRED EIGHTY SEVEN THOUSAND DOLLARS ($1,287,000.00) and also to secure the payment and performance of all other obligations including future advances of Mortgagors to Bank, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, grants to the Mortgagee, with MORTGAGE COVENANTS, the real estate situated in the Town of Jackson, County of Carroll and State of New Hampshire, as more particularly described in Schedule A, attached hereto and made a part hereof.

TOGETHER with all the privileges, hereditaments, leases, licenses and appurtenances thereto in anywise appertaining or belonging and all fixtures; and

TOGETHER with all buildings and improvements of any and all kind and description now or hereafter erected or placed thereon, and all fixtures, utilities, and all renewals or replacements thereof, whether or not the fixtures or utilities are or shall be attached to any buildings or to the real estate in any manner, said fixtures and utilities are to be considered as part of the real estate to the extent permitted by law.

TO HAVE AND TO HOLD the said granted premises with all the privileges and appurtenances to the same belonging to the said Mortgagee and its successors and assigns to its own proper use and benefit forever. And they, the said Mortgagors, and their heirs, executors, administrators and assigns, do hereby covenant, grant and agree, to and with the said Mortgagee, and its successors and assigns, that until the delivery hereof they are the lawful owners of said premises, seized and possessed thereof in their own right in fee simple, except as hereinabove stated; in the manner aforesaid; that the said premises are free and clear from all and

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every encumbrance whatsoever, except as hereinabove stated; and that they will, and their heirs, executors, administrators and assigns shall and will, warrant and defend the same to the said Mortgagee, and its successors and assigns, against the lawful claims and demands of any person or persons whomsoever.

PROVIDED, NEVERTHELESS, that if the said Mortgagors, their heirs and assigns, shall faithfully perform the following covenants and conditions, this Mortgage shall be void, otherwise to remain in full force.

The Mortgagors, for their heirs, executors, administrators and assigns, covenant and agree as follows:

That they will pay the indebtedness at the time and in the manner as provided in the Promissory Note of even date, and will perform all covenants and conditions of the Promissory Note of even date.

That they will pay all ground rents, taxes, assessments, water rates and other governmental or municipal charges, fines or impositions, arising in connection with said premises for which provision has not been made by payment as hereinabove provided, and in default thereof the Mortgagee may pay the same, charging such sums to the principal of this Mortgage.

That they will provide the Mortgagee with such financial information including balance sheets and profit and loss statements, as the Mortgagee may from time to time require.

That they will keep the premises above conveyed in good order and condition and will not commit or permit any waste thereof, reasonable wear and tear excepted.

That they will keep the structures and improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and other hazards, casualties and contingencies, as may be required by the Mortgagee, and all such insurance shall be carried in such companies and be for such periods as may be required by the Mortgagee. Such policies shall be endorsed with standard Mortgagee clause, with loss payable to the Mortgagee and Mortgagors, as their interests may appear, and shall be deposited with the Mortgagee.

That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinbefore provided, the amounts paid by any insurance company pursuant to the contract of insurance shall, to the extent of the indebtedness then remaining unpaid, be paid to the Mortgagee, and at its option may be applied to the debt or released for the repairing or rebuilding of the premises.

That if the Mortgagors fail to make any payment provided for in this Mortgage for taxes, insurance premiums, repair of the

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premises, or the like, then the Mortgagee may pay the same, and all sums so advanced, with interest thereon at the same rate as the Promissory Note hereby secured from the date of such advance, shall be payable on demand and shall be secured hereby.

That they will not allow this Mortgage to be assumed by any subsequent purchaser without the prior written consent of the Mortgagee and failure to comply with this provision shall constitute a default under this Mortgage.

That they will allow the Mortgagee to come on the premises at reasonable times for the purposes of inspecting the mortgaged premises.

That in the event the premises or any part thereof shall be taken or condemned for public or quasi public purposes, the Mortgagors shall have no claim against the award for damages, or be entitled to any portion of the award until the within Mortgage shall be paid, and all rights to damages of the Mortgagors are hereby assigned to the Mortgagee to the extent of any indebtedness that remains unpaid, the Mortgagors, however, having the right to appeal said award to a Court of competent jurisdiction.

That they will not voluntarily create or permit to be created against the mortgaged premises any lien or liens superior to the lien of this Mortgage, and that it will not engage in any secondary financing not expressly permitted by the Mortgagee.

AND, IT IS AGREED, that on failure of performance of any of said covenants or conditions, or of the statutory conditions, the full sum of any unpaid balance of the mortgage debt hereby secured shall become due and payable and the Mortgagee or its successors and assigns shall have the STATUTORY POWER OF SALE, and upon compliance with the requirements of New Hampshire law respecting a Power of Sale mortgage foreclosure of real estate may sell the mortgaged property, or any part thereof, at public auction at some place in the town where the land is situated, in one or more lots, at one or several sales, to the highest bidder, and the Mortgagors hereby appoints any officer of the Mortgagee, its agents and attorney-in-fact to sell and convey the property so sold to the purchaser by indefeasible title discharged of all rights of redemption by the Mortgagors or their heirs, executors, administrators and assigns or any other person claiming under it.

It is also agreed that the Mortgagee may authorize bidders at any foreclosure sale of the real estate which is held in combination with a sale of personal property, pursuant to a foreclosure sale of a Security Agreement, to submit one combined, lump sum bid for the real estate described herein and secured by this mortgage deed and for the personal property located thereon secured by such Security Agreement. Such combined bid for the real estate and personal property will be effective to pass title to both. The proceeds of such sale shall be accounted for in one account without distinction between the items of security and

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without assigning to them any proportion of the proceeds, and the Mortgagors hereby waive the application of any doctrine of marshalling.

The Mortgagee shall apply the proceeds of said sale or sales in payment of said mortgage debt and all costs and expenses incurred by it in the sale, including reasonable attorney's fees and pay over the balance, if any, to the Mortgagors or their legal representative, and the Mortgagors hereby, for themselves and for their heirs, executors, administrators and assigns, covenant with the said Mortgagee, and its successors and assigns, that in case a sale or sales shall be made under the foregoing power, it or they will, upon request, execute, acknowledge and deliver to the purchasers a deed or deeds of release confirming such sale.

It is agreed that the said Mortgagee, its successors and assigns, or any person in their behalf, may purchase at any sale or sales made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase money.

The Mortgagors do hereby assign to the Mortgagee all rents due and to become due under all existing leases and under all leases or rental agreements which may be entered into in the future; provided, however, until default by the Mortgagors in the performance of any of the terms or conditions of this Mortgage, the Promissory Note or any other loan document secured thereby, the Mortgagors shall have the right to collect and receive the rents accruing from any such leases prior to default.

The Mortgagors hereby authorize the Mortgagee, without waiving or affecting its right to foreclose or any other right hereunder, to take possession of the premises at any time there is a default in the payment of the mortgage debt or in the performance of any of the obligations herein contained, and, if feasible or desirable, to rent the premises on account of the Mortgagors. The expenses incurred by the Mortgagee in connection with its taking possession and its maintenance or operation of the mortgaged premises shall become a part of the indebtedness secured by this Mortgage.

The covenants herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

This Confirmatory Mortgage Deed is intended to confirm the full terms for Mortgage Deed of May 17, 1989 recorded at Book 1377, Page 072.

IN WITNESS WHEREOF, WILLIAM H. ZELIFF, JR. and SYDNA TAYLOR ZELIFF have caused this Mortgage to be signed and sealed this 1st day of October, 1990.

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Witness

WILLIAM H. ZELIFF, JR.

Witness

SYDNA T. ZELIFF

STATE OF NEW HAMPSHIRE
CARROLL, SS.

October 1, 1990

Personally appeared the above-named William H. Zeliff, Jr. and Sydna T. Zeliff and acknowledged to me that they executed the foregoing instrument for the purposes contained therein as their free and voluntary act and deed.

Before me,

Notary Public/~~Justice of the~~ Peace
My Comm. Expires:_____

MATTHEW W. NASTASIA, Notary Public
My Commission Expires December 6, 1994

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SCHEDULE A

Certain tracts or parcels of land situate in the Town of Jackson, County of Carroll and State of New Hampshire, being more particularly bounded and described as follows:

TRACT ONE:

"Three parcels of land together with all buildings thereon situate in Jackson, County of Carroll, State of New Hampshire, and bounded and described as follows:

"PARCEL #1. Christmas Farm Inn Lot:

"Beginning at an iron pipe at a corner of stone walls at the East side of the five-mile Circuit Road, said iron pipe at the Southwest corner of land of Martha E. McAleer, formerly of Alice Strahan Goff, and said iron pipe being at the Northwest corner of Parcel #1 herein conveyed; bearing South 62 degrees East, by land of said McAleer and by said stone wall, 309 feet to a picked stone at a corner of walls at the Northwest corner of land of said McAleer, formerly of said Richard F. and Doris E. Welch (Parcel 3-B); thence Southerly, still by land of said McAleer and still by stone wall, 357 feet to an iron pipe at a corner of walls on the North line of land of John J. and Helene E. McEvoy, formerly of said Welchs' (Lot 4); thence the following courses and distances, by land of said McEvoys': North 72 degrees 30' West, by stone wall, 31 feet to an iron pipe; South 7 degrees West, across the head of an old cattle lane, 14 feet to a corner of walls; South 12 degrees West, by stone wall, 61 feet; South 60 degrees 15' West, by stone wall, 33 feet; South 17 degrees 15' West, by stone wall, 63 feet; South 11 degrees 45' West, by stone wall, 80 feet to an iron pipe at a corner of walls at the Northwest corner of land of Edward W. Diegoli, Jr. and Jennie M. Diegoli, formerly of said Welchs' (Lot 10); thence South 40 degrees West, by land of said Diegolis', 316 feet to an iron pipe; thence the following courses and distances by land of said Welchs' (Lots 10-A and 20): North 76 degrees 15' West, 217 feet to an 'x' mark in the top of a boulder; same course, 68 feet to an iron pipe near the East bank of a brook; South 65 degrees 45' West, 178.5 feet to an iron pipe; thence the following courses and distances by land of said Welchs' and by the East side of a new roadway: North 22 degrees East, 39 feet to an iron pipe; North 5 degrees 30' East, 69.7 feet to an iron pipe; North 12 degrees 30' West, 251 feet to a stone post at the East side of said five-mile Circuit Road, thence Northeasterly, by said five-mile Circuit Road, approximately 781 feet to the bound begun at. Saving, excepting and reserving nevertheless that parcel with the buildings thereon formerly held and used as the Grantors' homestead buildings constructed in the northwesterly most corner of the within described tract and Easterly of Five-Mile Circuit Road and which parcel hereby saved, excepted and reserved is more particularly bounded and described as follows:

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"Commencing at the Northwesterly most corner of the parcel hereby released, at an iron pipe at a junction of stone walls on the Easterly side of said Black Mountain Road; thence running by land now or formerly of Martha E. McAleer at an Easterly course of approximately South 62 degrees 43' 43" East, 308.56 feet by which line is evidenced on the face of the earth by a stone wall, to a wooden stake at the junction of walls where one meets Southerly therefrom; thence running to the right still by stone wall, and by land now or formerly of said Martha E. McAleer, South 4 degrees 8' 40" East, being the approximate course and a distance of 126.44 feet to a stake in said wall; thence still by said wall and turning to the left approximately on a course of South 7 degrees 11' 20" East, a distance of 160.42 feet to a wooden stake at an angle in said wall; thence turning to the right and running by remaining land of said Grantors, North 65 degrees 20' 23" West, 510.76 feet to a wooden stake in a stone wall on the Easterly edge of said Black Mountain Road; thence running by said Black Mountain Road Northerly, and which by its Easterly edge is depicted by a stone wall in an approximate course of North 36 degrees 57' 43" East, a total distance of 267.26 feet to said place of beginning.

"PARCEL #2, Swimming Pool Lot:

"Beginning at an iron pipe at the West side of said five-mile Circuit Road, said iron pipe being at the Northeast corner of land of J. Arthur and Rachel R. Doucettes, formerly of Robert W. and Carlene Owen; bearing North 65 degrees 45' West, by land of said Doucettes', 283 feet to an iron pipe in a stone wall at the East side of the Old Ditson Entrance Road, and at the South corner of land of Andrew S. Harris, formerly of said Robert W. and Carlene Owen; thence North 24 degrees 30' East, by land of said Harris and by a short piece of stone wall, 405 feet to stone slab marked 'A.B.S.' near a maple tree at the Southwest corner of land of Christopher B. and Mary Janet Johnson, formerly of George W. Morton; thence South 75 degrees East, by land of said Johnsons', 221 feet to a stone wall; thence same course, still by land of said Johnsons' and by said stone wall, 208 feet to an iron bar at the West side of said five-mile Circuit Road; thence Southwesterly, by said five-mile Circuit Road, 495 feet to the bound begun at.

"PARCEL #3, Pump House Lot:

"Beginning at an iron pipe at the North side of the Valley Cross Road, so-called, leading from the five-mile Circuit Road to the Carter Notch Road, and at land of Henry W. Kendall, formerly of L. Winthrop Pitman; Bearing North 28 degrees 30' East, by an old wire fence and land of said Kendall, 45 feet to a stone post; thence North 55 degrees West, still be wire fence and land of said Kendall, 250 feet to an iron pipe on the East bank of the Wildcat River; thence same course, still by land of said Kendall, to said Wildcat River; thence Southwesterly, by said Wildcat River, as it trends downstream, approximately 58 feet to said

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Valley Cross Road at the iron bridge; thence Southeasterly, by said Road, to a point on the river bank; thence still Southeasterly, by said Road, approximately 257 feet to the bound begun at.

"The above tracts including that reserved to these Grantors is all in the same as had by these Grantors under deed of Doris E. and Richard F. Welch dated June 30, 1971, and recorded in Carroll County Records, Book 488, Page 303. The quoted portions above have been copied therefrom.

"The three parcels hereby conveyed have been surveyed at various times by Roger S. Burnell of Conway, New Hampshire, with his revision being February 9, 1970. The reserved parcel was surveyed by Valley Engineering Associates of North Conway, New Hampshire, on October 21, 1974, and as depicted thereon as 'Parcel A' having 2.4 acres more or less.

"There is further saved, excepted and reserved nevertheless to the reserved parcel which is to be held by these Grantors as an appurtenance thereto, the common right to use, hook on to and take water from the well located on the within conveyed property for domestic purposes. The water right as hereunder reserved and held as appurtenant to the reserved premises shall be in common with the right to use the same by the within granted premises provided the Grantors, their successors and assigns shall pay their fair proportionate cost of use of said well and any electricity necessary for the pumping thereof and maintenance to the same. Furthermore, this water right may be used by connection to the subsurface water line as it leads from the well to the reserved property via the Christmas Farm Inn with the right to enter at all reasonable time and times for the purpose of inspecting, maintaining, repairing and/or replacing said subsurface water line and with the further right to relocate said pipe line directly from the storage facility at the well site to the reserved premises. In explanation, the pipe line as it now serves the reserved premises leads through Christmas Farm Inn and at the sole expense of the Grantors, their heirs and assigns, the same may be relocated at a mutually convenient location and run from the storage facility directly by underground pipe line to the reserved premises and in the event of such relocation, such first relocation under the surface of the ground shall then fix the location of the reserved right of way hereunder for said pipe line. The sole obligation of the reserved premises to bear their fair proportionate cost of maintaining said water source shall apply only to the water source, any pumping device from the water source and the storage facility but shall not apply to the pipe line save the pipe line to the extent as it leads through the reserved premises and from Christmas Farm Inn. Once relocation occurs, the entire pipe line as it leads directly from the storage facility to the reserved premises shall be borne exclusively by the Grantors, their successors and assigns."

Meaning and intending to describe and convey the same premises

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conveyed to William H. Zeliff, Jr. and Sydna T. Zeliff by Warranty Deed of James F. Powers and Eva A. Powers, dated May 15, 1976. Recorded at Carroll County Registry of Deeds, Book 623, Page 232.

TRACT TWO:

"RESTAURANT LOT:

"A certain parcel or tract of land, with the buildings thereon, (known as the Restaurant Lot), situated in the Town of Jackson, Carroll County, State of New Hampshire, bounded and described as follows:

"Beginning at a bound, being an iron pipe and stones at the Southeast corner of a lot of land sold by William W. Trickey and George P. Trickey to Joseph Weber, Jr.; thence North 30 degrees East, 6 rods to an iron hub; thence North 62 degrees West, to the east side of the main road from Jackson Falls House to Glen Station; thence down the side of the same road, 3 rods and 6 links to an iron pipe and stone; thence South 22 degrees East, to the point of beginning.

"ALSO a right of way across a certain parcel of land on the Southerly side of the above described premises between the above described premises and land now or formerly of Mrs. Merton C. Harriman.

"The above parcel is conveyed SUBJECT TO water system easement, Rodney and Ellen Charles to Jackson Water Precinct, dated January 30, 1982, recorded in Carroll County Records, Book 848, Page 18.

"TOGETHER ALSO with a sewer drainage easement on to other land of said Charles (hereinafter referred to as the 'Charles House Lot') situate in said Jackson, bounded and described as follows:

TRACT THREE:

"CHARLES HOUSE LOT:

"A certain tract or parcel of land situated in Jackson, Carroll County, State of New Hampshire, easterly or southeasterly of State Highway Route 16-A, so-called, and bounded and described as follows: Beginning at an iron post set in the ground at a point 50 feet from the easterly or southeasterly side of said Route 16-A, and thence running southwesterly by land of Hatch, on a line parallel with the easterly or southeasterly side of Route 16-A, 58 feet, more or less, to a stone wall at the southwesterly corner of the premises hereby conveyed; thence southeasterly along a stone wall, by land of Freeman, 110.90 feet to a large boulder; thence South 53 degrees 15' East, by land of Frost, 347.20 feet to a square stone post set in the ground; thence North 30 degrees 2' East, 224.12 feet to a square stone post in the ground; thence North 67 degrees West, by other land of the grantors, 140.06

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feet, to an iron post in the ground; thence North 75 degrees 31' West, by said other land of the grantors, 164.78 feet to an iron post in the ground; thence North 59 degrees West, 137.10 feet, by other land of the grantors, to a point of beginning.

parcel of land (the Charles House Lot), TOGETHER WITH the right to maintain, repair, improve and replace, when necessary or convenient, said leach field, and all structures or appurtenances used in connection with the operation of said leach field".

"TOGETHER ALSO with the right to enter said parcel of land (Charles House Lot) for all of the foregoing purposes, whenever necessary or convenient. Whenever work is done on the above parcel of land (Charles House Lot), the Grantees agree to return the surface of the earth to its original condition, in so far as practical.

"Said sewer drainage easement shall be binding upon and inure to the benefit of all parties hereto and their respective heirs, administrators, executors and assigns."

Meaning and intending to describe and convey Tract 2 and Tract 3 as conveyed to William H. Zeliff, Jr. and Sydna T. Zeliff by Rodney C. Charles and Ellen M. Charles by Warranty Deed dated July 1, 1982 and recorded at the Carroll County Registry of Deeds at Book 857, Page 261.

Mortgagors release all rights of homestead herein.

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EXHIBIT H

JUL 11 1990

UNITED STATES HOUSE OF REPRESENTATIVES

Committee on Standards of Official Conduct

ETHICS IN GOVERNMENT ACT—FINANCIAL DISCLOSURE STATEMENT

FORM B—For use by candidates for the office of Member and new employees

☐ Check if amended Statement.

DUE DATE May 15.
Extension July 15 1990

William H. Zeliff, Jr.
Full Name

Route 16 B Box cc
Mailing Address

Jackson, New Hampshire 03846

(Office Use Only)

Check the appropriate box and fill in the blanks.

☒ Candidate for the U.S. House of Representatives—District 1 State N.H.

Date of Election 4-11-90 primary
11-6-90 general

☐ New Officer or Employee—Employing Office _____

GENERAL INFORMATION

WHO MUST FILE AND WHEN:

CANDIDATES for the U.S. House of Representatives must file a Financial Disclosure Statement within 30 days of becoming a candidate or on or before May 15th of the calendar year in which he or she becomes a candidate, whichever is later, but in no event later than 7 days before the election.

YOU ARE A CANDIDATE IF:

(A) YOU ARE AN INDIVIDUAL, OTHER THAN A MEMBER OF CONGRESS WHO HAS TAKEN THE ACTION NECESSARY UNDER THE LAW OF A STATE TO QUALIFY FOR NOMINATION OR ELECTION TO THE U.S. HOUSE OF REPRESENTATIVES; OR

(B) YOU OR YOUR AUTHORIZED CAMPAIGN COMMITTEE HAVE TAKEN THE ACTION NECESSARY TO RECEIVE OR FILE REPORTS REQUIRED BY THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 (2 U.S.C. 434(a)).

NEW EMPLOYEES of the Legislative Branch must file a Financial Disclosure Statement within 30 days of assuming the new position.

You are a new employee if:

(A) you are compensated at a rate equal to or in excess of the annual rate of basic pay for grade GS-16 of the General Schedule; or

(B) you are designated as a principal assistant by a Member of Congress upon employment in the House of Representatives.

Note: Individuals who are employed in the Legislative Branch immediately before assuming the new position described above or who have left such a position within 30 days prior to assuming the new position shall not file this Statement.

WHERE TO SECURE ASSISTANCE: Committee on Standards of Official Conduct, U.S. House of Representatives, Room HT-2, Capitol Building, Washington, D.C. 20515. Telephone (202) 225-7103. Additional forms and instructions may be obtained from the Committee office.

REPORTING INSTRUCTIONS

Note: Please read instructions carefully. Sign the form where indicated. Attach additional sheets if needed, identify each item by showing your name and the section [illegible] ANSWERS ALL PARTS, IF ANY, OR SPECIFICALLY PLEASE TYPE OR PRINT CLEARLY.

REPORTING PERIOD: WITH RESPECT TO INCOME, THE INFORMATION REQUIRED BY THIS DISCLOSURE STATEMENT IS THE PRECEDING CALENDAR YEAR AND THE CURRENT CALENDAR YEAR TO DATE OF FILING. Information concerning assets and liabilities must be current as of a date not more than 31 days before the filing date. Other required information must be current as of the filing date.

I. SPOUSE AND DEPENDENT DISCLOSURE

EXEMPTION

In general, the reporting individual is required to include financial information concerning his or her spouse or dependent children. However, in certain limited circumstances, the truly independent financial interests of a spouse or dependent would be exempt from disclosure.

Information concerning a spouse or dependent child should be reported as follows: (1) the source, but not amount, of spouse earned income which exceeds $1,000; (2) the source and category of value of income derived from any asset of the spouse or dep. relevant reported under Part III of the Disclosure Statement; and (3) assets and liabilities of the spouse or dependent child.

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STANDARDS FOR EXEMPTION

Disclosure of the financial interests and liabilities [illegible] spouse or dependent under Parts III and IV of the Statement is exempted when all three of the following cri[illegible] standards are met: (1) the item is the sole interest or responsibility of the spouse or dependent child and the reporting individual has no knowledge of the item; (2) the item was not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (3) the reporting individual neither derives, nor expects to derive, any financial or economic benefit from the item.

NOTE: Only financial interests meeting the standards are exempted from disclosure, all other interests must be reported.

The information concerning a spouse or dependent child must be reported in the same manner as that of the reporting individual. However, the persons reporting need not identify which items belong to a spouse or dependent. No information is required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of the marriage or permanent separation.

NOTE: If the reporting individual does not disclose certain financial interests or liabilities of the spouse or dependent children because these items meet the standards for exemption and, he or she must so indicate.

ARE YOU AWARE OF ANY INVESTMENTS OR PROPERTY OR LIABILITIES OF A SPOUSE OR DEPENDENT CHILD WHICH YOU HAVE NOT REPORTED BECAUSE THEY MEET THE THREE STANDARDS FOR EXEMPTION? (See Instructions Booklet at page 1)

YES____ NO X NA

II. INCOME

INCOME: The term "income" is intended to be all-inclusive, as defined in the Act. The identity of the source and the amount or category of value of all income which exceeds $100 from any one source must be disclosed separately. Gross income should be listed, but the net income derived from business may also be reported. The type of income should be identified as salary, commission, pension, honoraria, dividends, interest, etc. In reporting any honoraria, include the date of receipt and indicate which honoraria, if any, were assigned to charity. Exclude income from current U.S. Government employment.

For more information, see detailed Instructions Booklet at page 2.

A. The source, type, and amount of income exceeding $100 received (other than from U.S. Government employment) in 0 or more in value received from any source during the PRECEDING CALENDAR YEAR and the CURRENT CALENDAR YEAR to date of filing, listed separately by year of receipt, are stated.

SOURCE	YEAR	TYPE	AMOUNT
Schedule 1 attached			

B. The source, type, and category of value of income from dividends, interest, rents, and royalties (other than any income disclosed in Part III) received from any source during the PRECEDING CALENDAR YEAR and the YEAR OF FILING, listed separately by source, which exceeds $100 in value. Note: For this part only, indicate Category of Value, as follows: Category A—over $1,000; B—$101-$1,000; C—$1,001-$2,500; D—$2,501-$5,000; E—$5,001-$15,000; F—$15,001-$50,000; G—over $50,000; [illegible] Exclusion.

SOURCE	YEAR	TYPE	CATEGORY
Interest dividends and Partnership distributions-Schedule 2 attached			
Income from Sub S corporation-Schedule 3 attached			
Rents Schedule 4 attached			
Capital Gains Schedule 5 attached			

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IN PARTS III AND IV, THE INFORMATION REQUIRED SHOULD BE CURRENT AS OF A DATE WHICH IS LESS THAN THIRTY-ONE DAYS BEFORE THE FILING DATE. THE INFORMATION BELOW IS CURRENT AS OF April 30, 1990
(Date)

NOTE: For Parts III and IV below, indicate Category of Value as follows: Category A—not more than $5,000; B—$5,001-$15,000; C—$15,001-$50,000; D—$50,001-$100,000; E—$100,001-$1000,000; F—over $1000,000.

III. HOLDINGS

HOLDINGS: Business interests, stocks and bonds, real estate, savings accounts, and any other investment or income-producing property should be reported by category of value. In listing the category of value of any item where it is difficult to determine an approximate fair market value, any reasonable indication of value may be used provided that the method of valuation is indicated on the Disclosure statement. (See 2 U.S.C. 701(a) for methods of valuation.) IN LISTING SECURITIES, THE NAME OF EACH COMPANY IN WHICH STOCK WORTH OVER $1,000 IS HELD MUST BE LISTED SEPARATELY. IN REPORTING REAL PROPERTY HOLDINGS, A BRIEF DESCRIPTION OF THE PROPERTY (SUCH AS NUMBER OF ACRES AND DESIGNATION OF ANY IMPROVEMENTS), AND ITS LOCATION SHOULD BE INCLUDED. Exclusions: Any deposits aggregating $1,000 or less in personal savings accounts, and any personal liability owed to the reporting individual by a relative. A personal residence would not be reported unless any part of the residence produces rental income. The cash value of a life insurance policy need not be reported.

The holdings of and income from a trust or other financial arrangement in which a beneficial interest in principal or income is held by the reporting individual, his spouse, or any dependent children must be disclosed. However, the reporting individual need only report the category of the income of income received by him, his spouse, or dependents from: (1) a trust which was not created directly by such individual, his spouse, or any dependent, and with respect to which such individual, his spouse, and dependents have no knowledge of the holdings or sources of income of the trust; or (2) a "qualified blind trust," as defined in section 102(f)(3) of the Act. Such a trust must be approved by the Committee on Standards of Official Conduct before it will be deemed a qualified blind trust under the Act.

DO YOU, YOUR SPOUSE OR DEPENDENT CHILD RECEIVE INCOME FROM OR HAVE A BENEFICIAL INTEREST IN A TRUST OR OTHER FINANCIAL ARRANGEMENT WHICH HOLDINGS WERE NOT DISCLOSED WHO TRUST IS A "QUALIFIED BLIND TRUST" OR OTHER EXCEPTED TRUST? (See Instructions Section on page 4)

YES ____ NO X NA ____

The identity and category of value of any interest in property held in a trade or business, or for the production of income, which has a fair market value in excess of $1,000 as of the date specified above, IF NONE, SO STATE.

DESCRIPTION	CATEGORY
Schedule 6 attached	

IV. LIABILITIES

LIABILITIES: All personal obligations aggregating over $1,000 owed to any creditor, whether secured or not, and regardless of the repayment terms or interest rates, must be listed. The listing of the liability should include the name of the individual or organization to which the liability is owed. Any contingent liability, such as that of a guarantor or endorser, or the liabilities of a business in which the reporting individual has an interest need not be listed. Exclusions: Any mortgage secured by the principal residence of the reporting individual or spouse (including a second residence or vacation home) that is NOT held for the PRODUCTION OF INCOME; any loan secured by a PERSONAL MOTOR VEHICLE, or household furniture or appliances; provided such loan does not exceed the purchase price of the item; ordinary liability owed to a relative.

For more information, see detailed instructions listed on page 4.

The identity and category of value of the total liabilities owed to any creditor which exceeds $1,000 as of the date specified above. IF NONE, SO STATE.

DESCRIPTION	CATEGORY
Schedule 7 attached	

0 0 0 7 0 3 1 1 7 5 0

V. POSITIONS

POSITIONS HELD: Any nongovernmental position held by the reporting individual, whether compensated or uncompensated, in any business entity, nonprofit organization, labor group, educational or other institution must be reported. *Exclusions:* Positions held in any religious, social, fraternal, or political entities, and positions solely of an honorary nature.

For more information, see detailed instructions Section at page 18.

The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States Government. IF NONE, SO STATE.

POSITION	NAME OF ORGANIZATION
Schedule A attached	

VI. AGREEMENTS

(For New Employees Only)

AGREEMENTS: Candidates are not required to complete this section. Continued payments or benefits from a former employer would include interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance; buy-out agreements; severance payments, etc.

For more information, see detailed instructions Section at page 18.

A description of the date, parties to, and terms of any agreement or arrangement with respect to future employment, leave of absence during period of government service, continuation of payments by a former employer other than the U.S. Government, and continuing participation in an employee welfare or benefit plan maintained by a former employer. IF NONE, SO STATE.

DATE	PARTIES TO	TERMS OF AGREEMENT
n/a		

This Financial Disclosure Statement is required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 101, et seq.). This Statement will be made publicly available to any requesting person under written request, and will be reviewed by the Committee on Standards of Official Conduct. Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions (see 5 U.S.C. App. 104 and 18 U.S.C. § 1001).

Signature	Date
[illegible signature]	July 10, 1990

WHERE TO FILE:

RETURN COMPLETED STATEMENT
(WITH TWO COPIES) TO:
The Clerk, U.S. House of Representatives
Office of Records and Registration
1036 Longworth House Office Building
Washington, D.C. 20515

EXTENSIONS: The Committee on Standards of Official Conduct may grant reasonable extensions of time for filing any Disclosure Statement. Extension requests should be directed to the chairman of that Committee in writing and should state the reason the extension is necessary.

U.S. GOVERNMENT PRINTING OFFICE: 1987 O-[illegible]

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William H Zeliff, Jr

Schedule A

Form 8 Part II B Income-Rents

Christmas Farm Inn-Real Estate Jackson, N.H.	1989 Rents	Gross F Net A
Christmas Farm Inn-Real Estate Jackson, N.H.	1989 Rents	Gross F Net A
Yesterdays Restaurant Real Estate Jackson, N.H.	1989 Rents	Gross D Net D
Yesterdays Restaurant Real Estate Jackson, N.H.	1989 Rents	Gross E Net E
Jackson Corner-Real Estate Jackson, N.H.	1989 Rents	Gross C Net D
Jackson Corner-Real Estate Jackson, N.H.	1989 Rents	Gross D Net D
Duplex Rental Property Sea Isle City, N.J.	1989 Rents	Gross D Net A
Duplex Rental Property Sea Isle City, N.J.	1989 Rents	Gross E Net A

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William H Zeliff, Jr

Form 8 Part II A Income — Schedule 1

Christmas Farm Inn	1988	Salary	18,200
Christmas Farm Inn	1989	Salary	18,000
Christmas Farm Inn Subchapter S Corp	1988 (1)	Business Income Gross Sales 1,088,388 net loss	
Christmas Farm Inn Subchapter S Corp	1990	Business Income Gross Sales 2,181,189 net loss	

(1) Figures represent a 6/30 fiscal year gross income and net income. Records are not maintained on a calendar year basis. Christmas Farm Inn, Inc. as a corporation electing as a subchapter S corporation to report its income or loss as part of the personal tax returns of the stock holders.

2 5 0 4 3 4 4 0 7

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William H Zeliff, Jr

Schedule 2

Form 8 Part II B Income -Interest.Dividends.Partnerships.
Distributions

First Home Savings Bank. S J	1988	Dividends A
First Home Savings Bank	1990	Dividends A
Worthington	1989	Dividends A
Worthington	1990	Dividends A
Amsteog Bank	1989	Dividends A
Amsteog Bank	1990	Dividends A
E F Hutton Money Market	1989	Dividends A
E. F Hutton Money Market	1990	Dividends A

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William H. Zeliff, Jr

Schedule 3

Form B Part II B -Income from Sub S Corporation

Capital gains - pass through gains and dividends from Sub S Corp

Christmas Farm Inn

Advanced Micro D	Capital Gains	(1) 1989	Gross D Net B
Enzek	Capital Gains	(1) 1989	Gross D Net B
Manus	Capital Gains	(1) 1989	Gross D Net A
First N H. Banks	Capital Gains	(1) 1989	Gross E Net E
First N H. Banks	Dividends	(1) 1989	Gross A
N.H. Savings	Dividends	(1) 1989	Gross A
N.H. Savings	Dividends	(1) 1990	Gross A
United Savers	Dividends	(1) 1989	Gross A
United Savers	Dividends	(1) 1990	Gross A
Manus	Dividends	(1) 1989	Gross A

(1) Represents results of fiscal year ended 6/30/89 and 6/30/90-pass through items from a sub S corporation-records not maintained on a calendar year.

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William H. Zeliff, Jr

Schedule 1

Forms 8 Part II B Income-Capital Gains

Wheelebrator	1989	Capital Gains	Gross D	Net Loss
Intell. Mobile Mach	1989	Capital Gains	Gross D	Net Loss
Union Carbide	1989	Capital Gains	Gross D	Net Loss
Newton	1989	Capital Gains	Gross A	Net Loss
1/2 Duplex Sea Isle City, NJ	1989	Capital Gains	Gross C	Net Loss
Ltd. Prtnshp Int. Connecticut Media	1989	Capital Gains	Gross B	Net A
Ltd Prtnshp - Mt. Washington Valley	1989	Capital Gains	Gross B	Net B
Ltd. Prtnshp-Broadcasting	1989	Capital Gains	Gross D	Net Loss
Ltd Prtnshp-Broadcasting	1989	Capital Gains	Gross A	Net Loss

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William M Zolitt, Jr

Schedule A

Form B Part III Holdings

		Category
Amoskeag Bank Stock	Investments	A
Worthington Stock	Investments	A
First Home Savings	Investments	A
Land & Bldgs CFI Jackson, M M	Rental Property	F
Yesterday's Restaurant Jackson, M M	Rental Property	F
Condo Venice, Fla	Rental Property	D
Jackson Corner, Jackson, M M	Rental Property	E

Assets of Sub S Corp-Christmas Farm Inc

Cash	C
Accounts receivable	C
Inventory	B
Investment-Mt Attitash	A
Mo Conway Country Club	A
Prepaid Expenses	B
Equipment-leasehold improvements and vehicles	F
Security Investments	C

(1) Based on original cost

William H Zelitt, Jr

Schedule 7

Form 8 Part IV Liabilities

White Mountain National Bank	Mortgage Real Estate Jackson, N H	F
C & S Real Estate Services	Mortgage Real Estate Venice,Fla	D
United Savers	Mortgage Real Estate Jackson, N.H.	C
United Savers	Home Equity Loan Jackson, N.H.	D
John Hartnett, Jr	Mortgage Jackson Corner Jackson, N.H.	C
Rodney Charles	Mortgage Yesterday's Boat Jackson, N.H.	B

Liabilities of Sub S Corporation- Christmas Farm Inn

White Mountain National Bank	Note Payable	F
Trade Accounts Payable		B
Accrued Expenses		C
Customer Deposits		D
Due Broker		B
Note Payable SBA		C
Installment loans - vehicles		C

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July 10, 1990

William H. Zeliff, Jr.

Schedule B

Form B Part III Holdings

		Category
American Bank Stock	Investments	A
Worthington Stock	Investments	A
First Home Savings	Investments	A
Land & Buildings - CFI Jackson, N H	Rental Property	F
Yesterday's Restaurant Jackson, N H	Rental Property	F
Condo Venice, FL	Rental Property	D
Jackson Corner, Jackson, N H	Rental Property	E
Limited Partnership Mt Washington Valley	Investments	C

Assets of Sub S Corp-Christmas Farm Inn

Cash	C
Accounts Receivable	C
Inventory	D
Investment-Mt Attitash	A
No Conway Country Club	A
Prepaid Expenses	§B
Equipment-leasehold improvements and vehicles	F
Security Investments	C

(1) Based on original cost

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OCT - 9 1990

BILL ZELIFF
Republican for Congress
813 Elm Street, Manchester, NH 03101 • (603) 641-1990

EXHIBIT 1

Friends of Bill Zeliff Committee
Box 5
Jackson, New Hampshire 03846
October 1, 1990

16

Clerk
U.S. House of Representatives
Office of Records and Registration
1036 Longworth House Office Building
Washington, D.C. 20515-6612

Dear Sir:

I have previously forwarded to you the required Financial Disclosure Statements for the periods reporting through August 31, 1989, and April 30, 1990.

During the recent primary campaign, one of my opponents alleged that there were improprieties about the way I financed my campaign, and he alleged that my Disclosure Statements were misleading. In an effort to insure that this was not the case, I directed my accountants to review my filings to insure both their completeness and accuracy.

I am pleased to report that there were no substantial errors. There are, however, a number of typographical errors, as well as some minor reclassifications. I am taking this opportunity to correct those, and I have enclosed revised filings containing appropriate amendments with this letter.

These changes are all minor, and in fact, many of them are typographical errors. They do not alter my income or liability statements in any significant way. Please contact me if you have any questions.

Sincerely,

William H. Zeliff, Jr.

Enclosure

Paid for and Produced by
Friends of Bill Zeliff Committee

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William H. Zeliff, Jr.

November 1, 1990 Filing

I. Form A Part II B Income - Interest Dividends, Partnerships, Distributions Schedule 3

A. Original filing

Correct as is but should have added two items.

Amended filing

Covina Mortgage	1989	Interest	A
Crestar Bank	1989	Interest	A

Purpose: The original filing inadvertently left off two category A (not more than $1,000) items. This corrects that error.

II. Form A Part II B Income - Interest Schedule 4

A. Original filing

Jackson Corner - Real Estate 1988 Rents Gross D Net D
Jackson, NH

Amended:

Jackson Corner - Real Estate 1988 Rents Gross D Net A
Jackson, NH

Purpose: Through a typographical error, the rental income was categorized in the "D" range instead of the "A" range. This corrects that error.

B. Original filing

Jackson Corner - Real Estate 1989 Rents Gross C Net D
Jacks n, NH

Amended:

Jackson Corner - Real Estate 1989 Rents Gross C Net A
Jackson, NH

Purpose: The original filing incorrectly categorized the amount of rents as being in the "D" category. The rents received are in the "A" category, (less than $1,000).

III. Form 8 - Part II B Income - Capital Gains Schedule 2

Original filing

Limited Partnership - 1969 Capital Gains Gross D Broadcasting

Amended filing

Delete entry. Transaction not a capital gain.

Reason: The interest was not sold and this is not a capital gain.

IV. Form 8 Part III Buildings Schedule 6

A. The word "category" is misspelled.

B. Original filing

Duplex (s)on Isle, N.J. Rental Property (1) 33,906

Amended filing

Duplex Gen Isle, N.J. Rental Property D, and delete footnote 1.

Purpose: This corrects 2 misspellings. In addition the gain from the sale of the Duplex qualifies for the "D" classification. The original filing omitted any classification and instead installed a footnoted dollar amount.

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Nov 1, 1989

William H. Zeliff, Jr

Schedule B

Form B Part II B Income -Interest, Dividends, Partnerships distributions

First Home Savings Bank, N.J.	1988	Dividends	A
First Home Savings Bank	1989	Dividends	A
Jackson Falls Group	1988	Partshp/Dist	A
Jackson Falls Group	1989	"	" None
Occidental Petroleum	1988	Dividends	A
Occidental Petroleum	1989	"	" None
Upjohn	1988	"	" A
Upjohn	1988	"	" None
Worthington	1988	"	" W/A
Worthington	1989	"	" A
Amoskeag Bank	1988	"	" W/A
Amoskeag Bank	1989	"	" A
E F Hutton Money Market	1988	Interest	A
E F Hutton Money Market	1989	Interest	A
Covina Mortgage	1988	"	" A
Crestar Bank	1988	"	" A

Nov 1, 1989

William H. Zoliff, Jr

Schedule A

Form 3 Part II B Income-Rents

Christmas Farm Inn-Real Estate Jackson, N.H	1988	Rents	Gross F	Net A
Christmas Farm Inn-Real Estate Jackson, N.H	1988	Rents	Gross F	Net A
Yesterdays Restaurant Real Estate, Jackson, N.H.	1988	Rents	Gross E	Net B
Yesterdays Restaurant Real Estate, Jackson, N.H.	1988	Rents	Gross B	Net B
Jackson Corner-Real Estate Jackson, N.H.	1988	Rents	Gross B	Net A
Jackson Corner-Real Estate Jackson, N.H.	1988	Rents	Gross C	Net A
Duplex-Rental Property Sea Isle, N.J.	1988	Rents	Gross E	Net A
Duplex Rental Property Sea Isle, N.J.	1988	Rents	Gross D	Net A

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Dec 1, 1989

William H. Soliff, Jr

Schedule 1

Forms 8 - Part II B Income-Capital Gains

Wheelabrator	1988	Capital Gains		Gross D	Net Loss
Intuit: Mobile Mach	1988	"	"	Gross D	Net Loss
Union Carbide	1988	"	"	Gross D	Net Loss
Newtek	1988	"	"	Gross A	Net Loss
1/2 duplex-See info BJ	1988	"	"	Gross C	Net F
TMC Corp	1988	"	"	Gross A	Net Loss
Cannon Group	1988	"	"	Gross A	Net Loss
Cornerstone	1988	"	"	Gross B	Net Loss
Upon	1988	"	"	Gross C	Net Loss
Grossmans	1988	"	"	Gross B	Net Loss
Jaquar	1988	"	"	Gross D	Net Loss
Brookline Savings	1988	"	"	Gross B	Net Loss
Timberlane	1988	"	"	Gross D	Net Loss
Albany International	1988	"	"	Gross B	Net Loss
Orion	1988	"	"	Gross D	Net Loss
Polaroid	1988	"	"	Gross D	Net B
Liz Claiborne	1988	"	"	Gross C	Net A
James River	1988	"	"	Gross C	Net A
Dupont	1988	"	"	Gross E	Net A
Tyco	1988	"	"	Gross D	Net B
IBM	1988	"	"	Gross A	Net Loss
Digital	1988	"	"	Gross D	Net A
Advanced Micro	1988	"	"	Gross D	Net B
Dupont	1988	"	"	Gross D	Net Loss
Occidental	1988	"	"	Gross C	Net Loss
Occidental	1988	"	"	Gross D	Net A
Upjohn	1988	"	"	Gross C	Net Loss
Manus	1988	"	"	Gross D	Net Loss
Vanguard	1988	"	"	Gross B	Net Loss
Lmtd Prtnshp Int					
Kennebunk Media	1988	"	"	Gross B	Net A
Lmtd Prtnshp-Mt					
Washington Valley	1988	"	"	Gross B	Net D

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William H. Schiff, Jr.

Nov 1, 1979

Schedule A

Form B
Part III Holdings

		Category
Amoskeag Bank Stock	Investments	A
Worthington Stock	Investments	A
First Home Savings	Investments	A
Land & Bldgs CFI		
Jackson, N H	Rental property	F
Yesterdays Restaurant		
Jackson, N.H.	Rental property	F
Condo, Venice FL	Rental property	D
Duplex-Sea Isle NJ	Rental property	D
Jackson Corner,		
Jackson, N H.	Rental property	E

Assets of Sub S Corp-Christmas Farm Inn

Cash	C
Accounts Receivable	C
Inventory	D
Investment-Mt Attitash	A
No Conway Country Club	A
Prepaid expenses	C
Equipment-leasehold improvements and vehicles	F
Security investments	C

c ~) 7 0 3 ' ~) 5 3

William H. Seliff, Jr.

July 10, 1990 Filing

I. Page 1. The form, through a typographical error incorrectly identified the primary date as 6/11/90 instead of 9/11/90. The later is correct.

II. Form A Part II B Income - Interest, Dividends, Partnerships, Distributions Schedule 2

A. Original filing

Correct but incomplete.

Amended filing

Covino Mortgage	1989	Interest	A
Covino Mortgage	1990	Interest	A
Greater Bank	1989	Interest	A
Greater Bank	1990	Interest	A
Limited Partnership Rennebunk Media	1989	Partnership Income	C
Limited Partnership Mt. Washington Valley	1989	Partnership Income	B

Purpose: The amended filing adds a mortgage and bank interest that each total less than $1,000 as well as added two partnership interests that were acquired but omitted from the original filing because of an oversight.

III. Form A Part II B Income - Rents Schedule 4

A. Original filing

Yesterdays Restaurant Real Estate, 1989 Rents Gross D Net D
Jackson, NH

Amended filing

Yesterdays Restaurant Real Estate, 1989 Rents Gross E Net E
Jackson, NH

Purpose: The original filing misclassified by dollar code the gross and net.

B. Original filing

Jackson Corner - Real Estate 1989 Rents Gross C Net B
Jackson, NH

Amended filing

Jackson Corner - Real Estate 1989 Rents Gross B Net A
Jackson, NH

Purpose: Same as previous correction.

C. Original filing

Jackson Corner - Real Estate 1990 Rents Gross D Net D
Jackson, NH

Amended filing

Jackson Corner - Real Estate 1990 Rents Gross D Net A
Jackson, NH

Purpose: The amended filing corrects a misclassification of the value of the net rents.

D. Original filing

Duplex Rental Property 1989 Rents Gross B Net A
Sea Isle, NJ

Amended filing

Duplex Rental Property 1989 Rents Gross E Net A
Sea Isle, NJ

Purpose: The original filing misclassified the gross rents.

E. Original filing

Duplex Rental Property 1990 Rents Gross E Net A
Sea Isle, NJ

Amended filing

Delete entry

Purpose: This was a duplicate listing. The deletion corrects the duplication.

IV. Form 8 Part II 8 Income - Capital Gains Schedule 2

A. Original filing

1/2 Duplex Sea Isle, NJ	1989	Capital Gains	Gross G	Net Loss

Amended filing

Duplex Sea Isle, NJ	1989	Capital Gains	Gross G	Net E

Reason: The original filing reflected only the sale of 1/2 of the duplex and showed a loss. Both halves were sold in the reporting period and as a result there was a gain. This corrects that error.

B. Original filing

Ltd. Partnership Int. Homestead Media	1989	Capital Gains	Gross B	Net A
Ltd. Partnership - Int. Washington Valley	1989	Capital Gains	Gross B	Net B
Ltd. Partnership Broadcasting	1989	Capital Gains	Gross B	Net Loss
Ltd. Partnership Broadcasting	1990	Capital Gains	Gross A	Net Loss

Amended filing

Delete all four entries.

Reason: In the original filing these items were classified as capital gains. They are more appropriately labelled partnership income. As a result they are deleted from Schedule B and were included in Schedule I. The Broadcasting partnerships had no income and so should not be on either Schedule.

V. Page 8 Part III Holdings Schedule C

A. Original filing

Correct as is but missing one item.

Amended filing

Limited Partnership -

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Mr. Buckingham Valley

Remarks: This interest was listed on the earlier report. By error it was omitted from the later report.

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William-M-Zeller Jr

0 1 1 7 0 3 1 - 3 5 7

William H. Seliff, Jr. July 10, 1990

Schedule E

Form 8 Part II B. Income -Interest, Dividends, Partnerships, Distributions

First Home Savings Bank, N.J.	1989	Dividends A
First Home Savings Bank	1990	Dividends A
Worthington	1989	Dividends A
Worthington	1990	Dividends A
Amoskeag Bank	1989	Dividends A
Amoskeag Bank	1990	Dividends A
E.F. Hutton Money Market	1989	Dividends A
E.F. Hutton Money Market	1990	Dividends A
Covino Mortgage	1989	Interest A
Covino Mortgage	1990	Interest A
Crester Bank	1989	Interest A
Crester Bank	1990	Interest A
Limited Partnership-Kennebunk Media	1989	Partnership C Income
Limited Partnership-Mt. Washington Valley	1989	Partnership D Income

William H Zeliff, Jr.

Schedule A

Form B Part II B Income-Rents

Christmas Farm Inn-Real Estate Jackson, N H	1988 Rents	Gross F	Net A
Christmas Farm Inn-Real Estate Jackson, N H	1988 Rents	Gross F	Net A
Yesterdays Restaurant-Real Estate Jackson, N H	1989 Rents	Gross E	Net E
Yesterdays Restaurant-Real Estate Jackson, N.H	1988 Rents	Gross E	Net E
Jackson Corner-Real Estate Jackson, N H	1989 Rents	Gross D	Net A
Jackson Corner-Real Estate Jackson, N H	1988 Rents	Gross D	Net A
Duplex Rental Property Sea Isle City, N.J	1989 Rents	Gross E	Net A

William M Zeliff, Jr

Schedule 1

Form 8 Part II Income-Capital Gains

Wheelabrator	1989	Capital Gains	Gross D	Net Loss
Intntl Mobile Mach	1989	Capital Gains	Gross D	Net Loss
Union Carbide	1989	Capital Gains	Gross D	Net Loss
Homlok	1989	Capital Gains	Gross A	Net Loss
Duplex Sea Isle City,NJ	1989	Capital Gains	Gross C	Net E

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July 10, 1990

William H. Seliff, Jr.

Schedule B

Form B Part III Holdings

		Category
American Bank Stock	Investments	A
Worthington Stock	Investments	A
First Home Savings	Investments	A
Land & Buildings - CFI Jackson, N H	Rental Property	F
Yesterday's Restaurant Jackson, N H	Rental Property	F
Condo Venice, FL	Rental Property	D
Jackson Corner, Jackson, N H	Rental Property	E
Limited Partnership Mt Washington Valley	Investments	C

Assets of Sub S Corp-Christmas Farm Inn

Cash	C
Accounts Receivable	C
Inventory	D
Investment-Mt Attitash	A
No Conway Country Club	A
Prepaid Expenses	B
Equipment-leasehold improvements and vehicles	F
Security Investments	C

(1) Based on original cost

EXHIBIT J

THE BUFFALO NEWS, WEDNESDAY, OCTOBER 24, 1990

Keefe raises questions on Zeliff funds

New issue in N.H. congressional race

By Laura A. Kiernan
CONTRIBUTING REPORTER

MANCHESTER, N.H. – Democratic congressional candidate Joseph Keefe questioned yesterday whether his Republican opponent, William Zeliff, lent to his campaign all the proceeds from the sale of a New Jersey beach house jointly owned with his wife, thus violating federal election law.

Keefe, who according to recent polls is trailing Zeliff by a slim margin in what is seen as a hotly contested race, said that federal regulations state that only the candidate's share of joint assets can be used for campaign financing. The two men are vying for the 1st District House seat that Republican Rep. Robert Smith gave up to run for the US Senate.

Zeliff, who was campaigning in northern New Hampshire and unavailable for comment yesterday, said in a prepared statement last night that he had "complied fully to the best of my knowledge" with the election laws.

In a statement issued on Oct. 3 in response to questions about his campaign finances, Zeliff said the beach house sale yielded "a substantial gain and I used those funds in my campaign." In that statement Zeliff said the house was sold for $254,000 and a $200,000 mortgage was paid off.

Keefe, who was the Democrats' 1988 congressional nominee for the same seat, also made an issue yesterday out of Zeliff's refusal to release his federal income tax returns for the past three years. At the Globe's request, Keefe released his income tax forms for that period but Zeliff, who owns the Christmas Farm Inn and two other properties in Jackson, said disclosure would jeopardize his businesses.

Zeliff, who said he had a salary of $18,000 per year for the past two years, refused to say whether he owed or paid any federal taxes during these three years.

Zeliff has said that the Christmas Farm Inn and his other businesses operated at a net loss for the past two years, which he attributed to training new management, capital improvements and depreciation allowed under tax laws. Before depreciation, Zeliff said in the Oct. 3 statement, his businesses "had a positive net operating income."

Keefe charged Monday that Zeliff "hasn't paid his fair share of taxes" and is "taking advantage of tax loopholes for millionaires."

According to Zeliff's financial disclosure statements, he received a

WILLIAM ZELIFF
Says he has complied with law

minimum of $140,000 from the sale of stocks, which spokesman Stephen Duprey has said was Zeliff's second source of campaign money, after the beach house sale. Federal restrictions on candidates' use of joint assets would also apply to stock sales, a spokesman for the Federal Election commission said this week. Duprey said some of the stocks sold had been jointly owned by the Zeliffs.

Records on file with the secretary of state's office show that Zeliff's campaign has spent $609,464 this year, of which $294,000 came from personal loans made by Zeliff. A political newcomer with fund-raising ties to President Bush and his White House chief of staff, former Gov. John Sununu, Zeliff refused to abide by the state's voluntary $600,000 spending cap, which applies to each election, primary and general, saying it would deter him from getting his message across.

Keefe, who had a joint income with his wife of $181,688 in 1989, has abided by the spending limits. His campaign has spent a total of $219,916 this year.

Duprey said the "smallest" potential source of Zeliff's campaign income – $55,000 – was derived from funds remaining from $1.9 million in loans made in May 1989 by the First New Hampshire-White Mountain Bank in North Conway. The bulk of the money was for refinancing existing loans and capital improvements for his businesses. Duprey said he did not know whether any of the $55,000 had been used by the campaign.

But Keefe questioned yesterday whether federal law would prohibit Zeliff from using those funds for his campaign. He asserted the corporation would be prohibited from loaning Zeliff the money. Keefe also said no building permits have been issued for work on the Zeliff properties in the past three years.

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The Union Leader

EXHIBIT K

SATURDAY, NOVEMBER 3, 1990

Zeliff Says Campaign Financing Is Legal

By JOHN DISTASO
Union Leader Staff

Republican 1st Congressional District candidate William Zeliff yesterday denied he is breaking federal campaign finance laws, and, at the same time, issued a new challenge to his opponent to release the details of a private settlement agreement with a woman that he signed in 1987.

Zeliff said Democrat Joseph F. Keefe's charges to the Federal Election Commission that Zeliff is using illegal funds to pay for his campaign is a smear tactic.

Keefe has charged that $300,000 that Zeliff has loaned his campaign came from "Illegal corporate contributions, illegal individual contributions and illegal diversion of funds from bank loans."

Keefe charged that Zeliff used the sale proceeds of two condominiums to finance his campaign when, in fact, he was legally entitled to use half of the proceeds.

Since the condos were in the names of both Zeliff and his wife, his wife's half of the proceeds could not have been legally used for the campaign, said Keefe.

Keefe has also questioned whether Zeliff took the proceeds of loans meant for his business for his campaign. If so, said Keefe, Zeliff's Christmas Farm Inn made an illegal campaign contribution. Keefe also noted a bank letter called the loans "capital improvement financings."

Despite the bank letter, Zeliff said last night that the loan "has no relationship to capital improvement financings."

But Keefe noted that in a statement on Oct. 1, after his finances were questioned by Republican primary foe Larry Brady, Zeliff said that one of the reasons his business suffered losses was "the major renovation program we undertook during this two-year period" of 1989 and 1990.

Asked yesterday about the use of his wife's half of the condominium proceeds and the use of business loans for his campaign, Zeliff said, "Everything I have, including personal and business, is mixed together.

"My wife and I share the same piggybank," Zeliff said.

Zeliff said the FEC has dismissed a similar complaint filed by Brady and he attacked Keefe for trying to "smear me."

Zeliff contended that Keefe questioned his finances in retaliation for comments Zeliff made in a televised debate last week regarding the 1987 private settlement Keefe signed.

Keefe earlier this year acknowledged that he was a signatory to a settlement agreement with a former female co-worker at the law firm at which he is employed. Under the settlement, the co-worker was paid $38,000.

But Keefe refused to discuss the subject of the agreement, and when his primary foe, Robert Stephen, called on him to do so, Keefe attacked him for running a "divisive" campaign.

"I think it's finally time for him to come clean with the details of this matter," Zeliff said yesterday.

"Bobby Stephen asked him to clarify that settlement and he smeared Bobby Stephen," Zeliff said. "He leveled him at the ankles.

"Now that I brought it up duing the debate, he's doing the same to me," Zeliff said.

"He's trying to smear my wife and discredit my business and my reputation as a good businessman."

Regarding the settlement, Keefe said, "I have responded to that issue as fully as I can. I have gone over it many times."

He denied trying to attack Zeliff.

"How one funds his campaign is a valid campaign issue," he said.

9 5 0 4 3 6 6 2 0 3 1

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

December 5, 1990

Joseph F. Keefe
120 Lexington Avenue
Manchester, New Hampshire 03104

RE: MUR 3191

Dear Mr.Keefe:

This letter acknowledges receipt on November 30, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Friends of Bill Zeliff Committee and Richard H. Kirk, as treasurer, William Zeliff, Jr., Sydna T. Zellif, Christmas Farm Inn, Inc. and the First NH-White Mountain Bank. 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 3191. 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

9504366203 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1990

Richard H. Kirk, Treasurer
Friends of Bill Zeliff Committee
815 Elm Street
Manchester, NH 03101

RE: MUR 3191

Dear Mr. Kirk:

The Federal Election Commission received a complaint which alleges that the Friends of Bill Zeliff Committee and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3191. 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.

9504366203

If you have any questions, please contact Jeffrey 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

95043662034

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1990

William Zeliff, Jr.
Route 16B, Box cc
Jackson, NH 03846

RE: MUR 3191

Dear Mr. Zeliff:

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 3191. 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.

9 5 0 4 3 6 6 2 0 3 5

If you have any questions, please contact Jeffrey 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

25043662036

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1990

Sydna T. Zeliff
Route 16B, Box cc
Jackson, NH 03846

RE: MUR 3191

Dear Ms. Zeliff:

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 3191. 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.

9 5 0 4 3 6 6 2 0 3 7

If you have any questions, please contact Jeffrey 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

95043662038

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1990

Christmas Farm Inn, Inc.
Box cc
Jackson, NH 03846

RE: MUR 3191

Dear Gentlemen:

The Federal Election Commission received a complaint which alleges that the Christmas Farm Inn, Inc. 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 3191. 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 the Christmas Farm Inn, Inc. 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.

9504366203 9

If you have any questions, please contact Jeffrey 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

9504366204 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1990

First NH-White Mountain Bank
Box 1760
North Conway, NH 03860

RE: MUR 3191

Dear Gentlemen:

The Federal Election Commission received a complaint which alleges that the First NH-White Mountain 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 3191. 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 the Bank 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.

9504366204 1

If you have any questions, please contact Jeffrey 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

95043662042

OGC 9085

SHEEHAN
PHINNEY
BASS +
GREEN
PROFESSIONAL
ASSOCIATION

SPBG
ATTORNEYS AT LAW

1000 ELM STREET
P.O. BOX 3701
MANCHESTER
NEW HAMPSHIRE
03105-3701
FAX 603-627-8121
603-668-0300

3 HARBOUR PLACE
SUITE 325
PORTSMOUTH
NEW HAMPSHIRE
03801-3856
FAX 603-433-3126
603-433-2111

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH
90 DEC 21 AM 11:35

December 20, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 DEC 21 PM 3:40

Via Federal Express

Mr. Jeffrey Long
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: First NH-White Mountain Bank, MUR 3191

Dear Mr. Long:

As I discussed with you, this office represents First NH-White Mountain Bank in connection with the above-captioned matter under review. Because of the holidays and the attendant problems in accumulating information and locating pertinent personnel, I am writing to request a 20 day extension for the response of our client. This extension would require that the response be submitted by January 16, our client having received the complaint on December 12. The original letter from you was dated December 5, 1990.

Unless I hear otherwise, I will assume that this extension is acceptable and I appreciate the consideration of the Commission so that we are able to formulate a full response.

Very truly yours,

Bradford E. Cook

BEC/hce

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CGM

SC 9118

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH

90 DEC 24 AM 9:29

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 DEC 26 PM 12:22

December 19, 1990

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

Attn: Jeffrey Long

MUR
3191

Dear Mr. Noble:

We received your letter of December 5, 1990 at our offices on December 14, 1990, enclosing the complaint filed by Joseph F. Keefe. Our response to this complaint is accordingly due December 29, 1990. We will need to engage counsel to assist us in our response. Accordingly, in light of the forthcoming holidays, we respectfully request a twenty-day extension, until January 18, 1991, in this matter.

Sincerely yours,

John C. Naramore
Treasurer
Friends of Bill Zeliff
Box 5650
Manchester, NH 03108-5650

JCN/ske

9 5 0 4 3 6 6 2 0 4 4

CONSOLIDATED GROUP MARKETING CO., INC.
P.O. Box 1800 Wolfeboro, N.H. 03894-1800 (603) 569-4129

OGC 9113

SYDNA & BILL ZELIFF, your hosts and owners
Route 16B, Box CC, Jackson, NH 03846 (603) 383-4313

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH
90 DEC 24 AM 9:42

MUR 3191

December 19, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
90 DEC 26 PM 12:21

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

Attn: Jeffrey Long

Dear Mr. Noble:

We received your letter of December 5, 1990 at our offices on December 14, 1990, enclosing the Complaint filed by Joseph F. Keefe. Our response to this complaint is accordingly due December 29, 1990. We will need to engage counsel to assist us in our Response. Accordingly, in light of the forthcoming holidays, we respectfully request a twenty-day extension, until January 18, 1991, in this matter.

Sincerely yours

William H. Zeliff, Jr. Pres.

9 5 0 4 3 6 6 2 0 4 5

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH

90 DEC 24 AM 9:54

December 19, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 DEC 26 PM 12:20

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

Attn: Jeffrey Long

MUR
3191

Dear Mr. Noble:

We received your letter of December 5, 1990 at our offices on December 14, 1990, enclosing the Complaint filed by Joseph F. Keefe. Our response to this complaint is accordingly due December 29, 1990. We will need to engage counsel to assist us in our Response. Accordingly, in light of the forthcoming holidays, we respectfully request a twenty-day extension, until January 18, 1991, in this matter.

Sincerely yours

William H. Zeliff, Jr.

9 5 0 4 3 6 6 2 0 4 6

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH

90 DEC 24 AM 9:12

December 19, 1990

MUR
3191

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 DEC 26 PM 12:23

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

Attn: Jeffrey Long

Dear Mr. Noble:

We received your letter of December 5, 1990 at our offices on December 14, 1990, enclosing the Complaint filed by Joseph F. Keefe. Our response to this complaint is accordingly due December 29, 1990. We will need to engage counsel to assist us in our Response. Accordingly, in light of the forthcoming holidays, we respectfully request a twenty-day extension, until January 18, 1991, in this matter.

Sincerely yours

Sydna T. Zeliff

Sydna T. Zeliff

9504362047

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1991

Wiliam H. Zeliff, Jr., President
Christmas Farm Inn
Route 16B, Box CC
Jackson, New Hampshire 03846

MUR 3191
Christmas Farm Inn

Dear Mr. Zeliff:

This in response to your letter dated December 19, 1990, which we received on December 26, 1990, requesting an extension of 20 days to respond to the complaint filed by Joseph Keefe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on January 18, 1991.

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

9504366204 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1991

John C. Naramore, Treasurer
Friends of Bill Zeliff
Box 5650
Manchester, Vermont 03108-5650

MUR 3191
Friends of Bill Zeliff and
John C. Naramore, as
treasurer

Dear Mr. Naramore:

This is in response to your letter dated December 24, 1990, which we received on December 26, 1990, requesting an extension of 20 days to respond to the complaint filed by Joseph Keefe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on January 18, 1991.

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

9504366204 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1991

Bradford E. Cook, Esquire
Sheehan Phinney Bass & Green
1000 Elm Street
P.O. Box 3701
Manchester, Vermont 03105-3701

RE: MUR 3191
First NH-White Mountain Bank

Dear Mr. Cook:

This is in response to your letter dated December 20, 1990, which we received on December 21, 1990, requesting an extension of 20 days to respond to the complaint filed by Joseph Keefe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on January 16, 1991.

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

9504366200

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1991

Wiliam H. Zeliff, Jr.
Route 16B, Box cc
Jackson, New Hampshire 03846

MUR 3191
William H. Zeliff

Dear Mr. Zeliff:

This is in response to your letter dated December 19, 1990, which we received on December 26, 1990, requesting an extension of 20 days to respond to the complaint filed by Joseph Keefe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on January 18, 1991.

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

9504366205 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1991

Sydna T. Zeliff
Route 16B, Box cc
Jackson, New Hampshire 03846

MUR 3191
Sydna T. Zeliff

Dear Mrs. Zeliff:

This is in response to your letter dated December 19, 1990, which we received on December 26, 1990, requesting an extension of 20 days to respond to the complaint filed by Joseph Keefe. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on January 18, 1991.

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

95043662052

OGC9804

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

January 11, 1991

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 JAN 11 PM 4:17

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

ATTN: Jeffrey D. Long

Re: MUR 3191

Dear Mr. Noble:

Our firm has been retained to represent Congressman Bill Zeliff, Sydna Zeliff, the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, and Christmas Farms Inn, Inc. in Matter Under Review ("MUR") 3191. Enclosed please find signed Designation of Counsel forms.

A response date has been set for January 18, 1991. In order to allow adequate time to consult with our clients, and to assemble and review the many financial records necessary to respond in this Matter, we respectfully request a 60-day extension until March 19, 1991. This extension should not prejudice the Commission's consideration of this Matter, as the activity which is the subject of the complaint occurred during the now concluded 1990 election cycle.

Sincerely,

Jan Witold Baran

rpb
Encl.
cc: The Honorable & Mrs. Bill Zeliff
Mr. John C. Naramore

9504366205 3

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3191

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

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

1/4/91
Date

Signature

RESPONDENT'S NAME: William H. Zeliff, Jr.

ADDRESS: Route 16B
Jackson, NH 03846

HOME PHONE:

BUSINESS PHONE:

95043662054

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3191

NAME OF COUNSEL: Jan Witold Baran

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

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

1/4/91
Date

Signature

RESPONDENT'S NAME: Christmas Farm Inn, Inc.
by William H. Zeliff, Jr., Agent

ADDRESS: Route 16B
Jackson, NH 03846

HOME PHONE:

BUSINESS PHONE:

95043662055

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3191

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

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

1-4-91
Date

Sydna S Zeliff
Signature

RESPONDENT'S NAME: Sydna Zeliff

ADDRESS: Route 16B
Jackson, NH 03846

HOME PHONE:

BUSINESS PHONE:

9504366205 6

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3191

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

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

1/10/91
Date

Signature

RESPONDENT'S NAME: John C. Naramore,
Treasurer, Friends of Bill Zeliff Cmte.

ADDRESS: PO BOX 1800
WOLFEBORO NH
03894

HOME PHONE:

BUSINESS PHONE: 603 5694129

9504366205 7

SHEEHAN
PHINNEY
BASS +
GREEN
PROFESSIONAL
ASSOCIATION

SPBG
ATTORNEYS AT LAW

1000 ELM STREET
P.O. BOX 3701
MANCHESTER
NEW HAMPSHIRE
03105-3701
FAX 603-627-8121
603-668-0300

1 HARBOUR PLACE
SUITE 325
PORTSMOUTH
NEW HAMPSHIRE
03801-3856
FAX 603-433-3126
603-433-2111

95043662028

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
91 JAN 14 AM 10:51

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 JAN 14 PM 3:57

OGC 9812

January 11, 1991

VIA FEDERAL EXPRESS

Mr. Jeffrey Long
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: First NH-White Mountain Bank, MUR 3191

Dear Mr. Long:

Enclosed find the Response of First NH-White Mountain Bank in MUR 3191. It is the position of the Bank that it has not done anything outside of its normal procedures, has not violated the Federal Election laws in any respect, and that the matter under review should be dismissed. If you need further information or wish to discuss this matter, or should you need testimony from any relevant officials, please let me know.

Thank you for your consideration in this matter.

Very truly yours,

Bradford E. Cook

BEC/hce
Enclosure

P.S. Also enclosed find the Designation of Counsel form signed by an official of the Bank.

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

IN RE

First NH-White Mountain Bank
MUR 3191

RESPONSE OF FIRST NH BANK

NOW COMES First NH Bank (formerly First NH-White Mountain Bank) by and through its attorneys, Sheehan, Phinney, Bass + Green, Professional Association, 1000 Elm Street, P.O. Box 3701, Manchester, New Hampshire 03105 and responds to that portion of a complaint filed by the Keefe for Congress 1990 Committee, 120 Lexington Avenue, Manchester, New Hampshire 03104, Petitioner, insofar as it suggests improper activity or action by First NH Bank. Specifically, item B contained on page 2 of said complaint alleges a violation of 11 CFR Sec. 114.2(b) and (c), alleging "illegal corporate contributions in the form of loan proceeds from White Mountain Bank earmarked for business purposes and capital improvements to real estate." The said First NH Bank denies any such action in connection with any loans made by it to William Zeliff and Sydna Zeliff or the Christmas Farm Inn, Inc. and in support thereof states the following:

1. Since approximately 1983, First NH Bank has had a loan relationship with William and Sydna Zeliff and a corporation owned by them, which corporation operates the Christmas Farm Inn, Jackson, New Hampshire. At all times, loans made to all borrowers relevant hereto have been on the basis of financial statements, credit analysis, and appraisals consistent with the

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policy and procedures of the Bank with appropriate approvals in due course. See Exhibit A relative to the borrower and its business.

2. In 1989, a refinancing of existing loans and additional financing was made to consolidate existing borrowings and enable the Zeliffs and their corporation, Christmas Farm Inn, Inc., to make improvements, renovate the Inn premises, and have an available business line of credit for working capital purposes, consistent with the lending policies and procedures of the Bank. Said loans were secured by collateral which made the loans in a ratio of 63% to value, well within Bank guidelines. Said loans were approved by the Board of Trustees Loan Committee of the Bank in normal course.

3. At the time of the 1989 loans, documentation and legal work for the Bank was performed by the law firm of Cooper, Fauver & Deans, P.O. Box 450, Pine Street, North Conway, New Hampshire 03860. Mortgages were prepared in connection with loans made to Mr. and Mrs. Zeliff for improvements to property owned by them and to the Christmas Farm Inn, Inc. for property owned by it. The purpose of the mortgages was to grant security to the Bank in all of the real estate comprising the Christmas Farm Inn, whether owned personally or corporately. Additionally, two other businesses, Yesterday's (a restaurant) and the Jackson Country Store, owned by the Zeliff's, were granted as security. The intent at the time of the preparation of documentation was that all property would support each loan, whether personal or corporate. Thus, it was the intention of the parties that each

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mortgage contain a description of all of the relevant real estate, creating "cross collateral." Closing of the transactions herein described was held on May 17, 1989 and there was recording of mortgage deeds immediately thereafter at the Carroll County, New Hampshire, Registry of Deeds.

4. In 1990, the Bank undertook a reexamination of all documentation. After such examination, it was discovered that the mortgages which had been filed and were in place, securing the Bank's loans, had not included cross collateral descriptions, leaving certain parcels of property off each mortgage, each of which was supposed to have contained a description of all of the relevant real estate. To correct that omission, the law firm of Cooper, Fauver & Deans, P.A. prepared new documentation including the complete descriptions and filed the documentation, informing the Bank by letter dated October 31, 1990 that the defect in documentation was a result of its actions at the original closing and taking full responsibility for the correcting of the original defect. See Exhibit B. At no time subsequent to May 17, 1989, was an additional loan made or a security interest in property not previously pledged in connection with one or another of the loans granted. Further, at no time was there any default under any such loan, any receipt of information by the Bank that it was not fully secured or any indication that the assets securing the loans were insufficient in value, either as originally described or as amended. In fact, the Bank was fully secured at all times and the only 1990 action was to change the mortgages to correct the original legal defect.

2504366206 1

5. According to the complaint, it is alleged that the loan or loans to Mr. and Mrs. Zeliff and the Christmas Farm Inn, Inc. were somehow misused because no building permits were received. While the Bank is not responsible for the issuance or obtaining of building permits, it notes that many of the capital improvements which were funded with the loans had been previously built and the loans were granted as permanent financing. Further, much of the capital improvement work done at the Inn was in the form of renovations and refurnishing and reoutfitting of Inn rooms at substantial expense, none of which required a building permit. According to its monitoring of the loan and use of funds for capital improvements, all funds to be used for capital improvements were so used and the Bank was satisfied that such use took place. A total of $718,000 was invested in fixed assets and improvements. For a description, see Exhibit C.

6. The line of credit portion of the loans has not been misused, as far as the Bank is aware. There is no prohibition in the loan documentation against shareholder loans by the corporation as long as the requirements of the loan are followed.

7. At no time did the Bank receive a loan application from or make a loan to the Zeliff campaign as suggested in the complaint.

8. The Bank denies any violation of federal or state election laws in connection with its dealings with any borrower and denies any knowledge of any such violation.

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WHEREFORE, First NH Bank requests the Honorable Commission take the following action:

A. Dismiss the complaint as to First NH-White Mountain Bank.

B. Grant such other relief as may be just and equitable.

Respectfully Submitted,

FIRST NH BANK

By Its Attorneys,

SHEEHAN, PHINNEY, BASS + GREEN
PROFESSIONAL ASSOCIATION

Dated: Jan. 11, 1991

By: Bradford E. Cook

Bradford E. Cook
1000 Elm Street
Manchester, NH 03105
(603) 627-8109

Affidavit

I, Matthew W. Nastasia, Vice President and Senior Loan Officer of First NH Bank swear that the contents of the within Response are true.

Matthew W. Nastasia

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

Then appeared Matthew W. Nastasia, who declared himself/herself to be the Vice President and Senior Loan Officer of First NH Bank and swore that the contents of the within answer are true.

Bradford E. Cook
Notary Public
My commission expires:

2504366203

Christmas Farm Inn is a comfortable and casual family resort where you're sure to feel right at home. Our candlelit dining room offers exceptional dining, with hearty breakfasts every morning and a large and varied selection of delicious entrees in the evening. Fresh inn-made breads, soups, and desserts are also part of the reason our food is so widely acclaimed!

After dinner, or apres ski, step into our lounge for good cheer and good times. There's something happening every night—movies, games or entertainment. Or let the cozy cheer of the living room fireplace beckon you to do nothing at all!

The Christmas Farm Inn hospitality begins as soon as you check in. Bill and Sydna invite you to join them at the popular "getting-to-know-you" cocktail hour held Sundays in the Barn from 5 to 6 pm. A great way to unwind after your trip, plus a chance to meet the Christmas Farm Inn family and your fellow guests at the Inn!

Your hosts, Bill & Sydna Zeliff
Box 176, Jackson, NH 03846
(603) 383-4313

56

AAA Quality Rated ◆◆◆

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CHRISTMAS FARM INN

THE INN FOR ALL SEASONS

Box 176, Jackson Village, NH 03846

We Make Memories

Exhibit A

CHRISTMAS FARM INN

THE INN FOR ALL SEASONS

The Best of Winter

Open Year Round

We make memories

9 5 0 4 3 6 6 2 0 6 5

To ski...

Christmas Farm Inn and Jackson Village are right in the center of some of the best skiing in the East. The four incomparable mountains of Mt. Washington Valley are within minutes of the Inn. We run a shuttle to and from the Village to Black Mountain (a trip of about 5 minutes) and even the farthest mountain is less than 20 minutes away.

And, for cross country skiers, the 125 kilometers of exceptional ski touring trails belonging to the Jackson Ski Touring Foundation (rated the best in the East) criss-cross the area, some beginning right at our door. We can provide trail lunches and have a heated waxing room.

Or not to ski...

Jackson and the Mt. Washington Valley aren't only for skiers. There's plenty of room for skating, snowshoeing, sledding or ice climbing as well. All are within easy reach of our guests. You'll also find magnificent scenery, shopping and entertainment throughout the Valley.

And there's plenty *not* to do. Maybe you'd rather relax by the fire and read, or chat with the new friends you've met. Or visit the Barn for a sauna or tackle the games in our game room.

Watch television or take in a video feature movie. Loaf around the lounge if you like. Christmas Farm Inn is the ideal place to make yourself right at home!

Package Plans

We've designed these package plans to make your visit to Mt. Washington Valley and your stay at Christmas Farm Inn more enjoyable. Each plan includes lodging, hearty home-sweet-homemade breakfasts, sumptuous dinners and all trail fees and lift tickets.

The 5-Day Unwinder

Check in on Sunday, check out on Friday. Includes plenty of hospitality, relaxation and all the facilities of the Inn.

The 5-Day Cross Country Special

Check in on Sunday, check out on Friday. Ski the famous Jackson Ski Touring trails or try a different area every day—Bretton Woods, Waterville Valley, The Balsams, or Bethel —all on one interchangeable ticket.

The Economy Alpine Special

Check in on Sunday, check out on Friday. Ski a choice of two mountains for five days midweek (*and beat the crowds!*).

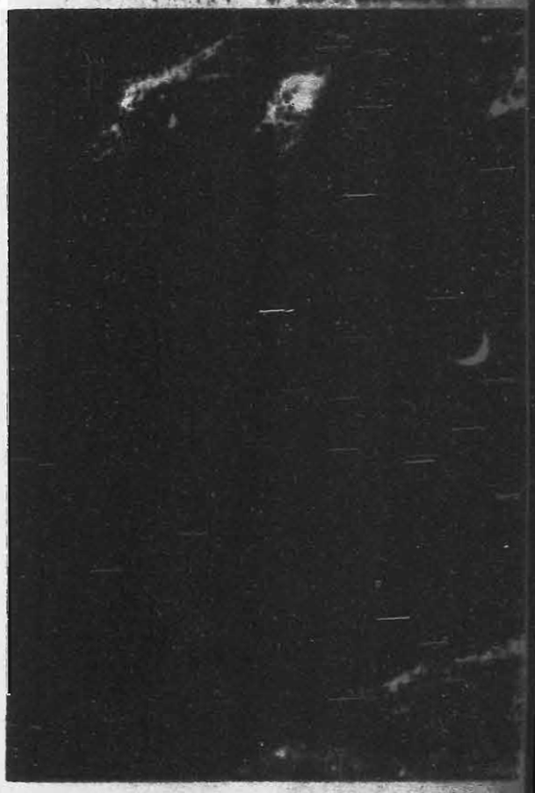
The Ski-Around Package

Check in on Sunday, check out on Friday. Ski any four Valley mountains—Attitash, Bi[illegible] Cranmore or Wildcat—plus Bretton Wo[illegible] and your "Wildcard" choice of Loon, Waterville Valley or Wilderness.

We'll gladly arrange for ski equipment rentals and car rentals at your request. Some package plans are not available during holiday and vacation weeks.

Speaking of Packages...

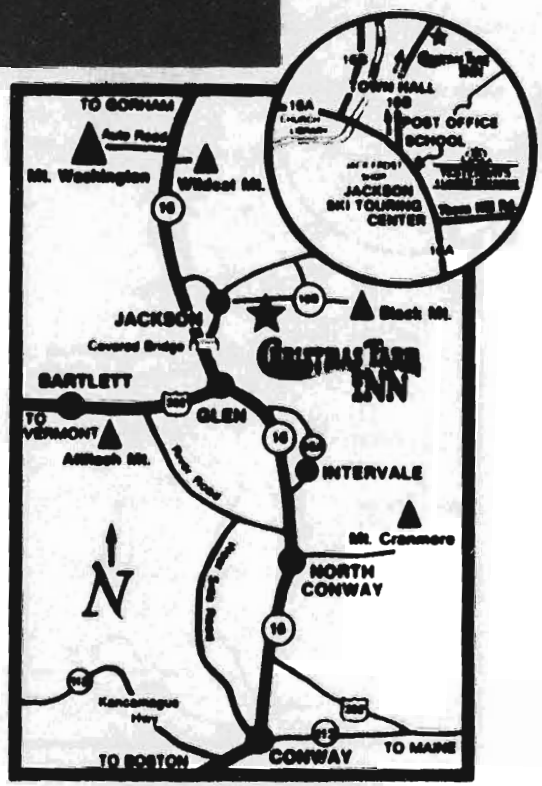
We can also set up business meetings for up to 50 people in our Barn Conference Center. This facility is also available (*and ideal*) for special parties, banquets and weddings. Just let us know what you need, with as much advance notice as possible, and we'll do the rest.



Your stay with us can be both action packed *and* lazily "laid back" because there's plenty to do...and *not* to do...for all ages. In addition to cycling, golf, and hiking, there's tennis, fly fishing, and lots of tax-free shopping throughout Mt. Washington Valley. Several family attractions are just minutes away.

Jackson Falls is a popular and scenic place to play. It's an easy walk from the Inn...bring a box lunch!

Join us for lunch in YESTERDAY'S, our country restaurant in the center of Jackson Village!



AAA ◆◆◆ — Mobil ★★★

Recommended in Country Inns of America, Guide to Recommended Inns of New England, and Country Inns and Back Roads

American Express ■ MasterCard ■ Visa

CHRISTMAS FARM INN

THE INN FOR ALL SEASONS

Call or write for reservations:

Sydna and Bill Zeliff

Box CC, Jackson Village, NH 03846

SantaPhone: 1-800-HI-ELVES

(Toll Free in the Continental U.S. and Canada)

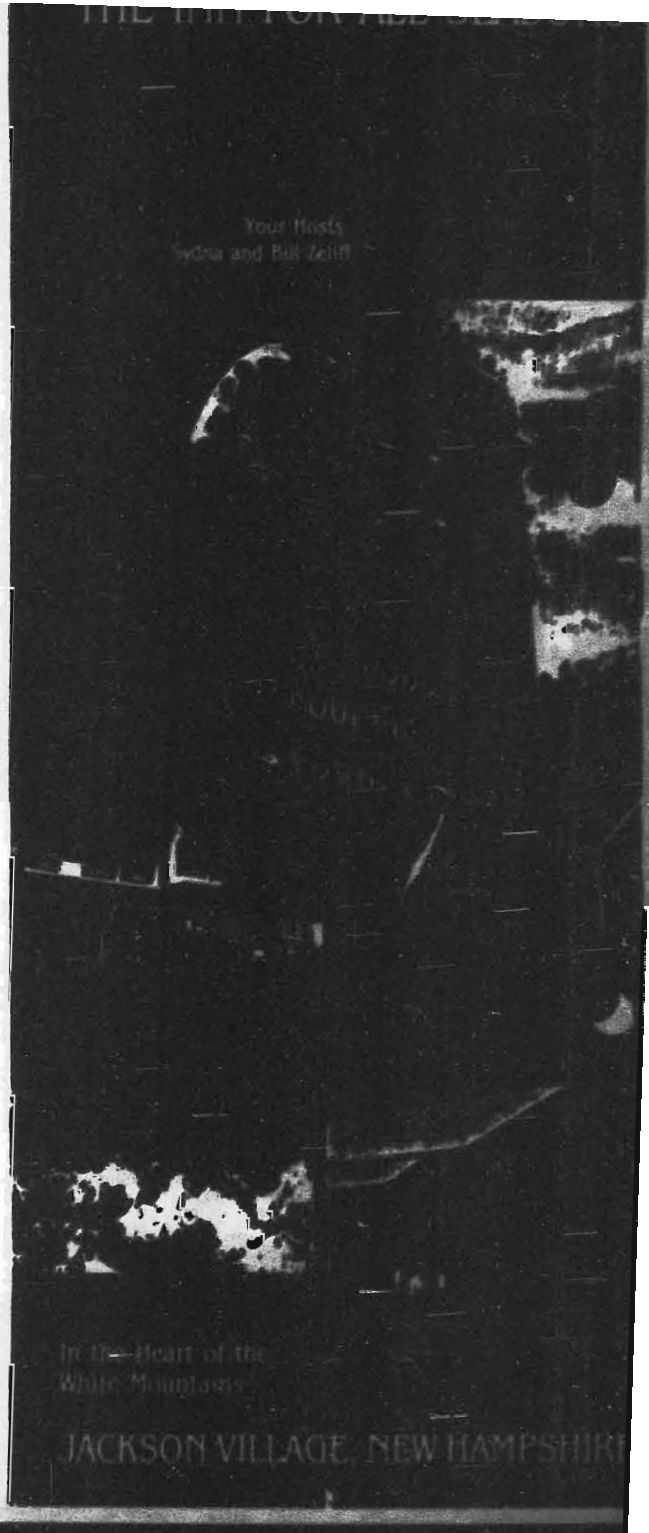
Otherwise... 603-383-4313

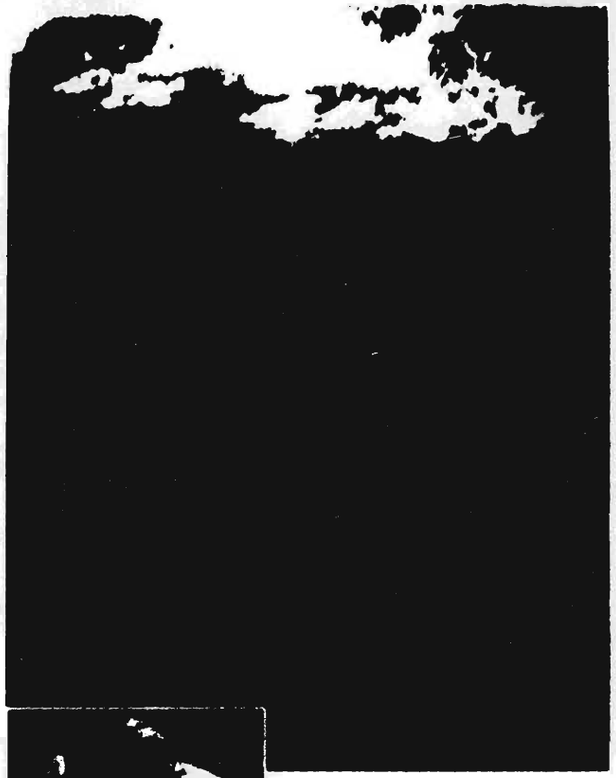
Our FAX number... 603-383-6495

Voted NH innkeepers of the Year

SCFI · 5/99 Printed in NH/USA

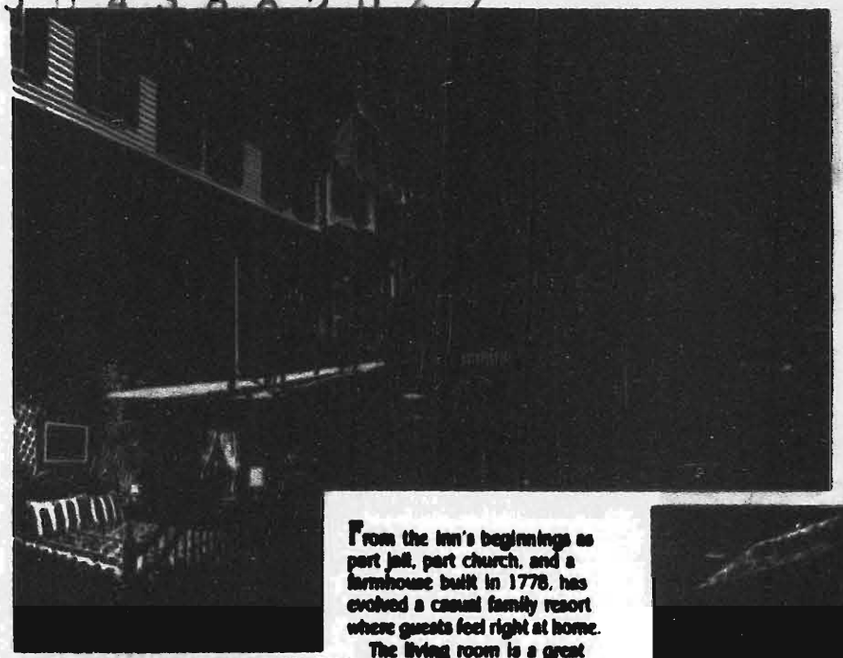
Design: Lydia Leming





We Make Memories!

The Christmas spirit of hospitality lives year 'round at our classic New England Inn. Set on a hillside above the mountain village of Jackson, we welcome you to a full range of creature comforts in both Inn and Cottage accommodations. · Our spring-fed, heated pool, Barn sauna, and award-winning flower gardens will delight and refresh your senses after a day of exploring the activities and attractions in the surrounding White Mountains.



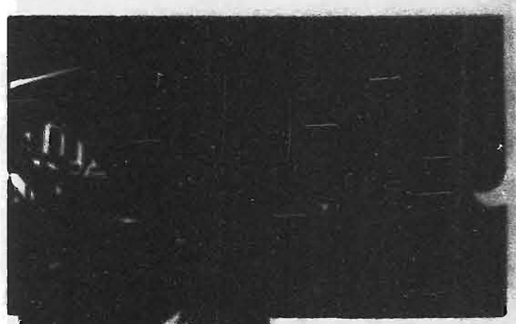
Typical rooms in The Main Inn and Bell Inn include "Sugar & Spice" (above) and one of our deluxe doubles "Kitzen" (below).

From the inn's beginnings as part jail, part church, and a farmhouse built in 1778, has evolved a casual family resort where guests feel right at home.

The living room is a great gathering spot each evening. Wander in and you'll find fellow guests watching TV or a movie, reading, playing games, or just getting to know one another. The atmosphere is friendly and inviting to all ages. The porch is also a lovely spot to sit and watch a waning summer's eve.

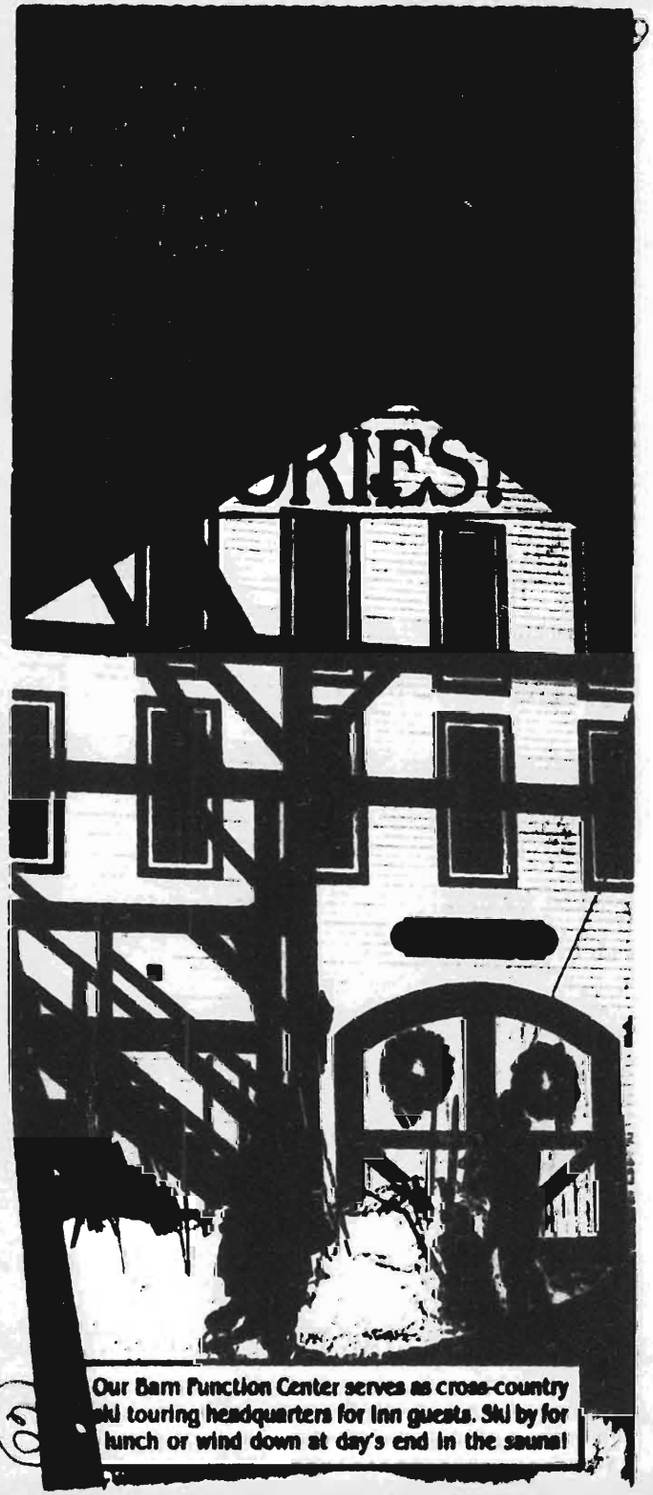
The Mistletoe Lounge in the Main Inn is a convivial place to mingle before and after one of Chef Will Zeliff's masterfully prepared and beautifully presented dinners by candlelight. Hearty breakfasts featuring Inn-baked breads and pastries get each day off to a good start!

Our two-bedroom cottages on the hill are ideal for families. Set just above, but close to, the Main Inn, each cottage has lots of privacy plus superb views of Mt. Washington. Each has a sun deck, fireplace, refrigerator, TV and telephone. Shown here are: "North Pole" (top); "The Log Cabin (above); and the "Blacksmith Shop" (left).



The Barn at the Inn is a popular place for gatherings and entertainments in every season. In winter, it's cross-country ski headquarters where the guests can have lunch or relax by the 12' fieldstone fireplace.

The Barn also serves as the Inn's year 'round Function Center. Over the years, we've hosted many wonderful weddings, banquets, and private parties as well as business meetings and conferences. After all, our specialty is making memories!



Our Barn Function Center serves as cross-country ski touring headquarters for Inn guests. Ski by for lunch or wind down at day's end in the sauna!

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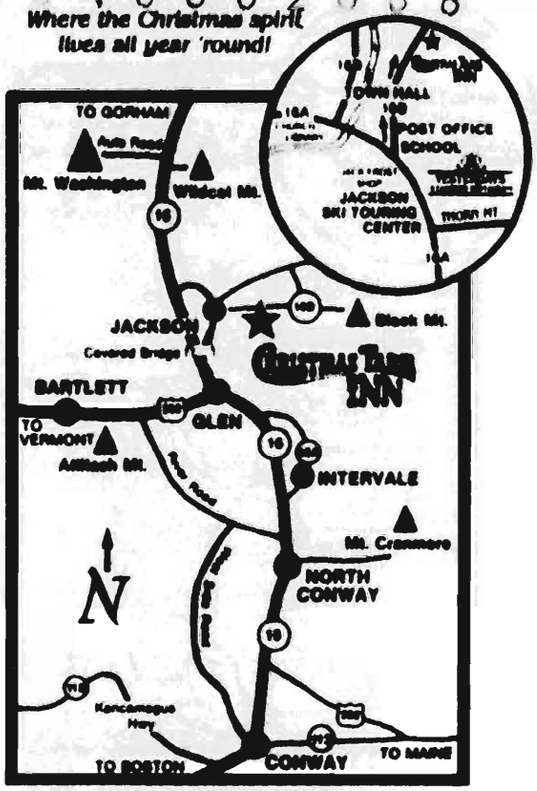
Where the Christmas spirit lives all year 'round!



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Country Inns & Back Roads
Country Inns of America
Guide to Recommended Inns of New England

AAA ◆◆◆ Mobil ★★★

MasterCard ■ Visa ■ American Express

CHRISTMAS FARM INN

THE INN FOR ALL SEASONS

1988 NH Innkeepers of the Year

Call or write...

Sydna and Bill Zeliff
Box CC, Jackson Village, NH 03846
Santa/Phone — 603-383-4313
FAX # — 603-383-6495

In the White Mountains
JACKSON VILLAGE
NEW HAMPSHIRE

To ski...

It was in the living room here at Christmas Farm Inn that the Jackson Ski Touring Foundation was created over 20 years ago. Today, the 145km trail system of the JSTF is considered one of the best in the East for its variety of terrain and trails for all ski abilities. The Inn is on the way to everywhere in that ski touring wonderland...the gently rolling Christmas Farm Inn Trail will take you there! Ski down to Jackson Village or off into the surrounding hills...we'll pack you a lunch...or ski back for a hot meal in the Barn. We also have a heated wax room there. • For alpine skiers, the four mountains of Mt. Washington Valley — Attitash, Black, Cranmore, and Wildcat — are all within 20 minutes of the Inn. You'll discover that each has a distinct personality, but *all* of them have extensive snowmaking and grooming, ensuring great conditions on the slopes all season long.

Ask about our 3 & 5-Day Valley Ski Packages.

Or not to ski...

Skiing is not the only winter thing to do in Jackson and Mt. Washington Valley. There's ice skating, sledding, snowshoeing, and ice climbing, too, all within easy reach. Bring your camera, the scenery is magnificent!

The Valley is also justly famous for its many shopping opportunities as well as the variety of nightly musical entertainments. Go out on the town or snuggle in here at the Inn with a good book, nightly movie, or lively conversation in the lounge.

Hearty Inn breakfasts get you started each day and delicious candlelit dinners help you unwind each evening. Our Inn-made breads, soups and desserts are just one of the reasons our guests come back to see us in every season. Come join us this winter...or anytime. We welcome you!

Jackson is at our doorstep!

And, to all a good

The Barn at Christmas Farm Inn is also an excellent Conference Center for business meetings and seminars for up to 75 people. The four Barn Suites can also double as workshop space.

The Inn is also delighted to host wedding receptions and private parties for any reason. The setting is magnificent and the Inn's staff is experienced in helping to plan such momentous occasions down to the last perfect detail. Give us a call...let's start making some beautiful memories!

Company _____

Address _____

City/State _____ Zip _____

Telephone (_____) _____ Ext _____

Proposed Date of Conference _____

Number of Participants _____

CHRISTMAS FARM INN AND CONFERENCE CENTER
Jackson Village, NH 03846

Taking care of business is a pleasure at...

CHRISTMAS FARM INN AND CONFERENCE CENTER

Rt. 16B, Jackson Village, NH 03846
603-383-4313 • The Zeliff Family

62

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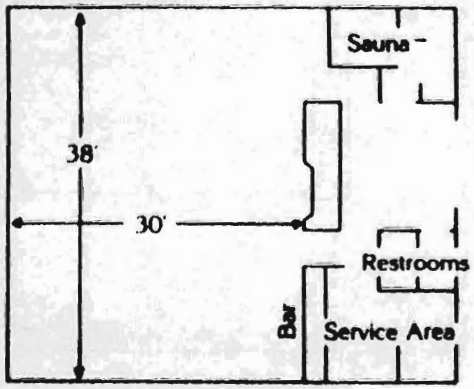
Main Floor Meeting Room

Size: 38' x 30'



Seating Accommodations:

Theater...100
Banquet...90
Conference...50

PLACE STAMP HERE

Conference Director
Christmas Farm Inn

CHRISTMAS FARM INN AND CONFERENCE CENTER

Facilities & Services

The Christmas Farm Inn Conference Center is located in a completely renovated barn, first built in the 1800's. This fully modern facility includes a spacious meeting room large enough to accommodate as many as fifty people for business meetings. Also on the main floor is a sauna, and a snack bar and lounge area set off by a 12' wide fieldstone fireplace. Upstairs are 4 deluxe suites that can double as workshops for conferences. Projection, PA and other audio-visual equipment are available, too.

All facilities of the Christmas Farm Inn Complex are available to Conference Center users. This includes the services of an assigned Conference Director to assure 24-hour coordination of conference requirements.

Nestled in the heart of the scenic White Mountains, the unique atmosphere of the Christmas Farm Inn Conference Center is conducive to a high achievement level for any business meeting.

63

Accommodations

The Christmas Farm Inn Complex also includes comfortable accommodations in the Main Inn, the 1778 Salt House as well as the 4 deluxe suites in the Conference Center itself.

The attractive dining room in the Main Inn offers an exceptional dining experience with hearty country breakfasts every morning and delicious gourmet entrees every night created by our award-winning chef. Inn-made soups, breads and desserts are the "specialty of the house".

After dinner, the cozy lounge in the Main Inn provides a cheerful setting for friendly fellowship and thirst-satisfying beverages.

Activities

When not occupied with business meetings, there are many enjoyable off-hour activities to enjoy. In summer, swim in our pool, sharpen up on the putting green or play shuffleboard. In winter, the world-renowned Jackson Ski Touring Foundation's trail system passes through Inn property. In addition to our own recreation facilities, there is golf and tennis within walking distance; shuttle service to 4 nearby mountains for hiking in summer and skiing in winter; streams for fishing; and many fine shops and eating places. Indoor tennis and racquetball in the area is available year-round and a number of quality attractions such as Heritage New Hampshire and Attitash Alpine Slide provide leisure time variety.

3 and 5-Day Package Plans Available

For further information and Christmas Farm Inn's CONFERENCE PLANNING GUIDE, just fill out the

Exhibit 8

COOPER, FAUVER & DEANS, P. A.
ATTORNEYS AT LAW
P. O. BOX 480 PINE STREET
NORTH CONWAY, NEW HAMPSHIRE 03860
TELEPHONE 603-356-5439

RANDALL F. COOPER*
PETER H. FAUVER
DORCAS H. DEANS
KENNETH R. CARGILL*
LINDA A. JENKINS*
LESLIE H. JOHNSON*

*ADMITTED IN NH AND MAINE

TELECOPIER
603-356-7978

October 31, 1990

Matthew Nastasia, Senior Loan Officer
First NH - White Mountain Bank
P.O. Box 1760
North Conway, NH 03860

Re: First NH - White Mountain Bank/Loan to Christmas Farm Inn/Zeliff

Dear Matt:

In light of the Associated Press article by Norma Love as printed in the Conway Daily Sun of Wednesday, October 31, 1990, we have been asked to comment specifically upon the allegation that the Bank was grossly undersecured from the period of the closing on May 17, 1989 to the recording of the Confirmatory Mortgage Deeds on October 2, 1990.

As reported to you orally on September 29, 1990 and confirmed in writing on October 2, 1990, an error was made by this firm at the time of the closing on May 17, 1989. As you recall, the loan, through the negotiation process, was eventually structured as two separate notes, one as a $1,287,000.00 obligation from Christmas Farm Inn, Inc., guaranteed by Mr. and Mrs. Zeliff personally, and the other being a $562,380.67 obligation from Mr. and Mrs. Zeliff guaranteed by Christmas Farm Inn. The bank, in their instructions to this firm, requested that the loans be cross-collateralized by the assets of both Christmas Farm Inn, Inc. and Mr. and Mrs. Zeliff. While the loan agreement, security agreements, etc. called for that cross-collateralization, the Mortgage Deeds did not comply with that requirement. As such, on record at the Carroll County Registry of Deeds was a mortgage from Mr. and Mrs. Zeliff to the bank securing only the $562,380.67 loan and a mortgage from Christmas Farm Inn, Inc. securing the $1,287,000.00 loan.

When asked to review the loan file on September 29, 1990, we discovered this particular error and immediately prepared Confirmatory Mortgage Deeds which included the cross-collateralization requirements. In other words, all of the assets

9504366207 2

of Christmas Farm Inn, Inc. now secure both obligations and all of the assets of Mr. and Mrs. Zeliff secure both obligations. This was what was intended in the original loan commitment and which unfortunately was not reflected in the mortgage documents.

The allegation of under-collateralization raised by Associated Press is dependent upon collateral values being less than the face amount of the original incorrect Mortgage Deeds. It should be noted that there is no mention in the Associated Press article with respect to collateral values. Nevertheless, the question remains as to the extent of the Bank's exposure if the Bank was, in fact, under-collateralized. To a certain extent, this firm is incompetent to comment upon the Associated Press allegation that the Bank was "grossly undersecured." Obviously, we are not appraisers and do not know the value of those properties. Assuming the Bank was under-collateralized, it would be based only upon the mortgaged documents. The reality is that all other documents associated with these loans are drafted with the specific intention of encompassing all assets owned by the Christmas Farm Inn, Inc. and the Zeliffs individually. The Security Agreement referred to cross-collateralization and was supported by cross-guarantees provided by Christmas Farm Inn, Inc. and the Zeliffs. At the first hint of a credit problem, this firm would have moved swiftly under those documents and would probably have obtained sufficient collateral to secure the Bank's position.

Notwithstanding that reality, a second, and perhaps more significant, avenue of recovery for the Bank would be this firm's professional liability policy. A number of years ago, First NH - White Mountain Bank (or particularly its predecessor, White Mountain National Bank) made a decision to use independent counsel for the purposes of preparing all closing documents and closing all commercial loans. Its intent in doing so was to assure that it would have that extra level of protection afforded by professionals who stand behind their product and are amply insured for that purpose. As such, we carry a significant amount of professional liability insurance to assure clients such as the Bank and its customers do not bear the financial burden of our errors. Thus, in a worst case situation, First NH - White Mountain Bank and its shareholders would have been protected by this firm and its professional liability carrier.

In closing, I think it is important to take heed of the adage: "where there is no harm, there is no foul." In this particular case, due to the diligence of the bank and its officers, an error in the collateral documents was discovered, although tardily. This firm responded immediately to that particular situation and with the cooperation of the borrowers re-secured the bank's loans through the Confirmatory Mortgage Deeds in the manner that was intended on May 17, 1989. That action eliminated any possible exposure.

While I believe our accuracy and ability to service the bank has been borne out by our record over the last ten or more years,

9504366203

we do apologize that an error did occur which, unfortunately, has exposed the bank to adverse publicity.

Very truly yours,

COOPER, FAUVER & DEANS, P.A.

Randall F. Cooper

RFC/dlc

95043662014

Exhibit C (See p 1)

Published for
Good Girls & Boys by
CHRISTMAS FARM INN
THE INN FOR ALL SEASONS
Jackson Village, NH 03846
603-383-4313
Sydna & Bill Zeliff
Owners/Hosts

THE NORTH POLE Ledger

VOLUME SIX, NUMBER 2 NOVEMBER, 1988

2504366204 5

Country Inns & Back Roads

This fall we were informed that the Inn had met the rigorous criteria to become a member of Country Inns & Back Roads Innkeepers Association. This is considered one of the most outstanding guides to the inns of North America. Sydna & Bill are looking forward to attending the Association's annual meeting from November 29th to December 2nd in Williamsburg, Virginia where they will meet and share ideas with other members.

All the staff here at Christmas Farm Inn take pride in this and we have rededicated ourselves to maintaining our standards of excellence that has brought us this honor.

German Acid Rain Delegation

Wally Stickney, Commissioner for New Hampshire Department of Transportation, hosted a delegation from Germany at the Inn. The group came from the Republic of Germany to study the issues of acid rain and hazardous waste cleanup.

Dr. Erwen Vetter who is minister of the Environment at Baden - Wurtemberg was quoted as saying "The further we go north, the more we are feeling at home. We have come to the United States to learn our lessons about environmental politics and we know that the future of our states is depending on the fact of bringing together economy and ecology".

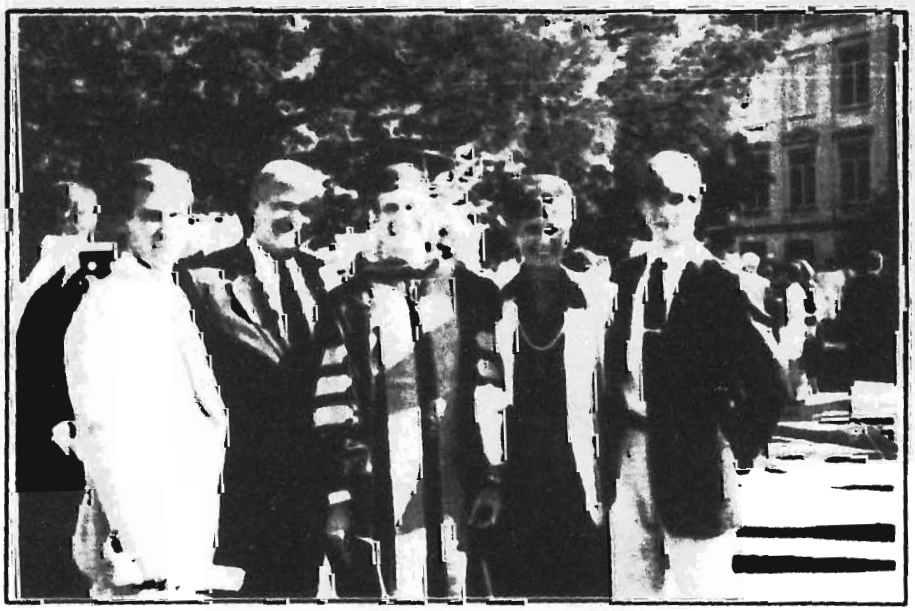
It is always interesting to meet with guests from other countries and find how much we have in common.

The Zeliff Family News

May 14th was a red letter day! **Jim** graduated from Purdue University as a Veterinarian. He is now working on Long Island for an Equine Orthopedic Veterinarian

Michael is in his Junior year at University of West Florida. This year he is very busy as the President of his Fraternity, President of the Marketing Club & the on campus representative for MacIntosh Computers.

Will and his fiance Jennifer Julian, packed the car and moved to Oakland, California in August. They camped cross country and stayed at Yellowstone during the "fire season". It was an interesting experience but they were glad to get out of the car after two weeks. Will is cooking at a restaurant in Oakland and Jennifer has been going to school.



The Zeliff Family: Michael, Bill, Jim, Sydna and Will

Bill & **Sydna's** excitement was attending the Republican National Convention in New Orleans. Bill was a Delegate representing George Bush. It was such a wonderful experience you will all have to hear it first hand from Bill.

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Nancy Crowther

★ ★ ★ Christmas Star ★ ★ ★

Our first Employee of the Year is Nancy Crowther of the Housekeeping Department.

Nancy has been one of our key employees here at Christmas Farm for the past seven years. She is a Mormon and is very active in her church and wants to be a missionary when she is eligible to retire.

All of us here at the Inn have a great deal of respect and admiration for Nancy and her commitment to a way of life which is centered around her family, her church and her job. In addition, she always has time to chat with anyone, give them words of encouragement when they need it, and is willing to go the extra mile with a smile that is sincere as well as contagious.

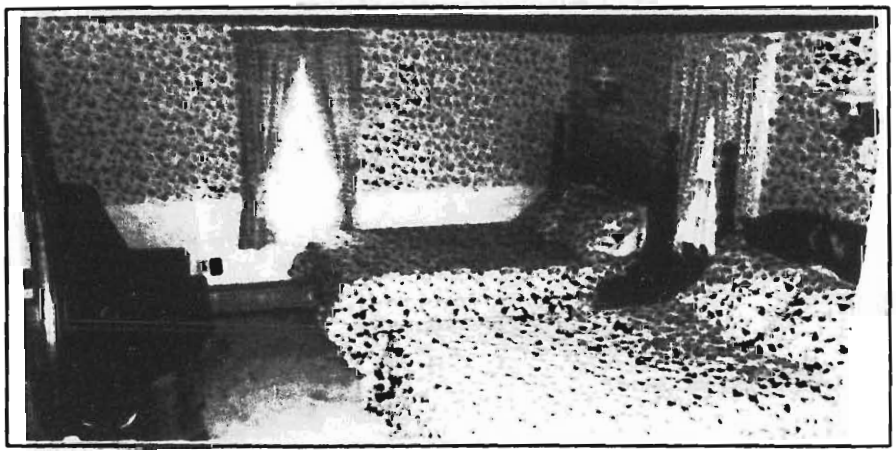
Nancy's prize will be a week-end trip for two to Montreal with all expenses paid, plus $250 in spending money.

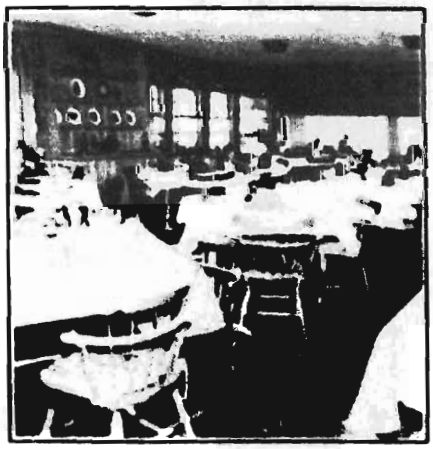
Main Inn remodeled and redecorated from pipes to wallpaper to fireplace!

We finally decided to take the plunge and completely remodel and redecorate the Main Inn. It started our with a change-over of the heating system from steam heat to hot water baseboard heat with thermostats in every room-to tearing out all the galvanized plumbing & changing over to copper. The end results of all this was the elimination of a lot of unnecessary noise as well as providing a much more balanced and efficient heating system. The improvements in our plumbing system, of course, eliminated all the problems of poor water pressure.

The decorating was divided into two segments. Elizabeth Brazilian, a local interior decorator, concentrated her efforts on the dining room, living rooms and front desk. Sydna, working with Lynn Crocher of Laura Ashley in Boston , redecorated all the guest rooms in the Main Inn.

In total, the Inn is now looking great and we look forward to having you see the results of our hard work– would you believe two rooms with Jaccuzies and a new fireplace in the living room! We are really excited and we know you will be too!





95043662017

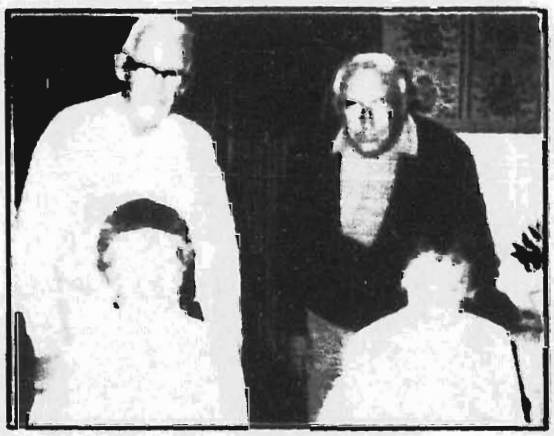
Friends from Far and Near

Our Artist Friends:
(left) Georgie Read Bartow.
(right) Frances Weston Hoyt.

The Griffin Girls

The Morgenstern family from Nebraska.

The "Duxbury Fun Bunch"



The Eckerts & McMahons Celebrate 30 years of visiting Christmas Farm Inn.

Winetasting 1988

Marie Tousignant.and Dean Williams Distributors: Jet Wine & Spirits .

Reading China & Glass provided the glassware.

Carolyn Wente of Wente Bros.

95043662078

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3191

NAME OF COUNSEL: Bradford E. Cook

ADDRESS: Sheehan, Phinney, Bass & Green, P.A.
1000 Elm Street, P.O. Box 3701
Manchester, NH 03105

TELEPHONE: 603-668-0300

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

12/20/90
Date

Signature

RESPONDENT'S NAME: First NH-White Mountain Bank

ADDRESS: P.O. Box 1760
North Conway, NH 03860

HOME PHONE:

BUSINESS PHONE: 603-356-5451

9504366207 9

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

91 JAN 16 AM 11: 18

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

January 16, 1991

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associated General Counsel

SUBJECT: MUR 3191
Request For Extension of Time

By letter dated January 11, 1991, counsel for Congressman Bill Zeliff, Sydna Zeliff, the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, and Christmas Farms Inn, Inc. requested an extension of 60 days to March 19, 1991, in which to respond to the complaint in this matter. The letter explains that the extension is necessary to allow time to assemble and review the many financial records involved in the matter. The complaint addresses possible excessive contributions by the candidate's spouse, possible diversion of proceeds from bank loans to the candidate's committee, and/or possible corporate contributions from a corporation owned by the candidate and his wife. The Office of the General Counsel recommends that the Commission grant the requested extension in light of the Respondents' sizable task necessary to prepare an adequate response.

RECOMMENDATIONS

1. Grant an extension of 60 days to Congressman Bill Zeliff, Sydna Zeliff, the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, and Christmas Farms Inn, Inc.

2. Approve the appropriate letter.

Attachment
Request for Extension

Staff person: Jeffrey Long

9504366200

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Request for Extension of Time) MUR 3191

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 18, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3191:

1. Grant an extension of 60 days to Congressman Bill Zeliff, Sydna Zeliff, the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, and Christmas Farms Inn, Inc., as recommended in the General Counsel's Memorandum dated January 16, 1991.

2. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated January 16, 1991.

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

Attest:

1-18-91
Date

Helen Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., Jan. 16, 1991 11:18 a.m.
Circulated to the Commission: Wed., Jan. 16, 1991 4:00 p.m.
Deadline for vote: Fri., Jan. 18, 1991 4:00 p.m.

dr

95043662081

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 24, 1991

Jan W. Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3191
Congressman Bill Zeliff,
Sydna Zeliff, the Friends of
Bill Zeliff Committee and
John C. Naramore, as
treasurer, and Christmas
Farms Inn, Inc.

Dear Mr. Baran:

This is in response to your letter dated January 11, 1991, which we received on January 11, 1991, requesting an extension of 60 days to respond to the complaint in the above-referenced matter. After considering the circumstances presented in your letter, the Federal Election Commission has granted the requested extension. Accordingly, your response is due by the close of business on March 19, 1991.

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

9504366208 2

MUR 3226

RAD REFERRAL - FEBRUARY 15, 1991

9 5 0 4 3 6 6 2 0 8 3

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 15 February 1991

ANALYST: KAREN WHITE

I. COMMITTEE: Friends of Bill Zeliff Committee
(C00237909)
John C. Naramore, Treasurer
(11/21/90 to Present)
Richard H. Kirk, Treasurer
(7/31/89-11/20/90)
c/o Leone, Bigelow & McDonnell, PA
Rural Route #1 Box 708
Wolfeboro, NH 03894[1/]

II. RELEVANT STATUTE: 2 U.S.C. §434(a)(6)
11 CFR §104.5(f)

III. BACKGROUND:

Failure to File Forty-Eight Hour Notifications

The Friends of Bill Zeliff Committee ("the Committee") has failed to file the required Forty-Eight (48) Hour Notifications ("48-Hour Notices") for two (2) contributions/loans totaling $97,000 received prior to the 1990 Primary Election.

The candidate was involved in the 1990 Primary Election held on September 11, 1990. Prior Notice was sent to the Committee on August 6, 1990 (Attachment 2). The Notice includes a section titled "Last-Minute Contributions". This section reads "Committees must also file special notices on contributions of $1,000 or more, received during the period August 23 through September 8, 1990. The notices must reach the appropriate federal and state offices within 48 hours of the committee's receipt."

1/ Correspondence was sent to a former address of record.

9504366204

Schedules A and C of the 1990 October Quarterly Report indicate that the Committee failed to file two (2) 48-Hour Notices for contributions/loans received during the aforementioned period (Attachment 3). The following is a list of the contributions/loans for which no 48-Hour Notices were filed:

Contributor Name	Date	Amount
William H. Zeliff Jr. (candidate loan)	8/28/90	$40,000
William H. Zeliff Jr. (candidate loan)	9/4/90	$57,000

On December 4, 1990, a Request for Additional Information ("RFAI") was sent to the Committee (Attachment 4). The RFAI noted on an informational basis that the Committee may have failed to file one or more of the required 48-Hour Notices for "last minute" contributions of $1,000 or more. The notice requested the Committee to review their procedures for checking contributions received during the aforementioned time period. In addition, the notice stated that although the Commission may take legal steps, any response would be taken into consideration.

On December 21, 1990 the Commission received a response from the Committee stating that it was an oversight and that the Committee will update their procedures (Attachment 5).

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

9504366208 5

ATTACHMENT 1
(Page 1 of 2)

FEDERAL ELECTION COMMISSION
1989-1990
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS PRIMARY	RECEIPTS GENERAL	DISBURSEMENTS PRIMARY	DISBURSEMENTS GENERAL	COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
							TYPE OF FILER		
ZELIFF, WILLIAM H JR	HOUSE 01	REPUBLICAN PARTY				NEW HAMPSHIRE	1990 ELECTION	ID# H0NH01100	
1. STATEMENT OF CANDIDATE									
1989 STATEMENT OF CANDIDATE							8AUG89	1	89HSE/384/0320
2. PRINCIPAL CAMPAIGN COMMITTEE									
FRIENDS OF BILL ZELIFF COMMITTEE							ID #C00237909 HOUSE		
1989 STATEMENT OF ORGANIZATION							8AUG89	1	89HSE/384/0319
YEAR-END			-		-		31DEC89	34	90HSE/391/0949
YEAR-END		- AMENDMENT	57,526		27,957		31DEC89	1	90HSE/392/0954
YEAR-END		- AMENDMENT	-		-		31DEC89	4	90HSE/399/4852
REQUEST FOR ADDITIONAL INFORMATION							31DEC89	2	90FEC/650/2627
REQUEST FOR ADDITIONAL INFORMATION 2ND							31DEC89	3	90FEC/652/5498
1990 48 HOUR CONTRIBUTION NOTICE							15SEP90	1	90HSE/407/4101
MISCELLANEOUS REPORT	TO FEC						17SEP90	2	90HSE/407/4923
48 HOUR CONTRIBUTION NOTICE							31OCT90	3	90HSE/416/4352
48 HOUR CONTRIBUTION NOTICE							30OCT90	1	90HSE/416/2961
48 HOUR CONTRIBUTION NOTICE							31OCT90	1	90HSE/416/5034
48 HOUR CONTRIBUTION NOTICE							2NOV90	1	90HSE/417/2669
48 HOUR CONTRIBUTION NOTICE							5NOV90	1	90HSE/417/1096
48 HOUR CONTRIBUTION NOTICE							6NOV90	2	90HSE/417/2037
48 HOUR CONTRIBUTION NOTICE							7NOV90	2	90HSE/417/2629
48 HOUR CONTRIBUTION NOTICE							7NOV90	1	90HSE/417/2271
48 HOUR CONTRIBUTION NOTICE							9NOV90	3	90HSE/417/3309
STATEMENT OF ORGANIZATION		- AMENDMENT					26NOV90	1	90HSE/417/4897
STATEMENT OF ORGANIZATION		- AMENDMENT					5DEC90	4	90HSE/418/2452
APRIL QUARTERLY			45,655		44,512		13APR90 -31MAR90	28	90HSE/396/0032
APRIL QUARTERLY		- AMENDMENT	-		-		13APR90 -31MAR90	1	90HSE/399/3975
REQUEST FOR ADDITIONAL INFORMATION							13APR90 -31MAR90	1	90FEC/642/2254
JULY QUARTERLY			89,425		107,149		14APR90 -30JUN90	30	90HSE/402/4089
JULY QUARTERLY		- AMENDMENT	89,425		107,149		14APR90 -30JUN90	3	90HSE/405/1440
JULY QUARTERLY		- AMENDMENT	-		-		14APR90 -30JUN90	1	90HSE/407/4225
REQUEST FOR ADDITIONAL INFORMATION							14APR90 -30JUN90	1	90FEC/654/1506
PRE-PRIMARY			116,500		126,538		1JUL90 -22AUG90	25	90HSE/407/1695
PRE-PRIMARY		- AMENDMENT	116,500		126,538		1JUL90 -22AUG90	5	90HSE/412/2146
PRE-PRIMARY		- AMENDMENT	116,500		126,538		1JUL90 -22AUG90	4	90HSE/417/3469
NOTICE OF FAILURE TO FILE							1JUL90 -22AUG90	1	90FEC/654/2146
REQUEST FOR ADDITIONAL INFORMATION							1JUL90 -22AUG90	2	90FEC/657/2570
REQUEST FOR ADDITIONAL INFORMATION 2ND							1JUL90 -22AUG90	1	90FEC/668/2324
OCTOBER QUARTERLY			137,370		115,950		23AUG90 -30SEP90	30	90HSE/411/2394
OCTOBER QUARTERLY		- AMENDMENT	137,370		115,950		23AUG90 -30SEP90	3	90HSE/417/3476
OCTOBER QUARTERLY		- AMENDMENT	-		-		23AUG90 -30SEP90	1	90HSE/420/1679
OCTOBER QUARTERLY				39,565		22,811	1SEP90 -30SEP90	10	90HSE/421/4575
OCTOBER QUARTERLY		- AMENDMENT		-		-	1SEP90 -30SEP90	2	90HSE/422/2354
REQUEST FOR ADDITIONAL INFORMATION							23AUG90 -30SEP90	1	90FEC/672/3918
REQUEST FOR ADDITIONAL INFORMATION							23AUG90 -30SEP90	2	90FEC/673/3209
REQUEST FOR ADDITIONAL INFORMATION 2ND							1JUL90 -30SEP90	1	90FEC/679/2037

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FEDERAL ELECTION COMMISSION
1989-1990
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

DATE 14FEB91

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS PRIMARY	RECEIPTS GENERAL	DISBURSEMENTS PRIMARY	DISBURSEMENTS GENERAL	COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
							TYPE OF FILER		
REQUEST FOR ADDITIONAL INFORMATION 2ND							1JUL90 -30SEP90	1	91FEC/679/2513
PRE-GENERAL				54,586		85,822	10OCT90 -17OCT90	24	90HSE/414/1583
PRE-GENERAL		- AMENDMENT		54,586		85,822	10OCT90 -17OCT90	3	90HSE/417/2473
PRE-GENERAL		- AMENDMENT		-		-	10OCT90 -17OCT90	3	90HSE/422/1680
PRE-GENERAL		- AMENDMENT		-		-	10OCT90 -17OCT90	4	90HSE/422/2356
REQUEST FOR ADDITIONAL INFORMATION							10OCT90 -17OCT90	1	90FEC/673/3822
REQUEST FOR ADDITIONAL INFORMATION							10OCT90 -17OCT90	1	90FEC/673/3823
REQUEST FOR ADDITIONAL INFORMATION 2ND							10OCT90 -17OCT90	1	91FEC/679/1128
REQUEST FOR ADDITIONAL INFORMATION 2ND							10OCT90 -17OCT90	1	91FEC/679/0511
POST-GENERAL				235,294		233,669	18OCT90 -26NOV90	55	91HSE/419/2349
REQUEST FOR ADDITIONAL INFORMATION							18OCT90 -26NOV90	3	91FEC/679/3662
REQUEST FOR ADDITIONAL INFORMATION 2ND							18OCT90 -26NOV90	4	91FEC/682/4125
YEAR-END			30,569		27,496		27NOV90 -31DEC90	20	91HSE/424/3010
TOTAL			482,069	325,445	459,604	343,072		348	TOTAL PAGES

3. AUTHORIZED COMMITTEES
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN

All reports have been reviewed except the 1990 Year End Report.

Cash-on-hand as of 12/31/90: $4,826.65
Debts owed by the Committee as of 12/31/90 $375,800.44

9504366207

ATTACHMENT 2

PRIMARY ELECTION

REPORT NOTICE

FEDERAL ELECTION COMMISSION

NEW HAMPSHIRE August 6, 1990

REPORT	REPORTING PERIOD1/	REG./CERT. MAILING DATE2/	FILING DATE
PRE-PRIMARY	07/01/90 - 08/22/90	08/27/90	08/30/90
OCTOBER QUARTERLY	08/23/90 - 09/30/90	10/15/90	10/15/90

WHO MUST FILE
PRINCIPAL CAMPAIGN COMMITTEES OF CONGRESSIONAL "CANDIDATES" who seek nomination in the September 11, 1990, New Hampshire Primary.

WHAT MUST BE REPORTED
All financial activity that occurred during the reporting period (or before, if not previously reported).

REPORTING FORMS
Candidate committees use Form 3 (enclosed). If the campaign has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 3Z.

WHERE TO FILE
Consult the instructions on the back of the Form 3 Summary Page. Note state filing requirements also.

LABEL
Committees should affix the peel-off label from the envelope to Line 1 of the report. Corrections should be made on the label.

LAST-MINUTE CONTRIBUTIONS
Committees must also file special notices on contributions of $1,000 or more, received during the period August 23 through September 8, 1990. The notice must reach the appropriate federal and state offices within 48 hours of the committee's receipt.

KW

COMPLIANCE
TREASURERS OF POLITICAL COMMITTEES ARE RESPONSIBLE FOR FILING ALL REPORTS ON TIME. FAILURE TO DO SO IS SUBJECT TO ENFORCEMENT ACTION. COMMITTEES FILING ILLEGIBLE REPORTS OR USING NON-FEC FORMS WILL BE REQUIRED TO REFILE.

1/The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
2/Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

FOR INFORMATION, Call: 800/424-9530 or 202/376-3120

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SCHEDULE A ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

PAGE 1 OF 1

FOR LINE NUMBER: 11(a)

Personal funds

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

NAME OF COMMITTEE (In Full): Friends of Bill Zoliff Committee C00237909

Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
A. William E. Zoliff Jr. Box 8 Jackson, NH 03846 Receipt For: [X] Primary [ ] General [ ] Other (specify):	Christmas Farm Inn Innkeeper Aggregate Year-to-Date > $ 248500.00	8/28/90 9/8/90 9/11/90	40000.00 57000.00 20000.00
B. Full Name, Mailing Address and ZIP Code Receipt For: [ ] Primary [ ] General [ ] Other (specify):	Name of Employer / Occupation Aggregate Year-to-Date > $	Date (month, day, year)	Amount of Each Receipt this Period
C. Full Name, Mailing Address and ZIP Code Receipt For: [ ] Primary [ ] General [ ] Other (specify):	Name of Employer / Occupation Aggregate Year-to-Date > $	Date (month, day, year)	Amount of Each Receipt this Period
D. Full Name, Mailing Address and ZIP Code Receipt For: [ ] Primary [ ] General [ ] Other (specify):	Name of Employer / Occupation Aggregate Year-to-Date > $	Date (month, day, year)	Amount of Each Receipt this Period
E. Full Name, Mailing Address and ZIP Code Receipt For: [ ] Primary [ ] General [ ] Other (specify):	Name of Employer / Occupation Aggregate Year-to-Date > $	Date (month, day, year)	Amount of Each Receipt this Period
F. Full Name, Mailing Address and ZIP Code Receipt For: [ ] Primary [ ] General [ ] Other (specify):	Name of Employer / Occupation Aggregate Year-to-Date > $	Date (month, day, year)	Amount of Each Receipt this Period
G. Full Name, Mailing Address and ZIP Code Receipt For: [ ] Primary [ ] General [ ] Other (specify):	Name of Employer / Occupation Aggregate Year-to-Date > $	Date (month, day, year)	Amount of Each Receipt this Period

SUBTOTAL of Receipts This Page (optional)	117000.00
TOTAL This Period (last page this line number only)	117000.00

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SCHEDULE B
(Period 3/90)

LOANS

Name of Committee (In Full)
Friends of Bill Zeliff Committee C00237909

A. Full Name, Mailing Address and ZIP Code of Lender Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
William H. Zeliff, Jr. Box 8 Jackson, NH 03846 Source: ☒ Primary ☐ Secondary ☐ Other (specify)	80,000.00		80,000.00

Terms: Date Incurred 3/28/90 Date Due Demand Interest Rate 0 % (Fixed) ☒ Secured

List All Endorsers or Guarantors (If any) to Loan A

KW

1. Full Name, Mailing Address and ZIP Code Personal Funds	Name of Employer Occupation Amount Guaranteed Outstanding 0	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding 0	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding 0	

B. Full Name, Mailing Address and ZIP Code of Lender Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
William H. Zeliff, Jr. Box 8 Jackson, NH 03846 Source: ☒ Primary ☐ Secondary ☐ Other (specify)	57,000.00	—	57,000.00

Terms: Date Incurred 9/4/90 Date Due Demand Interest Rate 0 % (Fixed) ☒ Secured

List All Endorsers or Guarantors (If any) to Loan B

KW

1. Full Name, Mailing Address and ZIP Code Personal Funds	Name of Employer Occupation Amount Guaranteed Outstanding 0	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding 0	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding 0	

SUBTOTALS This Period This Page (optional)	97000.00
TOTALS This Period (two pages in this line only)	

Carry outstanding balances only to Lines 3, 4, 5, 6, 7, 8 of Summary Page. For Schedule D, carry forward to appropriate line of Summary.

90014117372

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

FEB 4 1990

John C. Naramore, Treasurer
Friends of Bill Zeliff Committee
815 Elm Street
Manchester, NH 03101

Identification Number: C00237909

Reference: October Quarterly (8/23/90-9/30/90) and Amended October Quarterly (8/23/90-9/30/90, dated 11/8/90) Reports

Dear Mr. Naramore:

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

-Line 19(b), Column A, of the Detailed Summary Page discloses $0 in other loan repayments. Schedule B supporting Line 19(b) itemizes $2,047.83 in repayments. Please explain the discrepancy and amend your report(s). (11 CFR §104.3(b))

-Schedule A of your report indicates that your committee may have failed to file one or more of the required 48 hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-Primary report. A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of $1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of $1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. Although the Commission may take legal action, any response you wish to make concerning this matter will be taken into consideration. (11 CFR §104.5(f))

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office

Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 376-2488.

Sincerely,

Karen White

Karen W. White
Reports Analyst
Reports Analysis Division

0501367353360

ATTACHMENT 5

HAND DELIVERED

RECEIVED
FEC MAIL CENTER
1990 DEC 21 AM 10:50
OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

BILL ZELIFF
Republican for Congress

613 Elm Street, Manchester, NH 03101 • (603) 641-1990

December 18, 1990

131755

Clerk of the House of Representatives
1036 Longworth House Office Building
Washington, DC 20515

Attention: Karen W. White

Re: Friends of Bill Zeliff Committee
October Quarterly (8/23/90 - 9/30/90) and Amended October Quarterly (8/23/90 - 9/30/90) dated 11/8/90) Reports

Dear Ms. White,

Attached please your letter dated December 4, 1990, regarding the above referenced Reports.

Line 19(b) - The amount of the loan was not correctly listed on Schedule B and was inadvertently not carried forward to Column A of the Summary Page. We are in the process of filing an Amended Report for this reporting period.

Schedule A - The reporting of the Loans during the "Last Minute Reporting of Contributions" was an oversight. The person responsible for the handling of "Individual Contributions" and reporting the receipts of $1000 or more was not aware of the loans and therefore did not report them as required. We will "update our procedures" so that this does not happen in the future.

KW

If you need any additional information, please contact me at your convenience.

Yours truly,

Thomas S. Bigelow

Thomas S. Bigelow
Assistant Treasurer

CC: Bill Zeliff

Paid for and Produced by
Friends of Bill Zeliff Committee

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

91 FEB 22 PM 4:28

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD Referral #91L-21
STAFF MEMBER: Jeffrey Long

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

RESPONDENTS: Friends of Bill Zeliff Committee
and John C. Naramore, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(6)
11 C.F.R. § 104.5(f)

I. GENERATION OF MATTER

The Office of the General Counsel received a referral from the Reports Analysis Division ("RAD") on February 19, 1991. Attachment 1. The basis for the attached referral is the failure of Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, ("Committee") to file two forty-eight hour notifications ("48 Hour Notices") for contributions totaling $97,000.00. William H. Zeliff won the 1990 Primary Election in the 1st Congressional District in New Hampshire with 27 percent of the vote and won the General Election with 55 percent of the vote.

II. FACTUAL AND LEGAL ANALYSIS

See Attachment 2.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

The Office of the General Counsel recommends that the Commission find reason to believe that Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, violated

9504366209 4

2 U.S.C. § 434(a)(6). In addition, this Office recommends that the Commission offer to enter into conciliation with the Respondents prior to a finding of probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement

95043662095

IV. **RECOMMENDATIONS**

1. Open a MUR.

2. Find reason to believe that Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, violated 2 U.S.C. § 434(a)(6), and enter into conciliation prior to a finding of probable cause to believe.

3. Approve the appropriate letter, Factual and Legal Analysis, and proposed conciliation agreement.

Lawrence M. Noble
General Counsel

February 22, 1991
Date

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

Attachments:

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	RAD Referral 91L-21 (MUR 3226)
Friends of Bill Zeliff	)	
Committee and John C.	)	
Naramore, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1991, the Commission decided by a vote of 6-0 to take the following actions in RAD Referral 91L-21:

1. Open a MUR.

2. Find reason to believe that Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, violated 2 U.S.C. § 434(a)(6), and enter into conciliation prior to a finding of probable cause to believe.

3. Approve the letter, Factual and Legal Analysis, and proposed conciliation agreement, as recommended in the General Counsel's Report dated February 22, 1991.

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

Attest:

2-27-91
Date

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

Received in the Secretariat: Friday, Feb. 22, 1991 4:23 p.m.
Circulated to the Commission: Monday, Feb. 25, 1991 11:00 a.m.
Deadline for vote: Wednesday, Feb. 27, 1991 11:00 a.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 1, 1991

John C. Naramore, Treasurer
Friends of Bill Zeliff Committee
P.O. Box 5650
Manchester, New Hampshire 031008-5650

RE: MUR 3226
Friends of Bill Zeliff
Committee and John C.
Naramore, as treasurer

Dear Mr. Naramore:

On February 27, 1991, the Federal Election Commission found that there is reason to believe the Friends of Bill Zeliff Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(a)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

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If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
FACTUAL & LEGAL ANALYSIS

RESPONDENTS: Friends of Bill Zeliff Committee and John C. Naramore, as treasurer **MUR:** 3226

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling $1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

The Primary Election in the State of New Hampshire was held on September 11, 1990. Pursuant to the Act, the Committee

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was required to notify the Commission, in writing, of all contributions of $1,000 or more received from August 23 to September 8, 1990, within 48 hours of their receipt.

A review of the Committee's 1990 October Quarterly Report identified two contributions received on August 28 and September 4, 1990, of $1,000 or more totaling $97,000. The contributions were reported on Schedules A and C as personal loans made by the candidate to the Committee. According to 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The Committee did not submit 48 Hour Notices for these contributions.

Therefore, there is reason to believe that Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report campaign contributions in excess of $1,000 received after the 20th day, but more than 48 hours before the primary election, within 48 hours of receipt of the contributions.

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OGC 0435

WILEY, REIN & FIELDING

1776 K STREET, N.W.
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(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

March 19, 1991

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

Attn: Jeffrey Long, Esquire

Re: MUR 3191

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAR 19 PM 5:16

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Dear Mr. Noble:

Attached please find the Response of Friends of Bill Zeliff Committee and John L. Naramore as Treasurer, Congressman William H. Zeliff, Jr., and Sydna T. Zeliff, in Matter Under Review ("MUR") 3191.

This Response includes certain detailed information concerning the personal finances of Congressman Zeliff, his wife Sydna, and their jointly owned Subchapter S Corporation, Christmas Farms Inn, Inc. This information, although relevant to the Commission's consideration of MUR 3191, is considerably more detailed than the Congressman is required to disclose publicly as a federal candidate or Member of Congress. Accordingly, I request that the specifics of the Zeliffs' personal finances, and those of Christmas Farm Inn, Inc., be treated in a confidential manner and excerpted from the public file, including from the General Counsel's Report and Respondents' Response and accompanying Affidavits, when this Matter is closed. This was the procedure adopted by the Commission when it dealt with similar information in MUR 2070

Sincerely,

Jan Witold Baran

JWB/smr
Enclosure

cc: Honorable William H. Zeliff, Jr.
Sydna T. Zeliff
Friends of Bill Zeliff,
John C. Naramore, as Treasurer

WILEY, REIN & FIELDING

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TELEX 248349 WYRN UR

March 19, 1991

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

Attn: Jeffrey Long

Re: MUR 3191 (Friends of Bill Zeliff Committee and John C. Naramore, as Treasurer, The Hon. William H. Zeliff, Jr. and Sydna T. Zeliff)

91 MAR 19 PM 5:17

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Dear Mr. Noble:

This Response, along with the attached Affidavits and materials, is submitted on behalf of the Friends of Bill Zeliff Committee ("Committee") and John C. Naramore, as Treasurer, Congressman William H. Zeliff, Jr., and his wife Sydna T. Zeliff, in response to a Complaint filed by Joseph F. Keefe and designated Matter Under Review ("MUR") 3191. For the reasons set forth herein, the Federal Election Commission should find no reason to believe that the named respondents have violated the Federal Election Campaign Act of 1971, as amended ("Act").

INTRODUCTION

William H. Zeliff, Jr. was elected to represent the First Congressional District of New Hampshire in the United States House of Representatives on November 6, 1990. This

was Mr. Zeliff's first campaign for any federal office. His campaign committee, the Friends Of Bill Zeliff Committee, raised a total of $807,514 and spent a total of $802,680.[1] Of that total, Congressman Zeliff loaned the Committee a total of $357,500 from personal funds.

On November 30, 1990, Joseph F. Keefe, Congressman Zeliff's Democratic opponent in the general election, filed the current Complaint with the Federal Election Commission ("Commission" or "FEC") against the Friends of Bill Zeliff Committee, William H. Zeliff, Jr., Sydna T. Zeliff, and Richard H. Kirk in his capacity as Treasurer of the Friends of Bill Zeliff Committee.[2] The gravamen of the Complaint is that Congressman Zeliff could not afford to loan his campaign $357,500 because he did not have sufficient assets. Instead, the Complaint alleges, loans reported as personal funds of Congressman Zeliff must have come from excessive spousal contributions from Sydna T. Zeliff in violation of 11 C.F.R. § 110.1(b)(1) and 110.10(b)(3), and from illegal corporate contributions from Congressman Zeliff's business, Christmas Farm Inn, Inc. ("the Inn" or "the corporation") in violation of 11 C.F.R. § 114.2(b) & (c). Moreover, the

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[1] See Federal Election Commission Press Release, February 22, 1991, p. 36.

[2] Richard H. Kirk was replaced on December 6, 1990, as Treasurer by John C. Naramore and by Assistant Treasurer Thomas S. Bigelow.

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Complaint conjectures (at 3) that loans to the Committee from Congressman Zeliff "came from four possible sources." The Complaint suggests excessive spousal contributions, corporate contributions, a diversion of bank loans from Christmas Farm Inn, Inc. to the Committee, and/or unreported assets or holdings as the "four possible sources." The Complaint also alleges that the Committee used Christmas Farm Inn, Inc. resources without reimbursement.

In fact, the sources of Congressman Zeliff's personal funds totalling $357,500 loaned to the campaign were as follows:

(i) Cash draws against the Congressman's fifty-percent equity in Christmas Farm Inn, Inc., a Subchapter S corporation through which the Zeliffs operate a country inn, a restaurant, and a country store, in the form of checks totalling $209,000 drawn from the Inn's bank account;

(ii) Personal funds of the Congressman derived from salaries, rents, and liquidated assets;

(iii) A loan from The Woodstown National Bank & Trust Company of Woodstown, New Jersey to William H. Zeliff, Jr. personally in the amount of of which $108,000 was loaned to the Committee. This loan was made by the Bank to Congressman Zeliff in the ordinary course of business, in the

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same manner that the Bank had loaned him funds over many years; and

(iv) A home equity line of credit for from the Dartmouth Bank of Manchester, New Hampshire, secured by Congressman Zeliff's personal residence and from which Congressman Zeliff loaned his campaign $33,500.

In each case, Congressman Zeliff used his own personal funds or his own personal equity to fund his loans to the Committee.

Throughout the campaign, the Committee also used transportation and office services of Christmas Farm Inn, Inc. and was billed invoices totalling $32,483.76 for those services. All of the above loans, debts, and repayments have been reported on the Committee's FEC reports, and the Inn's invoices have been paid in full by the Committee.

As detailed more fully below, Congressman Zeliff's personal loans totalling $357,500 to his campaign Committee complied with FEC regulations. Bank loans to Congressman Zeliff which were in turn loaned to the Committee complied with the ordinary course requirement of 11 C.F.R. § 100.7(b)(11). And funds loaned to the Committee from Congressman Zeliff's personal accounts complied with the personal funds provisions of 11 C.F.R. § 110.10 (a) and (b). Finally, the Committee's use of the Inn's automobiles and

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services complied with the reimbursement provisions of 11 C.F.R. § 114.9. Therefore, the Commission should find no reason to believe a violation has occurred and dismiss the Complaint.

I. ALL FUNDS LOANED TO THE CAMPAIGN BY CONGRESSMAN ZELIFF FROM HIS EQUITY IN THE INN AND HIS PERSONAL INCOME QUALIFY AS PERSONAL FUNDS PURSUANT TO 11 C.F.R. § 110.10(a) & (b).

During the course of the campaign, Congressman Zeliff loaned the Committee $216,000: $209,000 from his personal equity in the Inn and $7,000 from his other income.[3]

The Inn is a Subchapter S corporation wholly owned by Congressman Zeliff and Sydna Zeliff. See Affidavit of Kenneth Kaslow at ¶¶ 1 & 2.[4] Under Subchapter S of the Internal Revenue Code,[5] the income earned by a Subchapter S corporation is taxed to its individual owners instead of to the corporation. That is, the Internal Revenue Service considers the income as the individual owner's money, not as corporate money.[6]

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[3] See List of Loans from Personal Funds of William H. Zeliff, Jr., Attachment 1.

[4] The Affidavit of Kenneth Kaslow is attached hereto as Attachment 2, and is hereinafter cited "Kaslow Aff."

[5] 26 U.S.C. §§ 1361-1379. A Subchapter S corporation is also commonly called a "closely held corporation."

[6] See generally, I. Grant & W. Christian, Subchapter S Taxation §§ 1.01 - 1.02 (3d ed. 1990).

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Consistent with this treatment of the Inn's account as personal income, "[a]s the only two owners of Christmas Farm Inn, Inc., William Zeliff and Sydna Zeliff have frequently drawn against their equity, as needed, from Christmas Farm Inn, Inc." for many years. See Kaslow Aff. at ¶ 10. The draws have been in the form of checks written on the Inn's bank accounts and have always been reflected in the Inn's internal business records and calculations of owner equity. See Kaslow Aff. at ¶ 10.

Congressman Zeliff's draws against his half of the equity in the Inn for campaign purposes conformed with these traditional practices. Congressman Zeliff drew upon his equity in Christmas Farm Inn, Inc. in the total of $209,000 during the course of the campaign. This aggregate amount was well within Congressman Zeliff's personal equity in Christmas Farm Inn, Inc.

The appraised value of Christmas Farm Inn, Inc. as of September 15, 1989 was See Kaslow Aff. at ¶ 7.[1] This value was appraised before Congressman Zeliff began drawing upon his equity in the corporation, and thus reflects the pre-campaign value of the Inn. As of December 31, 1990, Christmas Farm Inn, Inc. had outstanding mortgages and debt totalling See Kaslow Aff. at ¶ 8.

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[1] See also Appraisals of the Christmas Farm Inn, Yesterday's Restaurant, and the Jackson Corner Store, Attachment 3.

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Therefore, total stockholder equity was even after Congressman Zeliff's withdrawal of $209,000 of personal equity. This left Congressman Zeliff, as a one-half owner, with in stockholder equity. Because the drawn amount was clearly within Congressman Zeliff's equity in Christmas Farm Inn, Inc., no amount of the $209,000 should be attributed to Sydna T. Zeliff. The Congressman loaned the campaign a further $7,000 of his personal funds available to him from his salary and other income.[8]

According to 11 C.F.R. § 110.10(b)(1), "personal funds" means:

> Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) Legal and rightful title, or (ii) An equitable interest.

Congressman Zeliff did indeed have a legal right of access and control over his equity in the Inn, and thus his draws upon that equity complied with the personal funds provisions of 11 C.F.R. § 110.10. Furthermore, 11 C.F.R. § 110.10(b)(3) provides:

> A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be

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[8] William H. Zeliff, Jr.'s income during 1989 and 1990 included a salary from the Inn, rents received from real estate he owns, and the proceeds of the sale of his share of two condominiums.

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> considered as personal funds of the candidate shall be that portion which is the candidate's share under the instruments(s) of conveyance or ownership.

Because $209,000 was well within the Congressman's share of equity in the Inn, the drawn amount constituted personal funds under the Regulations.

II. ALL BANK LOANS TO CONGRESSMAN ZELIFF USED BY HIM AS THE SOURCE OF FUNDS FOR HIS LOANS TO THE FRIENDS OF BILL ZELIFF COMMITTEE COMPLIED WITH 11 C.F.R. § 100.7(b).

Congressman Zeliff personally borrowed funds from two banks which he in turn loaned to his campaign. The Woodstown National Bank & Trust Company of Woodstown, New Jersey loaned Congressman Zeliff in February of 1990 and in October of 1990. During the course of the campaign, Congressman Zeliff loaned the Committee a total of $108,000 from funds he had borrowed from the Woodstown Bank.[2/] The Woodstown National Bank & Trust Company is located in Woodstown, New Jersey which was Sydna Zeliff's home town, and in which the Zeliffs lived during the early years of their marriage. Congressman Zeliff has been a regular customer of the Woodstown National Bank & Trust Company since the mid-1970's. The loan was uncollateralized at a variable interest rate of 12% (prime plus 2), which is similar to the terms of all the

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[2/] See List Of Woodstown Bank Loans, Attachment 4.

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Congressman's other personal loans from the bank over their years of dealing with each other, and Congressman Zeliff is the only individual or entity liable on the loan. This loan was consistent with a history of dealings spanning fifteen years, including financing for numerous personal ventures and activities. These dealings are summarized with copies of relevant documents attached hereto.[10/] Furthermore, as noted above, Congressman Zeliff's own assets well exceeded

Pursuant to 11 C.F.R. § 100.7(b)(11), a bank loan "is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business." "Ordinary course" is defined as follows:

> A loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule.

Congressman Zeliff's loan from the Woodstown Bank complied with these standards. Because the bank has successfully dealt with Congressman Zeliff on a noncollateralized basis for many years, the bank has

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[10/] See bank documents reflecting fifteen years of dealings and uncollateralized loans between William H. Zeliff, Jr., and the Woodstown National Bank and Trust Co., Attachment 5.

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reasonable assurance of repayment. Moreover, the loan bears a 12% variable interest rate, is evidenced by a formal written loan agreement, and payment is due in full on February 26, 1995. The fact that the bank has dealt with the Congressman on this same basis for fifteen years makes it clear that this was not an improper contribution by the bank to the Congressman's campaign. Thus, the Woodstown National Bank Loan complied with the ordinary course requirements of 11 C.F.R. § 100.7(b)(11).

The second bank loan to Congressman Zeliff was the credit he drew on a home equity line of with the Dartmouth Bank of Manchester, New Hampshire. During the course of the campaign, Congressman Zeliff loaned the Committee a total of $33,500 from the home equity line.[11] Congressman Zeliff's equity in the house, which is collateral for the home equity credit line, exceeded $33,500. In order to qualify for the equity line, the Zeliffs had two appraisals conducted in January of 1989 by Badger Realty of North Conway, New Hampshire and Hamel Services Group of Chocorua, New Hampshire.[12] The average of the two appraisals was The outstanding mortgage on Congressman Zeliff's personal residence in May of 1989 was

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[11] See List Of Dartmouth Bank Home Equity Credit Draws, Attachment 6.

[12] See Appraisals of Zeliff Personal Residence, Attachment 7.

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Therefore, the Zeliffs' joint equity in their home as of May 1989 was , and Congressman Zeliff's personal equity was This figure clearly exceeded the $33,500 that Congressman Zeliff loaned to the Committee.

Like the Woodstown loan, the $33,500 drawn upon the Zeliff's home equity line with Dartmouth-Savers Bank conformed to standard banking procedures. The loan accrues interest at the rate of 13.5%, is secured by the Zeliffs' equity in their personal residence, is evidenced by a written loan agreement, and is due in full by May of 1999, a standard period for a home equity line.

Furthermore, 11 C.F.R. § 100.7(a)(1)(i)(D) provides that:

> A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign.

Congressman Zeliff's equity interest in the Zeliffs' personal residence exceeded $33,500. Therefore, Congressman Zeliff's use of his share of equity in the personal residence complied with 11 C.F.R. § 100.7(a)(1)(i)(D), and no amount of the loan should be attributed to his wife, Sydna Zeliff, who owns half of the equity in the residence as a joint tenant.

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III. NO BANK LOANS TO CHRISTMAS FARM INN, INC. WERE DIVERTED TO THE FRIENDS OF BILL ZELIFF COMMITTEE.

The Complaint alleges (at 3) that capital improvement loans to Christmas Farm Inn, Inc. were diverted to the Committee. The Complaint asserts that on May 17, 1989, the Inn received a loan of $1,287,000 and that Congressman Zeliff and Sydna Zeliff received a loan of $562,380.67 which was guaranteed by Christmas Farm Inn, Inc. The Complaint alleges that some of these loan proceeds were diverted to the Committee.

The Complaint's allegation is baseless. Not only were no bank loans to the Inn ever diverted to the Committee, but the Complaint is mistaken about the Inn's financial arrangements. In May of 1989, the Inn arranged a loan from First New Hampshire-White Mountain Bank in the amount of $1,187,000. Of that total, $857,137.14 merely refinanced the Inn's pre-existing debt.[13] Because the $857,137.14 was immediately paid by the settlement agent to other banks which the Inn owed money, the Inn did not receive any cash from this portion of the loan. The only change in the Inn's cash status afforded by this refinancing was a pre-approved

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[13] The refinancing simply consolidated five smaller outstanding loans that the Inn had incurred over the period of several years.

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construction loan of $329,862.86[14] which was intended for improvements to Christmas Farm Inn, Inc.'s properties. As explained in the Affidavit of Kenneth Kaslow, "[a]lthough this new $329,862.86 was included in the loan total, this sum was not provided to the Inn as cash at the time of the loan closing. Instead, the Inn had the right to draw down on the bank for up to this sum, but only as the Inn made capital improvements." See Kaslow Aff. at ¶ 4.

From May 1, 1989 to December 30, 1990, Christmas Farm Inn, Inc. borrowed $310,000 of this available loan. See Kaslow Aff. at ¶5. During that period from May 1, 1989 to December 30, 1990, Christmas Farm Inn, Inc. made capital expenditures for improvements and refurbishing totalling $313,996.49. See Kaslow Affidavit at ¶6. Thus, capital expenditures exceeded the total of loans made to Christmas Farm Inn, Inc. by $3,996.49.

Therefore, Christmas Farm Inn, Inc. has accounted for all money loaned to the Inn by First New Hampshire-White Mountain Bank and can show that these funds were used for their intended purposes -- improvements and refurbishing at the Inn's properties. Accordingly, the Commission should find no reason to believe that a diversion of corporate bank loans ever occurred and dismiss the Complaint.

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[14] The Inn's total loan was for $1,187,000: $857,137.14 of refinancing and $329,862.86 of new capital.

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IV. THE PROVISION OF FACILITIES, SERVICES, AND TRANSPORTATION BY CHRISTMAS FARM INN, INC. COMPLIED WITH THE REIMBURSEMENT PROVISIONS OF 11 C.F.R. § 114.9.

At various times throughout the campaign, the Committee used basic services, facilities, and automobiles of Christmas Farm Inn, Inc. These services and facilities included postage, signs, telephones, and the use of a van and a truck. From August 1, 1989 to December 17, 1990, the Committee was billed by the corporation a total of $32,483.76 for these services. The Committee has reported all of these charges on its amended FEC reports. The Committee has paid in full all invoices. See Kaslow Aff. at ¶ 11.

The Commission's regulations allow a campaign committee to use a corporation's facilities, resources, and transportation services so long as the Committee "reimburse[s] the corporation . . . within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market." 11 C.F.R. § 114.9(a)(2) & (c) & (d) & (e)(2). The Inn charged the Committee the actual costs for services provided and a standard rate for mileage on the Inn's vehicles. The Committee has reimbursed the Inn the full amount for these services. Therefore, the Committee complied with the reimbursement provisions of 11 C.F.R. § 114.9.

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V. **ANY REPORTING ERRORS DURING THE COURSE OF THE CAMPAIGN WERE INADVERTENT, THE RESULT OF AN INEXPERIENCED CAMPAIGN STAFF, AND SUBSEQUENTLY CORRECTED ON AMENDED REPORTS.**

The Friends of Bill Zeliff Committee was staffed primarily by volunteers, including a volunteer treasurer. Through the course of the campaign, Congressman Zeliff's loans to the Committee were considered as loans from Congressman Zeliff's personal funds because he was responsible for providing the loans and because they were written on his personal checks. Therefore, the staff reported them as loans from Congressman Zeliff's personal funds. Any errors in reporting were inadvertent. See Affidavit of John C. Naramore at ¶ 6.[13]

Upon public allegations by Congressman Zeliff's general election opponent and complainant herein, Joseph F. Keefe, the Committee employed the accounting firm of Leone, Bigelow & McDonnell of Wolfeboro, New Hampshire, to conduct a complete review of all the Committee's FEC Reports and bank records to make any necessary amendments and to insure compliance with the Act and FEC regulations. See Naramore Aff. at ¶ 5. The accounting firm conducted such a review and the Committee filed omnibus amended Reports with the FEC on February 15, 1991.

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[13] The Affidavit of John C. Naramore is attached hereto as Attachment 8, and is hereinafter cited in the form "Naramore Aff."

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CONCLUSION

For the reasons set forth above, the Commission should find no reason to believe that the Friends of Bill Zeliff Committee, John C. Naramore, as Treasurer, Congressman Zeliff, and Sydna T. Zeliff violated the Act in this Matter. Accordingly, the Complaint should be dismissed.

Sincerely,

Jan Witold Baran
Trevor Potter
Lee E. Goodman

Counsel for the Friends of Bill Zeliff Committee and John C. Naramore, as Treasurer, The Hon. William H. Zeliff, Jr., and Sydna T. Zeliff.

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ATTACHMENT 1

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ATTACHMENT 1

LIST OF LOANS FROM PERSONAL FUNDS OF WILLIAM H. SELIFF, JR.
AS REPORTED BY FRIENDS OF BILL SELIFF COMMITTEE'S
AMENDED FEC REPORTS

	Date	Amount
1)	3/30/90	$10,000
2)	4/17/90	$ 5,000
3)	5/90	$ 3,000
4)	8/90	$75,000
5)	8/28/90	$40,000
6)	9/4/90	$57,000
7)	9/11/90	$20,000
8)	12/3/90	$16,000
	Total =	$216,000
	Payments to Date =	$ 3,008.22
	Outstanding Obligation =	$212,991.78

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ATTACHMENT 2

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BEFORE THE FEDERAL ELECTION COMMISSION

County of Carroll	)	
	)	MUR 3191
State of New Hampshire	)	

AFFIDAVIT OF KENNETH KASLOW

KENNETH KASLOW, first being duly sworn, deposes and says:

1. I am employed as the bookkeeper of Christmas Farm Inn, Inc. (the "Inn"), and have performed this service for the Inn since June 1, 1985. In my capacity as the bookkeeper, I am responsible for maintaining the financial records of the business and I am familiar with the financial affairs of the Inn and its two owners, William H. Zeliff, Jr. and Sydna T. Zeliff. Each owns one half of Christmas Farm Inn, Inc.

2. Christmas Farm Inn, Inc. is a Subchapter S corporation located in Jackson, New Hampshire and is incorporated under the laws of that state. Christmas Farm Inn, Inc. consists of three separate local small businesses: Christmas Farm Inn, a country inn, Yesterday's Restaurant, located at the Inn, and the Jackson Corner Store. Each of these three businesses is located in Jackson, New Hampshire.

3. In May of 1989, First New Hampshire-White Mountain Bank approved a loan to Christmas Farm Inn, Inc. in the amount of $1,187,000. Of that total amount, $857,137.14 was

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for the purpose of consolidating and refinancing pre-existing debt of the Inn.

4. This arrangement afforded Christmas Farm Inn, Inc. an additional $329,862.86 to be available on an as-needed basis for construction and improvements to the Inn. ($857,137.14 + $329,862.86 = $1,187,000). Although this new $329,862.86 was included in the loan total, this sum was not provided to the Inn as cash at the time of the loan closing. Instead, the Inn had the right to draw down on the bank for up to this sum, but only as the Inn made capital improvements.

5. From May 1, 1989 to December 30, 1990, Christmas Farm Inn, Inc. borrowed a total of $310,000 from this available credit with First New Hampshire-White Mountain Bank.

6. Christmas Farm Inn, Inc.'s records indicate that between May 1, 1989 and December 31, 1990, Christmas Farm Inn, Inc. made capital expenditures for improvements and refurbishing totalling $313,996.49. Capital expenditures thus exceeded construction loans by $3,996.49 for the period from May 1, 1989 to December 30, 1990.

7. In September of 1989, Cardinal Appraisals of Intervale, New Hampshire, appraised the value of Christmas Farm Inn, Inc. Cardinal Appraisals appraised the value of the Christmas Farm Inn at of Yesterday's

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Restaurant at and of the Jackson Corner Store at bringing the total value of Christmas Farm Inn, Inc. to

8. As of December 31, 1990, Christmas Farm Inn, Inc. had outstanding mortgages and debts totalling leaving the owners, William H. Zeliff, Jr. and Sydna T. Zeliff, a joint equity (based on appraisal value) of Split equally, each shareholder has an equity of

9. According to Christmas Farm Inn, Inc.'s records, from May 1, 1989 to December 31, 1990, William H. Zeliff, Jr., as a half owner, drew from Christmas Farm Inn, Inc. a total of $209,000 for campaign purposes.

10. As the only two owners of Christmas Farm Inn, Inc., William Zeliff and Sydna Zeliff have frequently drawn against their equity, as needed, from Christmas Farm Inn, Inc. since my employment began in June of 1985. The Zeliffs also have made repayments of drawn amounts. Christmas Farm Inn, Inc. as a matter of ordinary course records all such draws and repayments on internal business records.

11. According to Christmas Farm Inn, Inc.'s records, from August 1, 1989 to December 17, 1990, the Inn periodically provided services and facilities to the Friends of Bill Zeliff Committee. The Inn regularly sent invoices to the Friends of Bill Zeliff Committee for the costs of these

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services and facilities. These invoices totalled $32,483.76 and have been paid in full.

The above information is true and correct to the best of my knowledge, information, and belief.

Kenneth Kaslow

Signed and sworn to before me
this 15th day of March, 1991.

Notary Public

My Commission Expires: _____

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ATTACHMENT 3

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Cardinal Appraisals

May 22, 1990

Mr. William H. Zeliff, Jr.
Christmas Farm Inn
Route 16B
Jackson, NH 03846

Re: Letter of Opinion: Land and Improvements,
Jackson Corner Store, Jackson, New Hampshire

Dear Mr. Zeliff:

In accordance with your request, I have made an updated study and analysis* of the above referenced property. The purpose of the study is to indicate a current range in value, for financial decision purposes. It should be clearly understood that this letter constitutes only a preliminary opinion and should not be construed as an appraisal.

The term "market value" is defined as "the most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Fundamental assumptions and conditions presumed in this definition are:

1. Buyer and seller are motivated by self-interest.
2. Buyer and seller are well-informed and acting prudently.
3. The property is exposed for a reasonable time on the open market.
4. Payment is made in cash, its equivalent, or in specified financing terms.
5. Specified financing, if any, may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date.
6. The effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report."

American Institute of Real Estate Appraisers, "The Dictionary of Real Estate Appraisal," 1984.

P. O. Box 840 • Intervale • New Hampshire 03845 603-356-2757

ATTACHMENT 4

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ATTACHMENT 4

LIST OF WOODSTOWN BANK LOANS AS REPORTED ON FRIENDS OF BILL BELIFF COMMITTEE'S AMENDED FEC REPORTS

	Date	Amount	Terms
1)	5/90	$ 4,500	Due 4 yrs. at 12%
2)	6/90	$ 45,500	Due 4 yrs. at 12%
3)	7/90	$ 8,000	Due 4 yrs. at 12%
4)	10/90	$ 50,000	Due 4 yrs. at 12%
	Total =	$108,000	
Payments to Date =		-0-	(The loans are due in total amount with interest by February 26, 1995)
Balance Outstanding =		$108,000	

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ATTACHMENT 6

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ATTACHMENT 6

LIST OF DARTMOUTH BANK HOME EQUITY CREDIT DRAWS AS REPORTED ON FRIENDS OF BILL SELIFF COMMITTEE'S AMENDED FEC REPORTS

	Date	Amount	Terms
1)	6/89	$ 7,000	Due 5/99 at 13.5%
2)	3/90	$20,000	Due 5/99 at 13.5%
3)	5/90	$ 6,500	Due 5/99 at 13.5%
	Total	= $33,500	
Payments to Date		= $ 4,000	
Outstanding Balance		= $29,500	

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ATTACHMENT 8

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BEFORE THE FEDERAL ELECTION COMMISSION

County of Palm Beach	)	
	)	MUR 3191
State of Florida	)	

AFFIDAVIT OF JOHN C. NARAMORE

JOHN C. NARAMORE, first being duly sworn, deposes and says:

1. I have served as Treasurer of the Friends of Bill Zeliff Committee ("the Committee") since December 6, 1990. Before that date, and throughout the existence of the Committee, I have been an active volunteer and advisor in the campaign activities of the Committee. I am accordingly familiar with the Committee's financial affairs and am competent to attest to the facts contained herein.

2. The Friends of Bill Zeliff Committee was established in August of 1989 as the principle campaign committee of William H. Zeliff, Jr. who sought election to the U.S. House of Representatives from the First Congressional District of New Hampshire.

3. Mr. Zeliff was a non-incumbent and the Committee's staff consisted primarily of non-professional volunteers and a volunteer treasurer. The staff handled receipts and disbursements. During the course of the campaign, approximately six different volunteers were responsible for

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processing and recording receipts and making and recording disbursements.

4. All loans made to the campaign were drawn on Mr. Zeliff's personal checking accounts. Therefore, the Committee regarded each loan as a personal loan by Mr. Zeliff and each was reported as a loan from the personal funds of Mr. Zeliff.

5. Upon public allegations made by Congressman Zeliff's opponent, Joseph F. Keefe, that the Committee had violated Federal Election Commission regulations, the Committee decided to employ the professional accounting firm of Leone, Bigelow & McDonnell of Wolfeboro, New Hampshire in November of 1990 to conduct a complete review of all FEC Reports filed by the Committee and to file any necessary amendments to all Reports. At that time, Leone, Bigelow & McDonnell reviewed all campaign records against bank records and made omnibus amendments to all of the Committee's FEC Reports. The Committee filed its amended FEC Reports on February 15, 1991.

6. At all times the Committee sought in good faith to comply with the Federal Election Campaign Act of 1991, as amended, and with the Federal Election Commission's regulations. Any errors contained in the Committee's original Reports were inadvertent.

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The above information is true and correct to the best of my knowledge, information and belief.

John C. Naramore

Signed and sworn to before me
this 15th day of March, 1991.

Notary Public

Notary Public, State of Florida
My Commission Expires Oct. 22, 1993
Bonded Thru Troy Fain - Insurance Inc.

My Commission Expires: _____

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OGC 0661

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

April 5, 1991

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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

Attn: Jeffrey Long, Esq.

Re: MUR 3226 (Friends of Bill Zeliff Committee and John C. Naramore, as Treasurer)

Dear Mr. Noble:

This letter, along with the attached Designation of Counsel form, is submitted on behalf of the Friends of Bill Zeliff Committee ("Committee") and John C. Naramore, as Treasurer, in response to the Federal Election Commission's letter of March 1, 1991 designated Matter Under Review ("MUR") 3226.

The issues raised in MUR 3226 are closely related to the issues currently under the Commission's review in MUR 3191. The Friends of Bill Zeliff Committee's reporting of personal loans from the candidate during the 1990 election is the subject of both MURs. Moreover, both MURs stem from the same underlying cause, namely an inexperienced volunteer campaign staff's misunderstanding about how to report personal loans of the candidate.

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The Committee filed its Response in MUR 3191 on March 19, 1991, and the Commission currently is reviewing the Complaint and Response. Because of the interrelated issues raised in MUR 3226 and MUR 3191, I request that the two matters be consolidated. If, however, the Commission believes merger to be inappropriate, then I respectfully request that further proceedings in MUR 3226 be deferred at least until Commission action in MUR 3191.

Sincerely,

Jan Witold Baran

Counsel for the Friends of Bill Zeliff Committee and John C. Naramore, as Treasurer

Encl.
cc: The Hon. Bill Zeliff, Jr.
Mr. John C. Naramore
Mr. Thomas S. Bigelow

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3226

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: 202-429-7330

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

3/27/91
Date

Signature

RESPONDENT'S NAME: Friends of Bill Zeliff Cmte. and John C. Naramore as Treasurer

ADDRESS: P.O. Box 1800
Wolfeboro, NH 03894

HOME PHONE:

BUSINESS PHONE: (603) 569-4129

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FEDERAL ELECTION COMMISSION
SECRETARIAT

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bill Zeliff	)	MUR 3226
Committee and John C.	)	
Naramore, as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

On February 27, 1991, the Commission found reason to believe the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, ("Respondents") violated 2 U.S.C. § 434(a)(6) for the failure to file 48 hour reports with regard to certain candidate loans prior to the September 11, 1990, New Hampshire primary election. The Commission also offered to enter into preprobable cause conciliation.

On April 5, 1991, counsel for the Respondents filed a designation of counsel and a letter. In the letter, counsel requested that further proceedings be deferred in MUR 3226 until the Commission acts in MUR 3191 and further requested that the two matters be merged. MUR 3191 is a complaint generated matter against the respondents relating to the source of funds used for candidate loans. Counsel points out that both matters stem from the same alleged cause, "namely an inexperienced volunteer campaign staff's misunderstanding about how to report personal loans of the candidate."

Counsel's request that further proceedings be postponed in MUR 3226 is reasonable. MUR 3226 has been reassigned to the same staff person who is handling MUR 3191. The request for merger will be addressed in the First General Counsel's Report in

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proceedings in MUR 3226 until the Commission acts in MUR 3191.

Lawrence M. Noble
General Counsel

4/10/91
Date

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

Attachment

95043662139

GCC#1137

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH
91 JUL -1 AM 9:25

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

June 28, 1991

Anne A. Weissenborn, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3191

Dear Ms. Weissenborn:

This is in response to your telephone inquiry to Lee Goodman of my office regarding the $562,380.67 loan referenced in Exhibits F and G to the Complaint in the above captioned matter.

Please be advised that that figure reflects refinancing of the then outstanding original first mortgage on the Christmas Farm Inn owed personally by Congressman and Mrs. Zeliff. The first mortgage financed the Zeliff's original purchase of the Inn in the early 1970s and the remaining amount, as of the May 1989 refinancing, was $562,380.67. Thus, in May 1989, the $562,380.67 loan from First New Hampshire-White Mountain Bank resulted in no cash to the Zeliffs or to Christmas Farm Inn, Inc. It merely refinanced existing debt.

Sincerely,

Jan Witold Baran

Encls.
cc: Honorable William H. Zeliff, Jr.
Synda T. Zeliff
Friends of Bill Zeliff
John C. Naramore, as Treasurer

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MAIL ROOM

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

FIRST GENERAL COUNSEL'S REPORT **SENSITIVE**

MUR 3191
DATE COMPLAINT RECEIVED BY OGC: November 30, 1990
DATE OF NOTIFICATION TO RESPONDENTS: December 5, 1990
STAFF MEMBER: Anne Weissenborn

COMPLAINANT: Keefe for Congress 1990 Committee

RESPONDENTS: Friends of Bill Zeliff Committee
John C. Naramore, as treasurer
William H. Zeliff, Jr.
Sydna T. Zeliff
Christmas Farm Inn, Inc.
First NH Bank

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b
2 U.S.C. § 434(b)
11 C.F.R. § 110.1
11 C.F.R. § 110.10
11 C.F.R. § 114.2
11 C.F.R. § 114.9
26 U.S.C. § 1366(c) and (d)

INTERNAL REPORTS CHECKED: Friends of Bill Zeliff Committee

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was initiated by the filing of a complaint by Joseph F. Keefe on behalf of the Keefe for Congress 1990 Committee ("the Keefe Committee"). In its complaint the Keefe Committee alleges:

1. that Sydna T. Zeliff made excessive contributions to the Friends of Bill Zeliff Committee ("the Committee") by means of her one-half interest in the net proceeds from the sale of two condominiums which William H. Zeliff allegedly lent to his campaign;

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2. that the Committee accepted corporate contributions in the form of proceeds from a $562,380.67 loan obtained from First NH - White Mountain Bank by William and Sydna Zeliff and from a $1,287,000 loan obtained from the same bank by Christmas Farm Inn, Inc.;

3. that the Committee has failed to report proceeds from sales of stock as "holdings" or assets in financial disclosure statements filed with the Clerk of the U.S. House of Representatives;

4. that Christmas Farm Inn, Inc., paid William Zeliff an excessive salary in 1990 unrelated to business purposes; and

5. that the Committee used motor vehicles owned by Christmas Farm Inn, Inc., for campaign purposes.

II. FACTUAL AND LEGAL ANALYSIS

1. Background

William H. Zeliff, Jr., filed his Statement of Candidacy on August 8, 1989. On the same date the Committee's Statement of Organization was received.

According to amended reports filed by the Committee, during the 1989-90 campaign cycle William Zeliff made $216,000 in loans to the Committee from personal funds and obtained $145,500 in bank loans which he then lent to the Committee, for a total of $361,500. These loans included the following:

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Loans from Personal Funds

3/30/90 -	$10,000
4/18/90 -	5,000
5/3/90 -	3,000
8/7/90 -	30,000
8/14/90 -	20,000
8/20/90 -	25,000
8/28/90 -	40,000
9/4/90 -	57,000
9/11/90 -	20,000
12/3/90 -	6,000
	$216,000

Bank Loans Obtained by Candidate for Campaign

Dartmouth Bank -	6/89	- $7,000 ($4,000 repaid 2/20/90)
Dartmouth Bank -	3/26/90	- 20,000
Dartmouth Bank -	5/7/90	- 6,500
Woodstown Nat'l Bank and Trust -	5/17/90	- 4,500
Woodstown Nat'l Bank and Trust -	6/90	- 45,500
Woodstown Nat'l Bank and Trust -	7/10/90	- 8,000
Woodstown Nat'l -	10/90	- 50,000
		$145,500

In response to the complaint (Attachment 1), counsel for the Committee and for Congressman and Mrs. Zeliff states that the sources of the "$357,500"[1] which the candidate lent to his campaign were

1. Cash draws against his 51% equity in Christmas Farm Inn, Inc., in the form of checks totaling $209,000 drawn on the Inn's bank account;

2. "Personal funds . . . derived from salaries, rents and liquidated assets;"

3. A loan from the Woodstown National Bank and Trust Company of Woodstown, New Jersey, in the amount of of which $108,000 was lent to the campaign; and

---

1. The $4,000 difference between the $361,500 in total loans reported by the Committee and the $357,500 cited by counsel may be accounted for by the $4,000 repayment made to the Dartmouth Bank on February 20, 1990.

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4. A home equity line of credit for from the Dartmouth Bank of Manchester, New Hampshire, of which $33,500 was lent to the campaign.

Counsel states that Christmas Farm Inn, Inc., is a Subchapter S Corporation jointly owned by William H. Zeliff and Sydna T. Zeliff and that "income earned by a Subchapter S corporation is taxed to its individual owners instead of to the corporation."

According to an affidavit attached to counsel's response and signed by Kenneth Kaslow, the bookkeeper for Christmas Farm Inn, Inc., that corporation's assets were appraised at in September, 1989. As of December 31, 1990, the corporation had outstanding mortgages and debts of leaving joint equity available to the owners of or each. According to Mr. Kaslow, between May 1, 1989, and December 31, 1990, William Zeliff drew a total of $209,000 from Christmas Farm Inn, Inc., for campaign purposes. Mr. Kaslow states that both owners "have frequently drawn against their equity, as needed . . . . The Zeliffs also have made repayments of drawn amounts. Christmas Farm Inn, Inc., as a matter of ordinary course records all such draws and repayments on internal balance records."

With regard to the loans obtained by William Zeliff from Dartmouth Bank and from Woodstown National Bank and Trust, counsel asserts that all were made in the ordinary course of the banks' businesses. Counsel states that the total of $33,500 in loans from Dartmouth Bank came from credit drawn by Mr. Zeliff against a home equity line of credit of Counsel does not state

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whether Mrs. Zeliff was a co-signer of the agreement establishing this line of credit. According to counsel, the credit was granted following two appraisals of the Zeliff residence in January 1989 which averaged As of May 1989 the outstanding mortgage on the residence was . leaving joint equity of and personal equity for Mr. Zeliff of Thus, counsel asserts, Mr. Zeliff's personal equity exceeded the total of the $33,500 in loans to the Committee made from the line of credit. Counsel further notes that interest on the loan from Dartmouth Bank was 13.5%, that it was evidenced by a written loan agreement, and that it is due in full by May 1999. Respondents have not provided a copy of the written loan agreement.

The $108,000 in loans to the Committee from Mr. Zeliff using monies obtained from Woodstown National Bank & Trust Company came from two loans which he was granted in February and October 1990 in the amounts of respectively, for a total According to counsel, Woodstown National Bank and Trust is located in the home town of Sydna Zeliff where the Zeliffs lived for the first years of their marriage. Congressman Zeliff has assertedly been a customer of this bank since the mid-1970's. Attached to counsel's response are a listing of unsecured loans obtained by Mr. Zeliff from this bank between 1975 and 1986 and copies of the notes for all of these loans; these loans ranged in amount from

Counsel states that the in loans obtained in 1990 "was uncollateralized at a variable interest rate of 12% (prime plus 2), which is similar to the terms of all the Congressman's

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other personal loans from the bank over their years of dealing with each other . . . ." It is also noted that the loan was evidenced by a formal written loan agreement, and that payment in full is due on February 26, 1995. Again, respondents have not provided a copy of the loan agreement(s) for the

2. Statutory Provisions

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b) limit to $1,000 the amount which an individual may contribute to a political committee per election. 2 U.S.C. § 441a(f) prohibits political committees from knowingly accepting contributions in excess of the limitations at 2 U.S.C. § 441a(a).

Candidates for the office of U.S. Representatives may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a candidate the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) legal and rightful title, or (ii) an equitable interest." 11 C.F.R. § 110.10(b)(1). Personal funds include proceeds from the sale of investments. 11 C.F.R. § 110.10(b)(2).

A candidate may use as personal funds his or her portion of assets jointly held with his or her spouse, the portion to be considered personal being the candidate's share according to the instrument of conveyance or ownership. "If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate." 11 C.F.R. § 110.10(b)(3). Any remaining

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portion used for campaign purposes is to be considered a contribution from the spouse.

2 U.S.C. § 441b and 11 C.F.R. § 114 prohibit the making and knowing acceptance of corporate contributions in connection with an election to federal office. In 1979 the Commission issued a "Notice to All Candidates and Committees" in which it addressed the issue of the use of corporate accounts by corporate personnel to make contributions. In this Notice the Commission distinguished among repayable drawing accounts, non-repayable drawing accounts, and expense accounts. "Contributions made from repayable drawing accounts that the employee is responsible to repay will be considered corporate contributions for the outstanding period of the draw, however, contributions made from non-repayable drawing accounts established to permit personal draws against salary, profits, or commissions will be considered personal contributions. Contributions written against standard expense accounts are prohibited as corporate contributions." CCH, Federal Election Campaign Financing Guide, § 9054.

Pursuant to 2 U.S.C. § 441b, a loan made by a national or state bank to a candidate or political committee will not be deemed a contribution if it is made in accordance with applicable banking laws and in the ordinary course of the bank's business. Pursuant to 11 C.F.R. § 100.7(b)(11), a loan will be considered to have been made in the ordinary course of business if it bears the usual and customary interest rate of the institution, is evidenced by a written instrument, is subject to a due date or amortization schedule, and is made on a basis which assures repayment.

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Pursuant to 11 C.F.R. § 114.9, stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of corporate facilities "for individual volunteer activity in connection with a Federal election" and must reimburse the corporation only to the extent that the operating costs or overhead of the corporation are increased. 11 C.F.R. § 114.9(a)(1). If more than occasional, isolated, or incidental use is involved, reimbursement must be made within a commercially reasonable time for the normal and usual charge for such services. 11 C.F.R. § 114.9(a)(2). Persons other than stockholders or employees who use corporate facilities such as telephones or typewriters or furniture in connection with a federal election must reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. 11 C.F.R. § 114.9(d). If a candidate, candidate's agent, or other person traveling on behalf of a candidate uses means of transportation owed or leased by a corporation such as automobiles, that person must reimburse the corporation for such use within a commercially reasonable time at the normal and usual rental charge. 11 C.F.R. § 114.9(e)(2)

The Technical Amendments Act of 1958 added Subchapter S to the Internal Revenue Code. The purpose of Subchapter S is to permit small businesses to avoid double taxation, i.e., of the corporation and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses

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may also be passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C. § 1366(c) and (d). See Byrne v. C.I.R., 361 F.2d 939 (7th Cir, 1966). The corporation's profits remain the property of the corporation until a majority of the shareholders declare a dividend or distribution. U.S. v. Falcone, No. 89-5718 (11th Cir. July 11, 1991)(WESTLAW 110201), quoting 1 O'Neal & R. Thompson, Close Corporations (3rd ed. 1986), § 2.06 at 34 ("'shareholder is taxed on his proportionate part of corporate income, even though income is not actually distributed to him,' because 'declaration of dividends is entirely within the discretion of the corporation's board of directors'").

3. Allegations

The allegations in the complaint are based upon the premise that, according to the personal financial disclosure statements filed by William H. Zeliff in July and October 1990, Mr. Zeliff had "very limited resources available to him for legal loans to his campaign as of April 30, 1990. Nevertheless, his FEC reports indicated that he has loaned to his campaign approximately $301,500."

a. Proceeds from Condominium Sales

In the present matter, the complaint asserts that $164,000 in net proceeds from the sale of two condominiums in Sea Isle City,

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New Jersey, was lent to the Zeliff campaign, resulting in excessive contributions from Synda T. Zeliff, the wife of the candidate. Attached to the complaint are apparent copies of the deeds to the two properties at issue dated August 25, 1989, and November 27, 1989, showing William M. Zeliff, Jr., and Sydna T. Zeliff as grantors. The complaint argues that Sydna Zeliff held a one-half interest in those condominiums and that, therefore, Mr. Zeliff could have made a loan to his campaign as personal funds of only one-half of the sale proceeds or $82,000. The remaining amount would have been a contribution from Sydna Zeliff.

The complaint cites an article which appeared in the Manchester Union Leader on September 22, 1990, and a press statement by William Zeliff on October 3, 1990, in support of this allegation. According to the article Mr. Zeliff had stated that the first condominium sold for $129,000 and the second for $135,000 for a total of $264,000. "'[W]e had mortgages of about $100,000, leaving about $164,000.'" The article continued, "That figure, said Zeliff, is the bulk of the $184,000 he loaned his campaign."

It is unclear from the copy of the press statement attached to the complaint whether this document is a transcript of a press conference or a written statement prepared and distributed by the Zeliff Committee. Dated October 3, 1990, the statement reads in part,

> The second allegation [an opponent] made was that the sale from my duplex was a loss and thus, did not yield any funds to put into my campaign. The fact is that both halves of the duplex were sold for an approximate total of $264,000 and a

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> mortgage of approximately $100,000 was paid off. That yielded a substantial gain and I used those funds in my campaign.

In response to the complaint, counsel for the Committee and the Zeliffs states, "During the course of the campaign, Congressman Zeliff loaned the Committee $216,000: $209,000 from his personal equity in the Inn and $7,000 from his other income." Counsel states that the $7,000 came from Mr. Zeliff's "salary and other income." A footnote asserts that his "income during 1989 and 1990 included a salary from the Inn, rents received from real estate he owns, and the proceeds of the sale of his share of two condominiums." The statement regarding $209,000 in draws on equity for campaign use is supported by the affidavit provided by Kenneth Kaslow which is cited above.

Based upon the information provided by counsel, which differs from that presented in the Union Leader article quoted above, it appears that Mr. Zeliff's share of the proceeds of the condominium sales, $82,000, was one of several sources of personal funds by which he made $7,000 of his loans to the Committee. The other $209,000 apparently came from draws against his personal equity in Christmas Farm Inn, Inc., which, as stated above, totaled

as of December 31, 1990; Mr. Zeliff's own equity was thus apparently sufficient to cover the $209,000 in loans. It appears that Mr. Zeliff alone was the source of the total of $216,000 which he was reported as having lent the Committee from personal funds. Therefore, this Office recommends that the Commission find no reason to believe Synda T. Zeliff violated 2 U.S.C. § 441a(a)(1)(A).

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Questions arise, however, with regard to the permissibility of Mr. Zeliff's draws on his equity in Christmas Farm Inn, Inc., as the source of loans to the Committee. It was unclear from counsel's original response whether these draws were taken as a distribution of owner's equity or with an obligation to repay. More recently, in response to questions posed by this Office, counsel has stated that these draws were recorded by the corporation as loans to Mr. Zeliff.

In MUR 2522 the Commission addressed the issue of whether funds transferred by a candidate from his corporation's account to his personal account could be considered personal funds rather than corporate funds. In that situation the source of the funds was the liquidation of certain instruments held as owner's equity, with the cash acquired having been returned to the corporation as an asset. The cash was then loaned to the candidate. The corporation's balance sheet for the relevant year showed an asset in the amount of the funds transferred by the candidate, apparently as a loan receivable. In addition, both the pre-enforcement correspondence and reports of the committee involved and the records of the candidate's personal account referred to this transaction as a loan to the candidate. Thus, the Commission determined that the amount transferred constituted a corporate contribution.

In the present matter, it appears from information supplied orally by counsel that Christmas Farm Inn, Inc., has treated Mr. Zeliff's $209,000 in draws on equity as loans. It is the position of this Office that because Mr. Zeliff apparently took the

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$209,000 from his corporation as a loan based upon his equity, not as a drawdown of that equity, this transaction has the effect of a loan from a repayable drawing account and thus must be considered to have been made with corporate funds.[2]

Counsel asserts that because this company has elected to be taxed as a Subchapter S Corporation, the loans should be treated as Mr. Zeliff's personal funds; i.e., as loans from himself to himself. However, in the opinion of this Office, although Christmas Farm Inn, Inc., is treated as a Subchapter S corporation for tax purposes, it remains a corporation for purposes of the Federal Election Campaign Act ("the Act"). As stated above, a Subchapter S corporation retains as its own any income taxed to individual shareholder until such time as a distribution or dividend is declared.

By choosing to incorporate their business, the Zeliffs converted personal assets into corporate ones. Their ability to benefit from a statute designed to provide protection against double taxation does not change the corporate nature of the enterprise itself or re-convert the corporation's assets and income into personal ones. Such a reconversion of assets could

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2. According to counsel, draws taken by the Zeliffs against their equity in the corporation have taken "the form of checks written on the Inn's bank accounts . . . ." The treasurer of the Committee, John C. Naramore, has stated in an affidavit that "[a]ll loans made to the campaign were drawn on Mr. Zeliff's personal checking accounts." Thus, it appears that Mr. Zeliff obtained the loans from the corporation by means of corporate checks which were deposited into his own account and that he then wrote personal checks to the Committee. This procedure did not serve to nullify the corporate source of the funds involved in his loans to the Committee.

have been accomplished by means of a nonrepayable drawdown of equity; however, that does not appear to have been the procedure chosen. Rather, the assets involved were apparently left as corporate assets which were loaned to Mr. Zeliff. And it was those corporate assets which he admits were the source of his loan to his committee.

Accordingly, this Office recommends that the Commission find reason to believe that the Friends of Bill Zeliff and John C. Naramore, as treasurer, and Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b.

b. Loans from First NH Bank

The complaint also alleges that the respondents accepted corporate contributions "in the form of loan proceeds from White Mountain Bank earmarked for business purposes and capital improvements to real estate." More specifically, the complaint alleges that loans obtained by Christmas Tree Inn, Inc., and by William and Synda Zeliff, from First NH - White Mountain Bank, now First NH Bank, ostensibly for capital improvements, were used for the campaign. The complaint offers as proof the assertion that no building permits were issued "for any capital improvements to real estate owned by the Zeliffs or Christmas Farm Inn, Inc., during 1988, 1989 or 1990."

According to information provided by respondents including First NH Bank (Attachment 2), Christmas Farm Inn obtained from First NH - White Mountain Bank on May 17, 1989, a loan in the

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amount of $1,187,000.[3] On the same day William and Sydna Zeliff received a loan in the amount of $562,380.67 from the same institution. According to the bank, these loans were "made to consolidate existing borrowings and enable the Zeliffs and their corporation, Christmas Farm Inn, Inc., to make improvements, renovate the Inn premises, and have an available business line of credit for working capital purposes . . . ." The loans were intended to be cross-collateralized, i.e., both the corporation's loan and the loan to the Zeliffs were to be secured by "all of the real estate comprising the Christmas Farm Inn, whether owned personally or corporately," as well as by two other businesses owned by the Zeliffs. Because of a drafting error, the original mortgage agreements did not include all cross collateral descriptions, and thus it became necessary in 1990 to prepare and file new documentation.

According to counsel, $857,137.14 of the loan to the corporation was used to refinance pre-existing debt involving five loans which the Inn had obtained over several years. The remaining $329,862.86 of the loan to the corporation was made available as a line of credit to be drawn down as the Inn made capital improvements. Between May 1, 1989, and December 30, 1990, the corporation borrowed $310,000 of this amount for improvements and refurbishing.

Counsel's initial response on behalf of the Committee and of Congressman and Mrs. Zeliff did not address the actual uses of the

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3. The complaint cites $1,287,000 as the amount of the loan to Christmas Farm Inn.

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$562,380.67 borrowed by the latter. More recently, counsel has stated that this sum, like $857,137.14 of the $1,187,000 borrowed by the corporation, was used to refinance previous loans, in this case the then outstanding original first mortgage on the Inn owed by the Zeliffs personally. (Attachment 3). Thus, the $562,380.67 assertedly did not result in any cash to the Zeliffs or to the corporation.

Regarding the statement in the complaint that no building permits were issued for capital improvements at the Inn from 1988 to 1990, the First NH Bank has stated,

> While the Bank is not responsible for the issuance or obtaining of building permits, it notes that many of the capital improvements which were funded with the loans had been previously built and the loans were granted as permanent financing. Further, much of the capital improvement work done at the Inn was in the form of renovations and refurnishing and reoutfitting of Inn rooms at substantial expense, none of which required a building permit. According to its monitoring of the loan and use of funds for capital improvements, all funds to be used for capital improvements were so used and the Bank was satisfied that such use took place. A total of $718,000 was invested in fixed assets and improvements."[4]

Based upon these discussions of the uses of the loans obtained from First NH Bank in May, 1989, it appears that none of the proceeds were expended for campaign purposes. Therefore, this Office recommends that the Commission find no reason to believe that First NH Bank violated 2 U.S.C. § 441b.

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4. Attached to the bank's response is a Christmas Farm Inn newsletter, The North Pole Ledger, dated November, 1988, which describes renovations to the Inn; however, these improvements would have pre-dated the 1989 loan and would be relevant only to the portion of that loan which refinanced earlier loans.

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c. Campaign-Related Bank Loans

The bank loans obtained by Mr. Zeliff from Dartmouth Bank and from Woodstown National Bank and Trust are not cited in the complaint as having been among the sources of the $361,500 in loans made by Mr. Zeliff to his campaign, nor are they questioned by the complainant. However, because counsel has identified these particular bank loans as sources of a portion of the loans to the Committee, an examination of their compliance with the Act and the Commission's regulations is relevant to the disposition of the present matter.

1. Dartmouth Bank

As indicated in the above discussion of loans obtained for his campaign, in 1989 and 1990 William Zeliff and, apparently, Mrs. Zeliff borrowed a total of from the Dartmouth Bank, of which $33,500 was relent by Mr. Zeliff to the Committee in June 1989 ($7,000) and March and May 1990 ($20,000 and $6,500 respectively). The in credits were drawn against a home equity line of credit backed by the Zeliff residence in which Mr. Zeliff held in equity. According to counsel, interest on the line of credit was set at 13.5% and payment is due in full in May 1999.[5]

The $33,500 in loans to the Committee were reported as loans

5. Throughout 1990 the Committee consistently reported the due dates of each loan as May 1990.

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from Mr. Zeliff obtained from the Dartmouth Bank.[6] Only $4,000 of this amount had been repaid as of December 31, 1990.

The written loan agreement(s) related to the Dartmouth Bank line of credit are not in hand; however, counsel asserts that it was evidenced by such a document. Further, this credit was subject to an apparently usual interest rate and to a specific due date, and was secured by the Zeliffs' residence, thus assuring repayment. It therefore appears that this line of credit was extended in the ordinary course of business.

Because Mr. Zeliff's equity interest in the Zeliff residence did not equal the equity line of credit, it appears that Mrs. Zeliff was in this instance a co-borrower from the Dartmouth Bank. Thus, the issue arises as to whether she should be considered to have contributed a portion of the $33,500 in loans made to the Committee from credits drawn against the line of credit.

In the absence of information to the contrary, it can be presumed that Mr. and Mrs. Zeliff each held a one-half interest in the credit line, or a piece. Therefore, Mr. Zeliff's interest was sufficient to cover the $33,500 in loans made to his committee, resulting in no contribution from Mrs. Zeliff. In

6. The $7,000 was obtained prior to Mr. Zeliff's becoming a candidate; however, pursuant to 11 C.F.R. § 104.3(d), loans obtained by an individual prior to candidacy for use in that person's campaign must be reported as loans from the lender if they are outstanding when the individual becomes a candidate.

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addition, Mr. Zeliff's equity of in the residence also provides a basis for considering the $33,500 as his contribution alone.

2. Woodstown National Bank and Trust

Although uncollateralized, the $108,000 in campaign loans from the Woodstown National Bank and Trust, which were included in the total of borrowed from that bank by William Zeliff, appear also to have been obtained by the candidate in the ordinary course of the bank's business. As stated above, Mr. Zeliff, together in certain instances with Mrs. Zeliff, had obtained numerous loans from this institution before 1990; more specifically, the bank made ten loans to one or both between 1975 and 1986, the largest of which was in the amount of None of these earlier loans was secured. Counsel argues that "[b]ecause the bank has successfully dealt with Congressman Zeliff on a noncollateralized basis for many years, the bank has reasonable assurance of repayment."

The 1990 loans assertedly carried an interest rate of 12%, were evidenced by a written agreement, and bore a due date of February 26, 1995. They, thus, apparently met the requirements of 11 C.F.R. § 100.7(b)(11).

d. Proceeds from Sales of Stock

The complaint alleges that respondents have violated 11 C.F.R. § 110.1(b)(1) and 11 C.F.R. § 110.10(b)(3) and failed to report proceeds from the sale of stocks on the candidate's financial disclosure statement filed with the Clerk of the U.S. House of Representatives in July and October 1990. Although the

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complaint is not precise as to the basis for these allegations, there is an implication that, because William Zeliff lent his campaign "approximately $192,000 after April 30, 1990," and because, according to an article which appeared in the Boston Globe on October 31, 1990, a campaign spokesman "admitted" that stock proceeds were used to finance the campaign, stocks in excess of the range reported ($3,000 to $15,000) were sold for campaign purposes. In addition, it is alleged that Mrs. Zeliff was joint owner of some stocks, apparently creating the possibility of an excessive contribution from her in violation of the statutory and regulatory limitations.

In response to the complaint, counsel has not specifically discussed the sale of stocks and the relationship or non-relationship of any such sale to the campaign. Rather, counsel has outlined what are asserted to be the actual sources of the loans made by the candidate to his campaign, sources which do not include the sale of stocks. The sources cited by counsel are sufficient to cover the $216,000 in loans from personal funds plus the $145,500 in bank loans obtained by Mr. Zeliff for campaign purposes. Thus, there is no evidence beyond the news story cited by the complainant that stocks held either separately by Mr. Zeliff or jointly with his wife were sold to finance the campaign.

Further, even if there exist omissions of information from the financial disclosure reports filed by Congressman Zeliff with the Clerk of the House of Representatives, such reporting errors would not come within the jurisdiction of the Commission.

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e. Salary Payments to William Zeliff

The complaint further alleges that, as of the submission by the candidate of his personal financial disclosure statement on July 15, 1990, Christmas Farm Inn had paid him a salary equal to or in excess of his entire salary for 1989, thus apparently resulting in an excessive salary "unrelated to business purposes" and in a violation of 11 C.F.R. § 114.2(b).

The schedule attached to Congressman Zeliff's July 15 financial disclosure statement, and apparently the one relied upon by the complainant, shows salary received from Christmas Farm in 1989 in the amount of $18,200 and that received in 1990 as $18,080. In the same Boston Globe article cited above, it is stated that Mr. Zeliff had put his salary at "18,000 per year for the past two years." Thus it appears that the $18,080 reported for 1990 constituted his entire year's salary. It also appears that no excessive salary was paid and that none, therefore, went into the campaign.

f. Use of Christmas Farm Inn Assets

The complaint also alleges that the Committee used motor vehicles belonging to the corporation for campaign purposes. In response, counsel states,

> the Committee used basic services, facilities and automobiles of Christmas Farm Inn, Inc. These services and facilities included postage, signs, telephones, and the use of a van and a truck. From August 1, 1989 to December 17, 1990, the Committee was billed by the corporation a total of $32,483.76 for these services. The Committee has reported all of these charges on its amended FEC reports. The Committee has paid in full all invoices.

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According to the Committee's reports, it began to accumulate debts owed Christmas Farm Inn during the second quarter of 1990. The amended July Quarterly Report showed debts totaling $4,579 for "Telephone, postage, signs, mileage." Between July 1 and August 22, 1990, reported debts to the corporation increased by $2,895 to a total of $7,474, with the new amount being for "Telephone, mileage, signs." An additional $4,251 in reported debt owed the Inn was added between August 23 and September, 1990, again for "Phone, postage signs [sic], mileage," bringing the total to $11,726. Between October 18 and November 26, 1990, $3,059 in further reported debt was accumulated, for a total of $14,785. The specific services provided were not itemized. Finally, between November 27 and December 31, 1990, $3,558 more in debts owed the Inn was reported for "Telephone, veh. exp., office supplies," bring the total to $18,343. The reason for the discrepancy between this total and the $32,483.76 cited by counsel in response to the complaint cannot be determined because the Committee has not yet filed a report in 1991.

The first payment of $5,000 on the debt owed the corporation was made on December 19, 1990, specifically for the "primary," or at least six months after the debt began to accumulate.[7] Again

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7. As of June 30, 1990, the Committee reported $6,007 in cash on hand and $102,079 in debts owed. By August 22 cash on hand was ($276) and debts totaled $109,812. As of September 30, the Committee's cash on hand had risen to $31,351 but none was used to meet the debt owed the corporation. Total debts as of September 30 were $309,225. By October 17 cash on hand had fallen to $110 while debts owed the corporation had risen to $11,726 and total debts had risen to $309,226. On November 26 reported cash on hand totaled $1,735, the amount owed the corporation totaled $14,785, and other debts equaled $347,500. And as of December 31,

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because the Committee has not filed a report during 1991, the dates of subsequent payments on this debt are not known. Counsel has simply stated that the Committee has reimbursed the Inn in full.

Given his ownership of the property, it is certain that the candidate was one of those involved in the use of the Inn's facilities. It cannot be ascertained from either the Committee's reports or counsel's response to the complaint whether others who used the corporation's facilities were stockholders or employees, or representatives of the Committee not associated with the Inn. In any case it also appears that the use of the Inn's facilities was more than "occasional, isolated or incidental," bringing it at the least within the requirements of 11 C.F.R. § 114.9(a)(2), as well as the requirements of 11 C.F.R. § 114.9(e)(2) with regard to the use of automobiles. The corporation thus should have been reimbursed within a commercially reasonable time for the normal and usual rental charge for such facilities. Such reimbursement did not, however, begin until more than a month after the general election campaign was over, and at least six months after the first portion of the debt was reported.

This Office recommends that the Commission include the full $18,343 reported as owed to the corporation in any determination

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(Footnote 7 continued from previous page)
the Committee reported $4,826.65 in cash on hand, debts owed the corporation totaling $13,343, and other debts totaling $366,016. This last figure included $220,991 in debts owed William Zeliff personally, $29,500 owed the Dartmouth Bank, and $100,000 owed the Woodstown National Bank and Trust.

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that the Friends of Bill Zeliff and John C. Naramore, as treasurer, and the Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b.

III. **RECOMMENDATIONS**

1. Find reason to believe that the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, violated 2 U.S.C. § 441b.

2. Find reason to believe that the Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b.

3. Find no reason to believe that First NH Bank violated 2 U.S. § 441b and close the file as to this respondent.

4. Find no reason to believe that Sydna T. Zeliff violated 2 U.S.C. § 441(a)(1)(A) and close the file as to this respondent.

5. Approve the attached factual and legal analyses.

6. Approve the appropriate letters.

8/2/91
Date

LMNoble (JH)
Lawrence M. Noble
General Counsel

Attachments

1. Zeliff response to complaint
2. First NH Bank response to complaint
3. Zeliff response re. loans
4. Factual and Legal Analyses (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH
COMMISSION SECRETARY

DATE: AUGUST 8, 1991

SUBJECT: MUR 3191 - FIRST GENERAL COUNSEL'S REPORT DATED AUGUST 2, 1991

The above-captioned document was circulated to the Commission on TUESDAY, AUGUST 6, 1991 at 11:00.

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

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	

This matter will be placed on the meeting agenda for TUESDAY, AUGUST 13, 1991.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3191
Friends of Bill Zeliff Committee;	)	
John C. Naramore, as treasurer;	)	
William H. Zeliff, Jr.;	)	
Sydna T. Zeliff;	)	
Christmas Farm Inn, Inc.;	)	
First NH Bank.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 13, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3191:

1. Find reason to believe that the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, violated 2 U.S.C. § 441b.

2. Find reason to believe that the Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b.

3. Find no reason to believe that First NH Bank violated 2 U.S.C. § 441b and and close the file as to this respondent.

4. Find no reason to believe that Sydna T. Zeliff violated 2 U.S.C. § 441a(a)(1)(A) and close the file as to this respondent.

(continued)

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5. Approve the factual and legal analyses as recommended in the General Counsel's report dated August 2, 1991.

6. Approve the appropriate letters as recommended in the General Counsel's report dated August 2, 1991.

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

Attest:

8-14-91
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 21, 1991

Bradford E. Cook, Esquire
Sheehan, Phinney, Bass & Green, P.A.
1000 Elm Street
P.O. Box 3701
Manchester, NH 03105

RE: MUR 3191
First NH - White
Mountain Bank

Dear Mr. Cook:

On December 5, 1990, the Federal Election Commission notified your client, First NH - White Mountain Bank, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On August 13, 1991, the Commission found, on the basis of the information in the complaint, and information provided on behalf of your client, that there is no reason to believe First NH Bank violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter as it pertains to your client.

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

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 21, 1991

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3191
Friends of Bill Zeliff Committee
John L. Naramore, as treasurer
Congressman William H. Zeliff, Jr.
Sydna T. Zeliff
Christmas Farm Inn, Inc.

Dear Mr. Baran:

On December 5, 1990, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied on behalf of your clients, the Commission, on August 13, 1991, found that there is reason to believe the Friends of Bill Zeliff Committee ("the Committee"), John L. Naramore, as treasurer, and Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b, a provision of the Act. The Factual and Legal Analyses, which formed bases for the Commission's findings, are attached for your information. The Commission also found no reason to believe that the Sydna T. Zeliff violated 2 U.S.C. § 441a(a)(1)(A) and closed the file as to her.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee, John C. Naramore, as treasurer, and Christmas Farm Inn, Inc.. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed questions and requests for documents must be submitted to the General Counsel's Office within 15 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the responses to the questions and document request.

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

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

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

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

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

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Factual & Legal Analyses (2)
Questions and Request for Documents

95043662170

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Friends of Bill Zeliff and John C. Naramore, as treasurer

MUR: 3191

I. GENERATION OF MATTER

This matter was initiated by the filing of a complaint by Joseph F. Keefe on behalf of the Keefe for Congress 1990 Committee ("the Keefe Committee"). In its complaint the Keefe Committee alleges:

1. that Sydna T. Zeliff made excessive contributions to the Friends of Bill Zeliff ("the Committee") by means of her one-half interest in the net proceeds from the sale of two condominiums which William H. Zeliff allegedly lent to his campaign;

2. that the Committee accepted corporate contributions in the form of proceeds from a $562,380.67 loan obtained from First NH - White Mountain Bank by William and Sydna Zeliff and from a $1,287,000 loan obtained from the same bank by Christmas Farm Inn, Inc.;

3. that the Committee has failed to report proceeds from sales of stock as "holdings" or assets in financial disclosure statements filed with the Clerk of the U.S. House of Representatives;

4. that Christmas Farm Inn, Inc., paid William Zeliff an excessive salary in 1990 unrelated to business purposes; and

5. that the Zeliff Committee used motor vehicles owned by Christmas Farm Inn, Inc., for campaign purposes.

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II. FACTUAL AND LEGAL ANALYSIS

1. Background

William H. Zeliff, Jr., filed his Statement of Candidacy on August 8, 1989. On the same date the Committee's Statement of Organization was received.

According to amended reports filed by the Committee, during the 1989-90 campaign cycle William Zeliff made $216,000 in loans to the Committee from personal funds and obtained $145,500 in bank loans which he then lent to the Committee, for a total of $361,500. These loans included the following:

Loans from Personal Funds

3/30/90 -	$10,000
4/18/90 -	5,000
5/3/90 -	3,000
8/7/90 -	30,000
8/14/90 -	20,000
8/20/90 -	25,000
8/28/90 -	40,000
9/4/90 -	57,000
9/11/90 -	20,000
12/3/90 -	6,000
	$216,000

Bank Loans Obtained by Candidate for Campaign

Dartmouth Bank -	6/89	- $7,000 ($4,000 repaid 2/20/90)
Dartmouth Bank -	3/26/90	- 20,000
Dartmouth Bank -	5/7/90	- 6,500
Woodstown Nat'l Bank and Trust -	5/17/90	- 4,500
Woodstown Nat'l Bank and Trust -	6/90	- 45,500
Woodstown Nat'l Bank and Trust -	7/10/90	- 8,000
Woodstown Nat'l -	10/90	- 50,000
		$145,500

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In response to the complaint, counsel for the Committee and for Congressman and Mrs. Zeliff states that the sources of the "$357,500"[1] which the candidate lent to his campaign were

1. Cash draws against his 51% equity in Christmas Farm Inn, Inc., in the form of checks totaling $209,000 drawn on the Inn's bank account;

2. "Personal funds . . . derived from salaries, rents and liquidated assets;"

3. A loan from the Woodstown National Bank and Trust Company of Woodstown, New Jersey, in the amount of of which $108,000 was lent to the campaign; and

4. A home equity line of credit for from the Dartmouth Bank of Manchester, New Hampshire, of which $33,500 was lent to the campaign.

Counsel states that Christmas Farm Inn, Inc., is a Subchapter S Corporation jointly owned by William H. Zeliff and Sydna T. Zeliff and that "income earned by a Subchapter S corporation is taxed to its individual owners instead of to the corporation."

According to an affidavit attached to counsel's response and signed by Kenneth Kaslow, the bookkeeper for Christmas Farm Inn, Inc., that corporation's assets were appraised at in September, 1989. As of December 31, 1990, the corporation had outstanding mortgages and debts of leaving joint equity available to the owners of or each. According to Mr. Kaslow, between May 1, 1989, and December 31, 1990, William Zeliff drew a total of $209,000 from

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1. The $4,000 difference between the $361,500 in total loans reported by the Committee and the $357,500 cited by counsel may be accounted for by the $4,000 repayment made to the Dartmouth Bank on February 20, 1990.

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Christmas Farm Inn, Inc., for campaign purposes. Mr. Kaslow states that both owners "have frequently drawn against their equity, as needed . . . . The Zeliffs also have made repayments of drawn amounts. Christmas Farm Inn, Inc., as a matter of ordinary course records all such draws and repayments on internal balance records."

With regard to the loans obtained by William Zeliff from Dartmouth Bank and from Woodstown National Bank and Trust, counsel asserts that all were made in the ordinary course of the banks' businesses. Counsel states that the total of $33,500 in loans from Dartmouth Bank came from credit drawn by Mr. Zeliff against a home equity line of credit of Counsel does not state whether Mrs. Zeliff was a co-signer of the agreement establishing this line of credit. According to counsel, the credit was granted following two appraisals of the Zeliff residence in January 1989 which averaged . As of May 1989 the outstanding mortgage on the residence was leaving joint equity of and personal equity for Mr. Zeliff of Thus, counsel asserts, Mr. Zeliff's personal equity exceeded the total of the $33,500 in loans to the Committee made from the line of credit. Counsel further notes that interest on the loan from Dartmouth Bank was 13.5%, that it was evidenced by a written loan agreement, and that it is due in full by May 1999. Respondents have not provided a copy of the written loan agreement.

The $108,000 in loans to the Committee from Mr. Zeliff using monies obtained from Woodstown National Bank & Trust Company came from two loans which he was granted in February and October 1990

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in the amounts of respectively, for a total of According to counsel, Woodstown National Bank and Trust is located in the home town of Sydna Zeliff where the Zeliffs lived for the first years of their marriage. Congressman Zeliff has assertedly been a customer of this bank since the mid-1970's. Attached to counsel's response are a listing of unsecured loans obtained by Mr. Zeliff from this bank between 1975 and 1986 and copies of the notes for all of these loans; these loans ranged in amount from to

Counsel states that the in loans obtained in 1990 "was uncollateralized at a variable interest rate of 12% (prime plus 2), which is similar to the terms of all the Congressman's other personal loans from the bank over their years of dealing with each other . . . ." It is also noted that the loan was evidenced by a formal written loan agreement, and that payment in full is due on February 26, 1995. Again, respondents have not provided a copy of the loan agreement(s)

2. <u>Statutory Provisions</u>

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b) limit to $1,000 the amount which an individual may contribute to a political committee per election. 2 U.S.C. § 441a(f) prohibits political committees from knowingly accepting contributions in excess of the limitations at 2 U.S.C. § 441a(a).

Candidates for the office of U.S. Representatives may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a

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candidate the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) legal and rightful title, or (ii) an equitable interest." 11 C.F.R. § 110.10(b)(1). Personal funds include proceeds from the sale of investments. 11 C.F.R. § 110.10(b)(2).

A candidate may use as personal funds his or her portion of assets jointly held with his or her spouse, the portion to be considered personal being the candidate's share according to the instrument of conveyance or ownership. "If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate." 11 C.F.R. § 110.10(b)(3). Any remaining portion used for campaign purposes is to be considered a contribution from the spouse.

2 U.S.C. § 441b and 11 C.F.R. § 114 prohibit the making and knowing acceptance of corporate contributions in connection with an election to federal office. In 1979 the Commission issued a "Notice to All Candidates and Committees" in which it addressed the issue of the use of corporate accounts by corporate personnel to make contributions. In this Notice the Commission distinguished among repayable drawing accounts, non-repayable drawing accounts, and expense accounts. "Contributions made from repayable drawing accounts that the employee is responsible to repay will be considered corporate contributions for the outstanding period of the draw, however, contributions made from non-repayable drawing accounts established to permit personal draws against salary, profits, or commissions will be considered

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personal contributions. Contributions written against standard expense accounts are prohibited as corporate contributions." CCH, Federal Election Campaign Financing Guide, § 9054.

Pursuant to 2 U.S.C. § 441b, a loan made by a national or state bank to a candidate or political committee will not be deemed a contribution if it is made in accordance with applicable banking laws and in the ordinary course of the bank's business. Pursuant to 11 C.F.R. § 100.7(b)(11), a loan will be considered to have been made in the ordinary course of business if it bears the usual and customary interest rate of the institution, is evidenced by a written instrument, is subject to a due date or amortization schedule, and is made on a basis which assures repayment.

Pursuant to 11 C.F.R. § 114.9, stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of corporate facilities "for individual volunteer activity in connection with a Federal election" and must reimburse the corporation only to the extent that the operating costs or overhead of the corporation are increased. 11 C.F.R. § 114.9(a)(1). If more than occasional, isolated, or incidental use is involved, reimbursement must be made within a commercially reasonable time for the normal and usual charge for such services. 11 C.F.R. § 114.9(a)(2). Persons other than stockholders or employees who use corporate facilities such as telephones or typewriters or furniture in connection with a federal election must reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. 11 C.F.R. § 114.9(d). If a candidate, candidate's agent, or other

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person traveling on behalf of a candidate uses means of transportation owed or leased by a corporation such as automobiles, that person must reimburse the corporation for such use within a commercially reasonable time at the normal and usual rental charge. 11 C.F.R. § 114.9(e)(2)

The Technical Amendments Act of 1958 added Subchapter S to the Internal Revenue Code. The purpose of Subchapter S is to permit small businesses to avoid double taxation, i.e., of the corporation and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses may also be passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C. § 1366(c) and (d). See Byrne v. C.I.R., 361 F.2d 939 (7th Cir, 1966). The corporation's profits remain the property of the corporation until a majority of the shareholders declare a dividend or distribution. U.S. v. Falcone, No. 89-5718 (11th Cir., July 11, 1991)(WESTLAW 110210), quoting 1 O'Neal & R. Thompson, Close Corporations (3rd ed 1986) § 2.06 at 34, ("'shareholder is taxed on his proportionate part of corporate income, even though income is not actually distributed to him,'

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because 'declaration of dividends is entirely within the discretion of the corporation's board of directors'").

3. Allegations

The allegations in the complaint are based upon the premise that, according to the personal financial disclosure statements filed by William H. Zeliff in July and October 1990, Mr. Zeliff had "very limited resources available to him for legal loans to his campaign as of April 30, 1990. Nevertheless, his FEC reports indicated that he has loaned to his campaign approximately $301,500."

a. Proceeds from Condominium Sales

In the present matter, the complaint asserts that $164,000 in net proceeds from the sale of two condominiums in Sea Isle City, New Jersey, was lent to the Zeliff campaign, resulting in excessive contributions from Synda T. Zeliff, the wife of the candidate. Attached to the complaint are apparent copies of the deeds to the two properties at issue dated August 25, 1989, and November 27, 1989, showing William M. Zeliff, Jr., and Sydna T. Zeliff as grantors. The complaint argues that Sydna Zeliff held a one-half interest in those condominiums and that, therefore, Mr. Zeliff could have made a loan to his campaign as personal funds of only one-half of the sale proceeds or $82,000. The remaining amount would have been a contribution from Sydna Zeliff.

The complaint cites an article which appeared in the Manchester Union Leader on September 22, 1990, and a press statement by William Zeliff on October 3, 1990, in support of this allegation. According to the article Mr. Zeliff had stated that

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the first condominium sold for $129,000 and the second for $135,000 for a total of $264,000. "'[W]e had mortgages of about $100,000, leaving about $164,000.' The article continued, "That figure, said Zeliff, is the bulk of the $184,000 he loaned his campaign."

It is unclear from the copy of the press statement attached to the complaint whether this document is a transcript of a press conference or a written statement prepared and distributed by the Zeliff Committee. Dated October 3, 1990, the statement reads in part,

> The second allegation [an opponent] made was that the sale from my duplex was a loss and thus, did not yield any funds to put into my campaign. The fact is that both halves of the duplex were sold for an approximate total of $264,000 and a mortgage of approximately $100,000 was paid off. That yielded a substantial gain and I used those funds in my campaign.

In response to the complaint, counsel for the Committee and the Zeliffs states, "During the course of the campaign, Congressman Zeliff loaned the Committee $216,000: $209,000 from his personal equity in the Inn and $7,000 from his other income." Counsel states that the $7,000 came from Mr. Zeliff's "salary and other income." A footnote asserts that his "income during 1989 and 1990 included a salary from the Inn, rents received from real estate he owns, and the proceeds of the sale of his share of two condominiums." The statement regarding $209,000 in draws on equity for campaign use is supported by the affidavit provided by Kenneth Kaslow which is cited above.

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Based upon the information provided by counsel, which differs from that presented in the Union Leader article quoted above, it appears that Mr. Zeliff's share of the proceeds of the condominium sales, $82,000, was one of several sources of personal funds by which he made $7,000 of his loans to the Committee. The other $209,000 apparently came from draws against his personal equity in Christmas Farm Inn, Inc., which, as stated above, totaled as of December 31, 1990; Mr. Zeliff's own equity was thus apparently sufficient to cover the $209,000 in loans. It appears that Mr. Zeliff alone was the source of the total of $216,000 which he was reported as having lent the Committee from personal funds.

Questions arise, however, with regard to the permissibility of Mr. Zeliff's draws on his equity in Christmas Farm Inn, Inc., as the source of loans to the Committee. It was unclear from counsel's original response whether these draws were taken as a distribution of owner's equity or with an obligation to repay. More recently, in response to questions posed by this Office, counsel has stated that these draws were recorded by the corporation as loans to Mr. Zeliff.

In MUR 2522 the Commission addressed the issue of whether funds transferred by a candidate from his corporation's account to his personal account could be considered personal funds rather than corporate funds. In that situation the source of the funds was the liquidation of certain instruments held as owner's equity, with the cash acquired having been returned to the corporation as an asset. The cash was then loaned to the candidate. The

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corporation's balance sheet for the relevant year showed an asset in the amount of the funds transferred by the candidate, apparently as a loan receivable. In addition, both the pre-enforcement correspondence and reports of the committee involved and the records of the candidate's personal account referred to this transaction as a loan to the candidate. Thus, the Commission determined that the amount transferred constituted a corporate contribution.

In the present matter, it appears from information supplied orally by counsel that Christmas Farm Inn, Inc., has treated Mr. Zeliff's $209,000 in draws on equity as loans. Because Mr. Zeliff apparently took the $209,000 from his corporation as a loan based upon his equity, not as a drawdown of that equity, this transaction had the effect of a loan from a repayable drawing account and thus must be considered to have been made with corporate funds.[2]

Counsel asserts that because this company has elected to be taxed as a Subchapter S Corporation, the loans should be treated as Mr. Zeliff's personal funds; i.e., as loans from himself to himself. However, in the opinion of this Office, although

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2. According to counsel, draws taken by the Zeliffs against their equity in the corporation have taken "the form of checks written on the Inn's bank accounts . . . ." The treasurer of the Committee, John C. Naramore, has stated in an affidavit that "[a]ll loans made to the campaign were drawn on Mr. Zeliff's personal checking accounts." Thus, it appears that Mr. Zeliff obtained the loans from the corporation by means of corporate checks which were deposited into his own account and that he then wrote personal checks to the Committee. This procedure did not serve to nullify the corporate source of the funds involved in his loans to the Committee.

Christmas Farm Inn, Inc., is treated as a Subchapter S corporation for tax purposes, it remains a corporation for purposes of the Federal Election Campaign Act ("the Act"). As stated above, a Subchapter S corporation retains as its own any income taxed to individual shareholder until such time as a distribution or dividend is declared.

By choosing to incorporate their business, the Zeliffs converted personal assets into corporate ones. Their ability to benefit from a statute designed to provide protection against double taxation does not change the corporate nature of the enterprise itself or re-convert the corporation's assets or income into personal ones. Such a reconversion could have been accomplished by means of a nonrepayable drawdown of equity; however, that does not appear to have been the procedure chosen. Rather, the assets involved were apparently left as corporate assets which were loaned to Mr. Zeliff. And it was those corporate assets which he admits were the source of his loan to his committee.

Accordingly, there is reason to believe that the Friends of Bill Zeliff and John C. Naramore, as treasurer, and Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b.

b. Loans from First NH Bank

The complaint also alleges that the respondents accepted corporate contributions "in the form of loan proceeds from White Mountain Bank earmarked for business purposes and capital improvements to real estate." More specifically, the complaint alleges that loans obtained by Christmas Tree Inn, Inc., and by

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William and Synda Zeliff, from First NH - White Mountain Bank, now First NH Bank, ostensibly for capital improvements, were used for the campaign. The complaint offers as proof the assertion that no building permits were issued "for any capital improvements to real estate owned by the Zeliffs or Christmas Farm Inn, Inc., during 1988, 1989 or 1990."

According to information provided by respondents including First NH Bank, Christmas Farm Inn obtained from First NH - White Mountain Bank on May 17, 1989, a loan in the amount of $1,187,000.[3] On the same day William and Sydna Zeliff received a loan in the amount of $562,380.67 from the same institution. According to the bank, these loans were "made to consolidate existing borrowings and enable the Zeliffs and their corporation, Christmas Farm Inn, Inc., to make improvements, renovate the Inn premises, and have an available business line of credit for working capital purposes . . . ." The loans were intended to be cross-collateralized, i.e., both the corporation's loan and the loan to the Zeliffs were to be secured by "all of the real estate comprising the Christmas Farm Inn, whether owned personally or corporately," as well as by two other businesses owned by the Zeliffs. Because of a drafting error, the original mortgage agreements did not include all cross collateral descriptions, and thus it became necessary in 1990 to prepare and file new documentation.

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3. The complaint cites $1,287,000 as the amount of the loan to Christmas Farm Inn.

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According to counsel, $857,137.14 of the loan to the corporation was used to refinance pre-existing debt involving five loans which the Inn had obtained over several years. The remaining $329,862.86 of the loan to the corporation was made available as a line of credit to be drawn down as the Inn made capital improvements. Between May 1, 1989, and December 30, 1990, the corporation borrowed $310,000 of this amount for improvements and refurbishing.

Counsel's initial response on behalf of the Committee and of Congressman and Mrs. Zeliff did not address the actual uses of the $562,380.67 borrowed by the latter. More recently, counsel has stated that this sum, like $857,137.14 of the $1,187,000 borrowed by the corporation, was used to refinance previous loans, in this case the then outstanding original first mortgage on the Inn owed by the Zeliffs personally. Thus, the $562,380.67 assertedly did not result in any cash to the Zeliffs or to the corporation.

Regarding the statement in the complaint that no building permits were issued for capital improvements at the Inn from 1988 to 1990, the First NH Bank has stated,

> While the Bank is not responsible for the issuance or obtaining of building permits, it notes that many of the capital improvements which were funded with the loans had been previously built and the loans were granted as permanent financing. Further, much of the capital improvement work done at the Inn was in the form of renovations and refurnishing and reoutfitting of Inn rooms at substantial expense, none of which required a building permit. According to its monitoring of the loan and use of funds for capital improvements, all funds to be used for capital improvements were so used and the Bank was

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satisfied that such use took place. A total of $718,000 was invested in fixed assets and improvements."[4]

Based upon these discussions of the uses of the loans obtained from First NH Bank in May, 1989, it appears that none of the proceeds were expended for campaign purposes.

c. Campaign-Related Bank Loans

The bank loans obtained by Mr. Zeliff from Dartmouth Bank and from Woodstown National Bank and Trust are not cited in the complaint as having been among the sources of the $361,500 in loans made by Mr. Zeliff to his campaign, nor are they questioned by the complainant. However, because counsel has identified these particular bank loans as sources of a portion of the loans to the Committee, an examination of their compliance with the Act and the Commission's regulations is relevant to the disposition of the present matter.

1. Dartmouth Bank

As indicated in the above discussion of loans obtained for his campaign, in 1989 and 1990 William Zeliff and, apparently, Mrs. Zeliff borrowed a total of from the Dartmouth Bank, of which $33,500 was relent by Mr. Zeliff to the Committee in June 1989 ($7,000) and March and May 1990 ($20,000 and $6,500 respectively). The in credits were drawn against a home equity line of credit backed by the Zeliff residence in which Mr.

4. Attached to the bank's response is a Christmas Farm Inn newsletter, The North Pole Ledger, dated November, 1988, which describes renovations to the Inn; however, these improvements would have pre-dated the 1989 loan and would be relevant only to the portion of that loan which refinanced earlier loans.

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Zeliff held in equity. According to counsel, interest on the line of credit was set at 13.5% and payment is due in full in May 1999.[5]

The $33,500 in loans to the Committee were reported as loans from Mr. Zeliff obtained from the Dartmouth Bank.[6] Only $4,000 of this amount had been repaid as of December 31, 1990.

The written loan agreement(s) related to the Dartmouth Bank line of credit are not in hand; however, counsel asserts that it was evidenced by such a document. Further, this credit was subject to an apparently usual interest rate and to a specific due date, and was secured by the Zeliffs' residence, thus assuring repayment. It therefore appears that this line of credit was extended in the ordinary course of business.

Because Mr. Zeliff's equity interest in the Zeliff residence did not equal the $75,000 equity line of credit, it appears that Mrs. Zeliff was in this instance a co-borrower from the Dartmouth Bank. Thus, the issue arises as to whether she should be considered to have contributed a portion of the $33,500 in loans made to the Committee from credits drawn against the line of credit.

In the absence of information to the contrary, it can be presumed that Mr. and Mrs. Zeliff each held a one-half interest in

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5. Throughout 1990 the Committee consistently reported the due dates of each loan as May 1990.

6. The $7,000 was obtained prior to Mr. Zeliff's becoming a candidate; however, pursuant to 11 C.F.R. § 104.3(d), loans obtained by an individual prior to candidacy for use in that person's campaign must be reported as loans from the lender if they are outstanding when the individual becomes a candidate.

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the credit line, or a piece. Therefore, Mr. Zeliff's interest was sufficient to cover the $33,500 in loans made to his committee, resulting in no contribution from Mrs. Zeliff. In addition, Mr. Zeliff's equity of in the residence also provides a basis for considering the $33,500 as his contribution alone.

2. Woodstown National Bank and Trust

Although uncollateralized, the $108,000 in campaign loans from the Woodstown National Bank and Trust, which were included in the total of borrowed from that bank by William Zeliff, appear also to have been obtained by the candidate in the ordinary course of the bank's business. As stated above, Mr. Zeliff, together in certain instances with Mrs. Zeliff, had obtained numerous loans from this institution before 1990; more specifically, the bank made loans to one or both between 1975 and 1986, the largest of which was in the amount of None of these earlier loans was secured. Counsel argues that "[b]ecause the bank has successfully dealt with Congressman Zeliff on a noncollateralized basis for many years, the bank has reasonable assurance of repayment."

The 1990 loans assertedly carried an interest rate of 12%, were evidenced by a written agreement, and bore a due date of February 26, 1995. They, thus, apparently met the requirements of 11 C.F.R. § 100.7(b)(11).

d. Proceeds from Sales of Stock

The complaint alleges that respondents have violated 11 C.F.R. § 110.1(b)(1) and 11 C.F.R. § 110.10(b)(3) and failed to

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report proceeds from the sale of stocks on the candidate's financial disclosure statement filed with the Clerk of the U.S. House of Representatives in July and October 1990. Although the complaint is not precise as to the basis for these allegations, there is an implication that, because William Zeliff lent his campaign "approximately $192,000 after April 30, 1990," and because, according to an article which appeared in the Boston Globe on October 31, 1990, a campaign spokesman "admitted" that stock proceeds were used to finance the campaign, stocks in excess of the range reported ($3,000 to $15,000) were sold for campaign purposes. In addition, it is alleged that Mrs. Zeliff was joint owner of some stocks, apparently creating the possibility of an excessive contribution from her in violation of the statutory and regulatory limitations.

In response to the complaint, counsel has not specifically discussed the sale of stocks and the relationship or non-relationship of any such sale to the campaign. Rather, counsel has outlined what are asserted to be the actual sources of the loans made by the candidate to his campaign, sources which do not include the sale of stocks. The sources cited by counsel are sufficient to cover the $216,000 in loans from personal funds plus the $145,500 in bank loans obtained by Mr. Zeliff for campaign purposes. Thus, there is no evidence beyond the news story cited by the complainant that stocks held either separately by Mr. Zeliff or jointly with his wife were sold to finance the campaign.

Further, even if there exist omissions of information from the financial disclosure reports filed by Congressman Zeliff with

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the Clerk of the House of Representatives, such reporting errors would not come within the jurisdiction of the Commission.

e. Salary Payments to William Zeliff

The complaint further alleges that, as of the submission by the candidate of his personal financial disclosure statement on July 15, 1990, Christmas Farm Inn had paid him a salary equal to or in excess of his entire salary for 1989, thus apparently resulting in an excessive salary "unrelated to business purposes" and in a violation of 11 C.F.R. § 114.2(b).

The schedule attached to Congressman Zeliff's July 15 financial disclosure statement, and apparently the one relied upon by the complainant, shows salary received from Christmas Farm in 1989 in the amount of $18,200 and that received in 1990 as $18,080. In the same Boston Globe article cited above, it is stated that Mr. Zeliff had put his salary at "18,000 per year for the past two years." Thus it appears that the $18,080 reported for 1990 constituted his entire year's salary. It also appears that no excessive salary was paid and that none, therefore, went into the campaign.

f. Use of Christmas Farm Inn Assets

The complaint also alleges that the Committee used motor vehicles belonging to the corporation for campaign purposes. In response, counsel states,

> the Committee used basic services, facilities and automobiles of Christmas Farm Inn, Inc. These services and facilities included postage, signs, telephones, and the use of a van and a truck. From August 1, 1989 to December 17, 1990, the Committee was billed by the corporation a total of $32,483.76 for these services. The Committee has reported all of these charges on

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its amended FEC reports. The Committee has paid in full all invoices.

According to the Committee's reports, it began to accumulate debts owed Christmas Farm Inn during the second quarter of 1990. The amended July Quarterly Report showed debts totaling $4,579 for "Telephone, postage, signs, mileage." Between July 1 and August 22, 1990, reported debts to the corporation increased by $2,895 to a total of $7,474, with the new amount being for "Telephone, mileage, signs." An additional $4,251 in reported debt owed the Inn was added between August 23 and September, 1990, again for "Phone, postage signs [sic], mileage," bringing the total to $11,726. Between October 18 and November 26, 1990, $3,059 in further reported debt was accumulated, for a total of $14,785. The specific services provided were not itemized. Finally, between November 27 and December 31, 1990, $3,558 more in debts owed the Inn was reported for "Telephone, veh. exp., office supplies," bring the total to $18,343. The reason for the discrepancy between this total and the $32,483.76 cited by counsel in response to the complaint cannot be determined because the Committee has not yet filed a report in 1991.

The first payment of $5,000 on the debt owed the corporation was made on December 19, 1990, specifically for the "primary," or at least six months after the debt began to accumulate.[7] Again

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7. As of June 30, 1990, the Committee reported $6,007 in cash on hand and $102,079 in debts owed. By August 22 cash on hand was ($276) and debts totaled $109,812. As of September 30, the Committee's cash on hand had risen to $31,351 but none was used to meet the debt owed the corporation. Total debts as of September 30 were $309,225. By October 17 cash on hand had fallen to $110 while debts owed the corporation had risen to $11,726 and

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because the Committee has not filed a report during 1991, the dates of subsequent payments on this debt are not known. Counsel has simply stated that the Committee has reimbursed the Inn in full.

Given his ownership of the property, it is certain that the candidate was one of those involved in the use of the Inn's facilities. It cannot be ascertained from either the Committee's reports or counsel's response to the complaint whether others who used the corporation's facilities were stockholders or employees, or representatives of the Committee not associated with the Inn. In any case it also appears that the use of the Inn's facilities was more than "occasional, isolated or incidental," bringing it at the least within the requirements of 11 C.F.R. § 114.9(a)(2), as well as the requirements of 11 C.F.R. § 114.9(e)(2) with regard to the use of automobiles. The corporation thus should have been reimbursed within a commercially reasonable time for the normal and usual rental charge for such facilities. Such reimbursement did not, however, begin until more than a month after the general election campaign was over, and at least six months after the first portion of the debt was reported.

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(Footnote 7 continued from previous page)
total debts had risen to $309,226. On November 26 reported cash on hand totaled $1,735, the amount owed the corporation totaled $14,785, and other debts equaled $347,500. And as of December 31, the Committee reported $4,826.65 in cash on hand, debts owed the corporation totaling $13,343, and other debts totaling $366,016. This last figure included $220,991 in debts owed William Zeliff personally, $29,500 owed the Dartmouth Bank, and $100,000 owed the Woodstown National Bank and Trust.

Therefore, the Commission has included the full $18,343 reported as owed to the corporation in its determination that the Friends of Bill Zeliff and John C. Naramore, as treasurer, violated 2 U.S.C. § 441b.

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FEDERAL ELECTION COMMISSION

ACTUAL AND LEGAL ANALYSIS

RESPONDENT: Christmas Farm Inn, Inc. MUR: 3191

I. GENERATION OF MATTER

This matter was initiated by the filing of a complaint by Joseph F. Keefe on behalf of the Keefe for Congress 1990 Committee ("the Keefe Committee"). In its complaint the Keefe Committee alleges that the Friends of Bill Zeliff Committee ("the Committee") accepted corporate contributions in the form of proceeds from a $562,380.67 loan obtained from First NH - White Mountain Bank by William and Sydna Zeliff and from a $1,287,000 loan obtained from the same bank by Christmas Farm Inn, Inc. ("the corporation"); that Christmas Farm Inn, Inc., paid William Zeliff an excessive salary in 1990 unrelated to business purposes; and that the Committee used motor vehicles owned by Christmas Farm Inn, Inc., for campaign purposes.

II. FACTUAL AND LEGAL ANALYSIS

1. Background

William H. Zeliff, Jr., filed his Statement of Candidacy on August 8, 1989. On the same date the Committee's Statement of Organization was received.

According to amended reports filed by the Committee, during the 1989-90 campaign cycle William Zeliff made $216,000 in loans to the Committee from personal funds. These loans included the following:

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Loans from Personal Funds

3/30/90 -	$10,000
4/18/90 -	5,000
5/3/90 -	3,000
8/7/90 -	30,000
8/14/90 -	20,000
8/20/90 -	25,000
8/28/90 -	40,000
9/4/90 -	57,000
9/11/90 -	20,000
12/3/90 -	6,000
	$216,000

In responses to the complaint, counsel for the Committee and for Congressman and Mrs. Zeliff states that the sources of the funds which the candidate lent to his campaign were, inter alia,

1. Cash draws against his 51% equity in Christmas Farm Inn, Inc., in the form of checks totaling $209,000 drawn on the Inn's bank account; and

2. "Personal funds . . . derived from salaries, rents and liquidated assets;"

Counsel states that Christmas Farm Inn, Inc., is a Subchapter S Corporation jointly owned by William H. Zeliff and Sydna T. Zeliff and that "income earned by a Subchapter S corporation is taxed to its individual owners instead of to the corporation."

According to an affidavit attached to counsel's response and signed by Kenneth Kaslow, the bookkeeper for Christmas Farm Inn, Inc., that corporation's assets were appraised at in September, 1989. As of December 31, 1990, the corporation had outstanding mortgages and debts of , leaving joint equity available to the owners of or each. According to Mr. Kaslow, between May 1, 1989, and

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December 31, 1990, William Zeliff drew a total of $209,000 from Christmas Farm Inn, Inc., for campaign purposes. Mr. Kaslow states that both owners "have frequently drawn against their equity, as needed . . . . The Zeliffs also have made repayments of drawn amounts. Christmas Farm Inn, Inc., as a matter of ordinary course records all such draws and repayments on internal balance records."

2. Statutory Provisions

Candidates for the office of U.S. Representatives may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a candidate the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) legal and rightful title, or (ii) an equitable interest." 11 C.F.R. § 110.10(b)(1).

2 U.S.C. § 441b and 11 C.F.R. § 114 prohibit the making and knowing acceptance of corporate contributions in connection with an election to federal office. In 1979 the Commission issued a "Notice to All Candidates and Committees" in which it addressed the issue of the use of corporate accounts by corporate personnel to make contributions. In this Notice the Commission distinguished among repayable drawing accounts, non-repayable drawing accounts, and expense accounts. "Contributions made from repayable drawing accounts that the employee is responsible to repay will be considered corporate contributions for the outstanding period of the draw, however, contributions made from

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non-repayable drawing accounts established to permit personal draws against salary, profits, or commissions will be considered personal contributions. Contributions written against standard expense accounts are prohibited as corporate contributions." CCH, Federal Election Campaign Financing Guide, § 9054.

Pursuant to 11 C.F.R. § 114.9, stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of corporate facilities "for individual volunteer activity in connection with a Federal election" and must reimburse the corporation only to the extent that the operating costs or overhead of the corporation are increased. 11 C.F.R. § 114.9(a)(1). If more than occasional, isolated, or incidental use is involved, reimbursement must be made within a commercially reasonable time for the normal and usual charge for such services. 11 C.F.R. § 114.9(a)(2). Persons other than stockholders or employees who use corporate facilities such as telephones or typewriters or furniture in connection with a federal election must reimburse the corporation within a commercially reasonable time for the normal and usual rental charge for such facilities. 11 C.F.R. § 114.9(d). If a candidate, candidate's agent, or other person traveling on behalf of a candidate uses means of transportation owed or leased by a corporation such as automobiles, that person must reimburse the corporation for such use within a commercially reasonable time at the normal and usual rental charge. 11 C.F.R. § 114.9(e)(2)

The Technical Amendments Act of 1958 added Subchapter S to the Internal Revenue Code. The purpose of Subchapter S is to

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permit small businesses to avoid double taxation, i.e., of the corporation and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses may also be passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C. § 1366(c) and (d). See Byrne v. C.I.R., 361 F.2d 939 (7th Cir, 1966). The corporation's profits remain the property of the corporation until a majority of the shareholders declare a dividend or distribution. U.S. v. Falcone, No. 89-5718 (11th Cir., July 11, 1991)(WESTLAW 110210), quoting 1 O'Neal & R. Thompson, Close Corporations (3rd ed. 1986), § 2.06, at 34, ("'shareholder is taxed on his proportionate part of corporate income, even though income is not actually distributed to him,' because 'declaration of dividends is entirely within the discretion of the corporation's board of directors'").

3. Allegations

The allegations in the complaint are based upon the premise that, according to the personal financial disclosure statements filed by William H. Zeliff in July and October 1990, Mr. Zeliff had "very limited resources available to him for legal loans to

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his campaign as of April 30, 1990. Nevertheless, his FEC reports indicated that he has loaned to his campaign approximately $301,500."

a. Sources of Personal Loans

In response to the complaint, counsel for the Committee and the Zeliffs states, "During the course of the campaign, Congressman Zeliff loaned the Committee $216,000: $209,000 from his personal equity in the Inn and $7,000 from his other income." Counsel states that the $7,000 came from Mr. Zeliff's "salary and other income." A footnote asserts that his "income during 1989 and 1990 included a salary from the Inn, rents received from real estate he owns, and the proceeds of the sale of his share of two condominiums." The statement regarding $209,000 in draws on equity for campaign use is supported by the affidavit provided by Kenneth Kaslow which is cited above.

Based upon this information provided by counsel, $209,000 in personal loans came from draws against Mr. Zeliff's personal equity in Christmas Farm Inn, Inc., which, as stated above, totaled as of December 31, 1990. Mr. Zeliff's equity was thus apparently sufficient to cover the $209,000 in loans.

Questions arise, however, with regard to the permissibility of Mr. Zeliff's draws on his equity in Christmas Farm Inn, Inc., as the source of loans to the Committee. It was unclear from counsel's original response whether these draws were taken as a distribution of owner's equity or with an obligation to repay. More recently, in response to questions posed by this Office,

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counsel has stated that these draws were recorded by the corporation as loans to Mr. Zeliff.

In MUR 2522 the Commission addressed the issue of whether funds transferred by a candidate from his corporation's account to his personal account could be considered personal funds rather than corporate funds. In that situation the source of the funds was the liquidation of certain instruments held as owner's equity, with the cash acquired having been returned to the corporation as an asset. The cash was then loaned to the candidate. The corporation's balance sheet for the relevant year showed an asset in the amount of the funds transferred by the candidate, apparently as a loan receivable. In addition, both the pre-enforcement correspondence and reports of the committee involved and the records of the candidate's personal account referred to this transaction as a loan to the candidate. Thus, the Commission determined that the amount transferred constituted a corporate contribution.

In the present matter, it appears from information supplied orally by counsel that Christmas Farm Inn, Inc., has treated Mr. Zeliff's $209,000 in draws on equity as loans. Because Mr. Zeliff apparently took the $209,000 from his corporation as a loan based upon his equity, not as a drawdown of that equity, this transaction had the effect of a loan from a repayable drawing

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account and thus must be considered to have been made with corporate funds.[1]

Counsel asserts that because this company has elected to be taxed as a Subchapter S Corporation, the loans should be treated as Mr. Zeliff's personal funds; i.e., as loans from himself to himself. However, although Christmas Farm Inn, Inc., is treated as a Subchapter S corporation for tax purposes, it remains a corporation for purposes of the Federal Election Campaign Act ("the Act"). As stated above, a Subchapter S corporation retains as its own any income taxed to individual shareholders until such time as a distribution or dividend is declared.

By choosing to incorporate their business, the Zeliffs converted personal assets into corporate ones. Their ability to benefit from a statute designed to provide protection against double taxation does not change the corporate nature of the enterprise itself or re-convert the corporation's assets into personal ones. Such reconversion could have been accomplished by means of a nonrepayable drawdown of equity; however, that does not appear to have been the procedure chosen. Rather, the assets involved were apparently left as corporate assets which were

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1. According to counsel, draws taken by the Zeliffs against their equity in the corporation have taken "the form of checks written on the Inn's bank accounts . . . ." The treasurer of the Committee, John C. Naramore, has stated in an affidavit that "[a]ll loans made to the campaign were drawn on Mr. Zeliff's personal checking accounts." Thus, it appears that Mr. Zeliff obtained the loans from the corporation by means of corporate checks which were deposited into his own account and that he then wrote personal checks to the Committee. This procedure did not serve to nullify the corporate source of the funds involved in his loans to the Committee.

loaned to Mr. Zeliff. And it was those corporate assets which he admits were the source of his loan to his committee.

Accordingly, there is reason to believe that Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b.

b. Loans from First NH

The complaint also alleges that the Committee accepted corporate contributions "in the form of loan proceeds from White Mountain Bank earmarked for business purposes and capital improvements to real estate." More specifically, the complaint alleges that loans obtained by Christmas Tree Inn, Inc., and by William and Synda Zeliff, from First NH - White Mountain Bank, now First NH Bank, ostensibly for capital improvements, were used for the campaign. The complaint offers as proof the assertion that no building permits were issued "for any capital improvements to real estate owned by the Zeliffs or Christmas Farm Inn, Inc., during 1988, 1989 or 1990."

According to information provided by respondents including First NH Bank, Christmas Farm Inn obtained from First NH - White Mountain Bank on May 17, 1989, a loan in the amount of $1,187,000.[2] On the same day William and Sydna Zeliff received a loan in the amount of $562,380.67 from the same institution. According to the bank, these loans were "made to consolidate existing borrowings and enable the Zeliffs and their corporation, Christmas Farm Inn, Inc., to make improvements, renovate the Inn premises, and have an available business line of credit for

2. The complaint cites $1,287,000 as the amount of the loan to Christmas Farm Inn.

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working capital purposes . . . ." The loans were intended to be cross-collateralized, i.e., both the corporation's loan and the loan to the Zeliffs were to be secured by "all of the real estate comprising the Christmas Farm Inn, whether owned personally or corporately," as well as by two other businesses owned by the Zeliffs. Because of a drafting error, the original mortgage agreements did not include all cross collateral descriptions, and thus it became necessary in 1990 to prepare and file new documentation.

According to counsel, $857,137.14 of the loan to the corporation was used to refinance pre-existing debt involving five loans which the Inn had obtained over several years. The remaining $329,862.86 of the loan to the corporation was made available as a line of credit to be drawn down as the Inn made capital improvements. Between May 1, 1989, and December 30, 1990, the corporation borrowed $310,000 of this amount for improvements and refurbishing.

Regarding the statement in the complaint that no building permits were issued for capital improvements at the Inn from 1988 to 1990, the First NH Bank has stated,

> While the Bank is not responsible for the issuance or obtaining of building permits, it notes that many of the capital improvements which were funded with the loans had been previously built and the loans were granted as permanent financing. Further, much of the capital improvement work done at the Inn was in the form of renovations and refurnishing and reoutfitting of Inn rooms at substantial expense, none of which required a building permit. According to its monitoring of the loan and use of funds for capital improvements, all funds to be used for capital improvements were

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> so used and the Bank was satisfied that such use took place. A total of $718,000 was invested in fixed assets and improvements."[3]

Based upon these discussions of the uses of the loans obtained from First NH Bank in May, 1989, it appears that none of the proceeds were expended for campaign purposes.

c. Salary Payments to William Zeliff

The complaint further alleges that, as of the submission by the candidate of his personal financial disclosure statement on July 15, 1990, Christmas Farm Inn had paid him a salary equal to or in excess of his entire salary for 1989, thus apparently resulting in an excessive salary "unrelated to business purposes" and in a violation of 11 C.F.R. § 114.2(b).

The schedule attached to Congressman Zeliff's July 15 financial disclosure statement, and apparently the one relied upon by the complainant, shows salary received from Christmas Farm in 1989 in the amount of $18,200 and that received in 1990 as $18,080. In the same Boston Globe article cited above, it is stated that Mr. Zeliff had put his salary at "18,000 per year for the past two years." Thus it appears that the $18,080 reported for 1990 constituted his entire year's salary. It also appears that no excessive salary was paid and that none, therefore, went into the campaign.

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3. Attached to the bank's response is a Christmas Farm Inn newsletter, The North Pole Ledger, dated November, 1988, which describes renovations to the Inn; however, these improvements would have pre-dated the 1989 loan and would be relevant only to the portion of that loan which refinanced earlier loans.

d. **Use of Christmas Farm Inn Assets**

The complaint also alleges that the Committee used motor vehicles belonging to the corporation for campaign purposes. In response, counsel states,

> the Committee used basic services, facilities and automobiles of Christmas Farm Inn, Inc. These services and facilities included postage, signs, telephones, and the use of a van and a truck. From August 1, 1989 to December 17, 1990, the Committee was billed by the corporation a total of $32,483.76 for these services. The Committee has reported all of these charges on its amended FEC reports. The Committee has paid in full all invoices.

According to the Committee's reports, it began to accumulate debts owed Christmas Farm Inn during the second quarter of 1990. The amended July Quarterly Report showed debts totaling $4,579 for "Telephone, postage, signs, mileage." Between July 1 and August 22, 1990, reported debts to the corporation increased by $2,895 to a total of $7,474, with the new amount being for "Telephone, mileage, signs." An additional $4,251 in reported debt owed the Inn was added between August 23 and September, 1990, again for "Phone, postage signs [sic], mileage," bringing the total to $11,726. Between October 18 and November 26, 1990, $3,059 in further reported debt was accumulated, for a total of $14,785. The specific services provided were not itemized. Finally, between November 27 and December 31, 1990, $3,558 more in debts owed the Inn was reported for "Telephone, veh. exp., office supplies," bring the total to $18,343. The reason for the discrepancy between this total and the $32,483.76 cited by counsel

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in response to the complaint cannot be determined because the Committee has not yet filed a report in 1991.

The first payment of $5,000 on the debt owed the corporation was made on December 19, 1990, specifically for the "primary," or at least six months after the debt began to accumulate.[4] Again because the Committee has not filed a report during 1991, the dates of subsequent payments on this debt are not known. Counsel has simply stated that the Committee has reimbursed the Inn in full.

Given his ownership of the property, it is certain that the candidate was one of those involved in the use of the Inn's facilities. It cannot be ascertained from either the Committee's reports or counsel's response to the complaint whether others who used the corporation's facilities were stockholders or employees, or representatives of the Committee not associated with the Inn. In any case it also appears that the use of the Inn's facilities was more than "occasional, isolated or incidental," bringing it at the least within the requirements of 11 C.F.R. § 114.9(a)(2), as

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4. As of June 30, 1990, the Committee reported $6,007 in cash on hand and $102,079 in debts owed. By August 22 cash on hand was ($276) and debts totaled $109,812. As of September 30, the Committee's cash on hand had risen to $31,351 but none was used to meet the debt owed the corporation. Total debts as of September 30 were $309,225. By October 17 cash on hand had fallen to $110 while debts owed the corporation had risen to $11,726 and total debts had risen to $309,226. On November 26 reported cash on hand totaled $1,735, the amount owed the corporation totaled $14,785, and other debts equaled $347,500. And as of December 31, the Committee reported $4,826.65 in cash on hand, debts owed the corporation totaling $13,343, and other debts totaling $366,016. This last figure included $220,991 in debts owed William Zeliff personally, $29,500 owed the Dartmouth Bank, and $100,000 owed the Woodstown National Bank and Trust.

well as the requirements of 11 C.F.R. § 114.9(e)(2) with regard to the use of automobiles. The corporation thus should have been reimbursed within a commercially reasonable time for the normal and usual rental charge for such facilities. Such reimbursement did not, however, begin until more than a month after the general election campaign was over, and at least six months after the first portion of the debt was reported.

The Commission has included the full $18,343 reported as owed to the corporation in its determination that the Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 3191
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Friends of Bill Zeliff Committee
and John C. Naramore, as treasurer
Congressman William H. Zeliff, Jr.
Christmas Farm Inn, Inc.

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

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QUESTIONS

1. Please account for the apparent discrepancy between the figure of $32,483.76 cited in your response to the complaint as the amount billed the Friends of Bill Zeliff Committee

("the Committee") by Christmas Farm Inn, Inc., during the 1989-90 campaign and the maximum total of $18,343 reported by the Committee as owed that corporation.

2. Please identify all individuals who used the facilities of Christmas Farm Inn, Inc., on behalf of the Zeliff campaign in 1989-90, stating whether each was an employee or volunteer with the Committee or an employee of the corporation, and describe the nature of the activities undertaken by each.

REQUEST FOR DOCUMENTS

Please provide all documents relevant to the $209,000 in draws taken by William H. Zeliff, Jr., on equity in Christmas Farm Inn, Inc., and then loaned to the Committee, including any written agreement(s) entered into by the corporation and Mr. Zeliff and ledgers on which such draws were entered.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3191
	)	MUR 3226
Friends of Bill Zeliff Committee	)	
and John C. Naramore, as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND AND ANALYSIS

On February 27, 1991, the Commission found reason to believe that the Friends of Bill Zeliff Committee and John C. Naramore, as treasurer, ("Respondents") violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to two loans later reported as having come from the candidate prior to the September 11, 1990, New Hampshire primary. Notification of the Commission's determination and a proposed conciliation agreement were sent to counsel. This matter was designated MUR 3226.

Earlier, on November 30, 1990, the Commission had received a complaint filed against the Respondents which was designated MUR 3191. In response to the Commission's finding of reason to believe in MUR 3226, counsel asked that further proceedings be deferred in MUR 3226 until the Commission acted in MUR 3191, and also asked that the two matters be merged. Counsel asserted that the issues in these two matters were closely related, involving as they did "personal loans from the candidate during the 1990 election." (See General Counsel's Report dated April 11, 1991.)

On August 13, 1991, the Commission addressed MUR 3191 and found reason to believe that the Respondents and Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b as a result of the candidate's

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having used corporate funds to make loans to the Friends of Bill Zeliff Committee. Two of these loans are the same as those at issue in MUR 3226.

Given this overlapping of transactions, the Office of General Counsel recommends that the Commission merge MUR 3226 with MUR 3191 with the new matter to be designated MUR 3191..

II. RECOMMENDATIONS

1. Merge MUR 3226 into MUR 3191.

2. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

8-20-91
Date

BY: Lois G. Lerner
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bill Zeliff Committee	)	MUR 3191 and
and John C. Naramore, as treasurer.	)	MUR 3226

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 23, 1991, the Commission decided by a vote of 5-0 to take the following actions with respect to MUR 3191 and MUR 3226:

1. Merge MUR 3226 into MUR 3191.

2. Approve the appropriate letter, as recommended in the General Counsel's Report dated August 20, 1991.

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

Attest:

8-23-91

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., August 20, 1991 1:05 p.m.
Circulated to the Commission: Wed., August 21, 1991 4:00 p.m.
Deadline for vote: Fri., August 23, 1991 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 4, 1991

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3191 and MUR 3226

Dear Mr. Baran:

On February 27, 1991, the Commission found reason to believe that the Friends of Bill Zeliff Committee ("the Committee") and John C. Naramore, as treasurer, violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to two loans received prior to the September 11, 1990, New Hampshire primary election which were later reported as having come from the candidate, William Zeliff. This matter was designated MUR 3226. More recently, on August 13, 1991, the Commission found reason to believe in MUR 3191 that the Committee, John C. Naramore, as treasurer, and Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b as a result of the candidate's having used corporate funds to make loans to the Committee. Two of these loans were the same as those at issue in MUR 3226.

Given this overlapping of transactions, the Commission on August 23, 1991, voted to merge MUR 3226 into MUR 3191. The combined matter will be designated MUR 3191.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
William H. Zeliff, Jr.	)	MUR 3191
Friends of Bill Zeliff Committee	)	
John C. Naramore, as treasurer	)	
Christmas Farm Inn, Inc.	)	**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On August 13, 1991, the Commission found reason to believe that the Friends of Bill Zeliff Committee ("the Committee"), John C. Naramore, as treasurer, and Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b as a result of the candidate's (William H. Zeliff, Jr.) having used corporate funds to make loans to the Committee. At that time this Office had made no recommendations, and the Commission made no determinations, with regard to the involvement of the candidate in the transactions at issue.

II. **ANALYSIS (The First General Counsel's Report in this matter is incorporated by reference into this report.)**

2 U.S.C. § 441b(a) prohibits any candidate, political committee, or other person from knowingly accepting or receiving any contribution from a corporation, national bank or labor organization in connection with a federal election. This provision also prohibits any officer or director of a corporation from consenting to the making of a corporate contribution. 2 U.S.C. § 441b(b)(2) defines "contribution" to include any loan made to a candidate, campaign committee or political party or organization.

As was discussed in the First General Counsel's Report in this matter, Mr. Zeliff made $216,000 in loans to the Committee, of which $209,000 came from draws against his personal equity in Christmas

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Farm Inn, Inc. These loans were apparently recorded by the corporation as loans to Mr. Zeliff, not as drawdowns of his equity interests. Because Mr. Zeliff took the $209,000 from his corporation as loans, such transactions had the effect of loans from a repayable drawing account and thus must be considered to have been made with corporate funds.

As was also discussed in the First General Counsel's Report, counsel has asserted that because Christmas Farm Inn, Inc., has elected to be taxed as a Subchapter S Corporation, the loans should be treated as Mr. Zeliff's personal funds. However, even if Christmas Farm Inn, Inc., is treated as a Subchapter S Corporation for tax purposes, it remains a corporation for purposes of the Federal Election Campaign Act. A Subchapter S Corporation retains as its own any income taxed to individual shareholders until such time as a distribution or dividend is declared.

According to counsel, draws taken by Mr. and Mrs. Zeliff against their equity in the corporation have taken "the form of checks written on the Inn's bank accounts . . . ." The treasurer of the Committee, John C. Naramore, has stated in an affidavit that "[a]ll loans made to the campaign were drawn on Mr. Zeliff's personal checking accounts." Thus, it appears that Mr. Zeliff obtained the loans from the corporation by means of corporate checks which were deposited into his own account and that he then wrote personal checks to the Committee.

2 U.S.C. § 432(e)(2) states generally that a candidate is an agent of his or her committee for purposes of receiving any loan. However, as is stated above, 2 U.S.C. § 441b prohibits candidates

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and officers or directors of corporations respectively from receiving or approving contributions made by corporations in connection with federal elections.

In the present matter Mr. Zeliff was personally and directly involved in the transactions at issue in that his own corporation was the source of the funds used by him to make loans to his committee and those funds apparently passed through his own bank account. As a principal of the corporation Mr. Zeliff at the least shared responsibility for the corporation's making of the loans to be used by the Committee, and as the candidate and initial lendee of the monies at issue he received and passed on corporate monies. Therefore, this Office recommends that the Commission find reason to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b.

RECOMMENDATIONS

1. Find reason to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b.
2. Approve the attached Factual and Legal Analysis.
3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

9/10/91
Date

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

Attachment
Factual and Legal Analysis

Staff Assigned: Anne A. Weissenborn

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. FAISON
COMMISSION SECRETARY

DATE: SEPTEMBER 13, 1991

SUBJECT: MUR 3191 - GENERAL COUNSEL'S REPORT DATED SEPTEMBER 10, 1991.

The above-captioned document was circulated to the Commission on WEDNESDAY, SEPTEMBER 11, 1991 at 4:00 p.m.

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

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for THURSDAY, SEPTEMBER 26, 1991.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3191
William H. Zeliff, Jr.;	)	
Friends of Bill Zeliff Committee;	)	
John C. Naramore, as treasurer;	)	
Christmas Farm Inn, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 26, 1991, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 3191:

1. Find reason to believe that William H. Zeliff, Jr. violated 2 U.S.C. § 441b.

2. Approve the Factual and Legal Analysis attached to the General Counsel's report dated September 10, 1991.

3. Approve the appropriate letter as recommended in the General Counsel's report dated September 10, 1991.

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

Attest:

9-27-91
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 7, 1991

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3191
Friends of Bill Zeliff Committee
John L. Naramore, as treasurer
Congressman William H. Zeliff, Jr.
Christmas Farm Inn, Inc.

Dear Mr. Baran:

On December 5, 1990, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon review of the allegations contained in the complaint, and information supplied on behalf of your clients, the Commission, on August 13, 1991, made certain determinations about which you were notified on August 21, 1991. More recently, on September 26, 1991, the Commission found reason to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Mr. Zeliff. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. It is understood that this response will be in conjunction with your response on behalf of all respondents to Commission determinations in this matter.

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

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

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

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

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

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosure
Factual & Legal Analysis

95043662220

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: William H. Zeliff, Jr. MUR 3191

I. GENERATION OF MATTER

This matter was initiated by the filing of a complaint by Joseph F. Keefe on behalf of the Keefe for Congress 1990 Committee.

II. FACTUAL AND LEGAL ANALYSIS

Candidates for the office of U.S. Representative may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a candidate the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) legal and rightful title, or (ii) an equitable interest."

2 U.S.C. § 441b(a) prohibits any candidate, political committee, or other person from knowingly accepting or receiving any contribution from a corporation, national bank or labor organization in connection with a federal election. This provision also prohibits any officer or director of a corporation from consenting to the making of a corporate contribution. 2 U.S.C. § 441b(b)(2) defines "contribution" to include any loan made to a candidate, campaign committee or political party or organization.

In 1979 the Commission issued a "Notice to All Candidates and Committees" in which it addressed the issue of the use of corporate accounts by corporate personnel to make contributions.

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In this Notice the Commission distinguished among repayable drawing accounts, non-repayable drawing accounts, and expense accounts. "Contributions made from repayable drawing accounts that the employee is responsible to repay will be considered corporate contributions for the outstanding period of the draw, however, contributions made from non-repayable drawing accounts established to permit personal draws against salary, profits, or commissions will be considered personal contributions. Contributions written against standard expense accounts are prohibited as corporate contributions." CCH, Federal Election Campaign Financing Guide, § 9054.

The Technical Amendments Act of 1958 added Subchapter S to the Internal Revenue Code. The purpose of Subchapter S is to permit small businesses to avoid double taxation, i.e., of the corporation and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses may also be passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C § 1366(c) and (d). See Byrne v. C.I.R., 361 F.2d 939 (7th Cir., 1966). The corporation's profits remain the property of the corporation until a majority of the shareholders declare a

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dividend or distribution. U.S. v. Falcone, No. 89-5718 (11th Cir., July 11, 1992)(WESTLAW 110210), quoting 1 O'Neal & R. Thompson, Close Corporations (3rd ed 1986) § 2.06 at 34, ("'shareholder is taxed on his proportionate part of corporate income, even though income is not actually distributed to him,' because 'declaration of dividends is entirely within the discretion of the corporation's board of directors'").

William H. Zeliff, Jr., made $216,000 in loans to the Friends of Bill Zeliff Committee ("the Committee"), of which $209,000 came from draws against his personal equity in Christmas Farm Inn, Inc. These draws were apparently recorded by the corporation as loans to Mr. Zeliff, not as drawdowns of his equity interest. Because Mr. Zeliff took the $209,000 from his corporation as loans, such transactions had the effect of loans from a repayable drawing account and thus must be considered to have been made with corporate funds.

Counsel has asserted that because Christmas Farm Inn, Inc., has elected to be taxed as a Subchapter S Corporation, the loans to the Committee should be treated as having come from Mr. Zeliff's personal funds. However, even if Christmas Farm Inn, Inc., is treated as a Subchapter S Corporation for tax purposes, it remains a corporation for purposes of the Federal Election Campaign Act. A Subchapter S Corporation retains as its own any income taxed to individual shareholders until such time as a distribution or dividend is declared.

According to counsel, draws taken by Mr. and Mrs. Zeliff against their equity in the corporation have taken "the form of

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checks written on the Inn's bank accounts . . . ." The treasurer of the Committee, John C. Naramore, has stated in an affidavit that "[a]ll loans made to the campaign were drawn on Mr. Zeliff's personal checking accounts." Thus, it appears that Mr. Zeliff obtained the loans from the corporation by means of corporate checks which were deposited into his own account and that he then wrote personal checks to the Committee.

2 U.S.C. § 432(e)(2) states generally that a candidate is an agent of his or her committee for purposes of receiving any loan. However, as is stated above, 2 U.S.C. § 441b prohibits candidates and officers or directors of corporations respectively from receiving or approving contributions made by corporations in connection with federal elections.

In the present matter Mr. Zeliff was personally and directly involved in the transactions at issue in that his own corporation was the source of the funds used by him to make loans to his committee and those funds apparently passed through his own bank account. As a principal of the corporation Mr. Zeliff at the least shared responsibility for the corporation's making of the loans to be used by the Committee, and as the candidate and initial lendee of the monies at issue he received and passed on to his committee corporate monies. Therefore, there is reason to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b.

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OBC 3130
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
91 OCT 15 AM 10: 06

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

October 9, 1991

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 OCT 16 AM 11: 10

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

ATTN: Anne Weissenborn, Esq.

Re: MUR 3191, Friends of Bill Zeliff Committee, John Narramore, as treasurer; Congressman William H. Zeliff, Jr.; Christmas Farm Inn, Inc.

Dear Mr. Noble:

This office is in receipt of your letter of Octber 7, 1991, regarding the above-captioned Matter. Due to Mr. Baran's absence from the country, we respectfully request an extension of 20 days to and including November 13, 1991, in which to respond.

Thank you for your attention to this request.

Sincerely,

Jan Witold Baran /kpt

Jan Witold Baran
By: Mrs. Robin Barbee
Secretary to Mr. Baran

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1991

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: Friends of Bill Zeliff Committee
John Narramore, as treasurer
William H. Zeliff, Jr.
Christmas Farm Inn, Inc.

Dear Mr. Baran:

This is in response to your letter dated October 9, 1991, which we received on October 16, 1991, requesting an extension of 20 days to and including November 13 in which to respond to the Commission's notifications of reason to believe determinations in the above-cited matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on November 13, 1991.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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OGC 3394

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

November 13, 1991

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

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

Attn: Anne A. Weissenborn, Esq.

Re: MUR 3191

Dear Mr. Noble:

Enclosed please find answers and documents of the Friends of Bill Zeliff Committee, John C. Naramore, as Treasurer, and Christmas Farm Inn, Inc. in response to Interrogatories and a Request for Documents served by the Federal Election Commission ("Commission" or "FEC") in the above-referenced Matter.

I am in receipt of the Commission's letters of August 21, 1991 and October 7, 1991 and the attached Federal Election Commission Factual And Legal Analyses ("Analyses") regarding this Matter.[1] The Commission found reason to believe that the Friends of Bill Zeliff Committee ("Committee"), John C. Naramore, as Treasurer, Christmas Farm Inn, Inc. ("the Inn"), and

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[1] The Commission's letter of August 21, 1991 stated findings as to the Friends of Bill Zeliff Committee, John C. Naramore, as Treasurer, and Christmas Farm Inn, Inc. The Commission's letter of October 7, 1991 stated findings as to Congressman William H. Zeliff, Jr. Each letter was accompanied by a Federal Election Commission Factual And Legal Analysis as a basis for the stated findings.

Congressman William H. Zeliff, Jr. violated 2 U.S.C. § 441b because a) the Inn is a corporation and b) loans repayable to corporations are per se corporate contributions.[2]

However, the Analyses do not appear to have considered the nature of Congressman Zeliff's equitable interest in the Inn. Absent from the Analyses is any attention to the fact that, in this instance, the funds and other assets used by Congressman Zeliff were his personal funds as defined by the Commission's own regulations. Accordingly, I am submitting this letter and supplemental information for the Office of General Counsel's review. In light of this information, I request that the Office of General Counsel recommend that the Commission find no probable cause to believe that respondents violated the Federal Election Campaign Act of 1971, as amended ("the Act").

CONGRESSMAN ZELIFF'S LOANS FROM THE INN ARE PERSONAL FUNDS

Congressman Zeliff's use of funds derived from the Inn, of which he was one-half owner and President, was consistent with the plain language of the personal funds definition in 11 C.F.R. § 110.10(b)(1). The Commission has defined personal funds as follows:

> Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) legal and rightful title, or (ii) an equitable interest.

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[2] See August 21, 1991 Federal Election Commission Factual And Legal Analysis ("Factual And Legal Analysis" or "Analysis") at p. 6 & 11-13.

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The Factual And Legal Analyses correctly note that although an individual pays taxes on a Subchapter S corporation's income, "[t]he corporation's profits remain the property of the corporation until a majority of the shareholders declare a dividend or distribution."[3] This conclusion pertains solely to legal title. While legal title may vest in the corporation, the Analyses ignore Congressman Zeliff's equitable interest in one-half of the Inn's assets. Section 110.10(b)(1) of the Commission's regulations specifies that personal funds are any assets to which the candidate has legal title or an equitable interest.

The Analyses similarly omit any discussion of Congressman Zeliff's undisputed control over and access to the assets of the Inn. Congressman Zeliff and his wife were the only two owners and operators of the Inn.[4] Congressman Zeliff, as President of the Inn, had "legal right of access to" and had discretionary "control over" the assets of the Inn.[5] At his discretion, Congressman Zeliff had the power to withdraw monies from the

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[3] August 21, 1991 Factual And Legal Analysis at pp. 8 & 13; October 7, 1991 Factual and Legal Analysis at pp. 2-3.

[4] See Attachment A, Corporate Filings with State of New Hampshire indicating William H. Zeliff, Jr. and Sydna T. Zeliff as the only two officers and directors of the Inn.

[5] See Attachment B, Affidavit of Kenneth Kaslow at ¶ 3, hereinafter cited "Kaslow Aff. at ¶ __".

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Inn's bank accounts, sell assets, forgive loans and declare dividends.[6] Because he could exercise these powers exclusively, there was no attendant risk of undue influence upon him by a third party, not even by his wife, Sydna Zeliff. Yet the Analyses do not recognize Congressman Zeliff's exclusive access to and control over assets of the Inn in which he owned an equitable interest. See 11 C.F.R. § 110.10(b)(1)(ii).

Moreover, the General Counsel's treatment of the Inn under 2 U.S.C. § 441b simply ignores the financial reality of Congressman Zeliff's ownership and authority over the Inn's assets. In reality and in theory, Congressman Zeliff had an absolute right of access to and control over the assets of the Inn. In reality and in theory, Congressman Zeliff had an equitable interest in fifty percent of all assets of the Inn. And in reality and theory, Congressman Zeliff drew upon far less than his fifty percent equitable interest for campaign purposes. Therefore, Congressman Zeliff's use of assets from the Inn fits squarely into the parameters of 11 C.F.R. § 110.10(b)(1).

The Analyses focus instead on Congressman Zeliff's choice to repay some drawn amounts from his equity and analogizes such repayments to the situations addressed in a 1979 "Notice to All Candidates and Committees" and MUR 2522. However, both of the

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[6] Kaslow Aff. at ¶ 3.

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cited authorities involved loan repayments to third-party corporations -- not the candidate's own equity in his own incorporated business. By contrast to the situation treated in MUR 2522, Congressman Zeliff's loans from the Inn were not, and are not, owed to any third-party corporation or outside group of individuals. Instead, Congressman Zeliff effectively owes himself this money and, given his authority at the Inn, he could forgive the loan and declare it a dividend should he choose to do so. In short, unlike the situations contemplated in MUR 2522 and the 1979 Notice, Congressman Zeliff is beholden to no one but himself.

This conclusion is consistent with the Inn's treatment of accounts receivable as assets of the Inn. The August 21, 1991 Analysis correctly notes that the Inn's "balance sheet for the relevant year showed an asset in the amount of the funds transferred by the candidate, apparently as a loan receivable."[7] If 11 C.F.R. § 110.10(b)(1) means what it expressly states -- that personal funds are "any assets" controlled and equitably owned by the candidate -- then the loan receivables were similarly assets of Congressman Zeliff. He indeed had discretionary right of control over and equity interest in fifty percent of the Inn's assets, including its loan receivables

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[7] August 21, 1991 Factual And Legal Analysis at p. 12.

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(i.e., Congressman Zeliff had an equitable interest in his own "receivables").

Far from any intention to subvert the integrity of the political process, Congressman Zeliff's choice to repay drawn amounts merely reflects his effort not to diminish his own estate which consists primarily of the Inn. The Inn's property was originally the Zeliffs' personal property and was transferred to the Inn upon its incorporation in 1977.[8] Congressman and Mrs. Zeliff have spent the last sixteen years of their lives developing, operating and nurturing the Inn. Over their many years of ownership, the Zeliffs have treated the Inn's assets as their own personal assets. Congressman Zeliff did so again in 1989 and 1990 when he ran for Congress.

SUPPLIES AND EQUIPMENT OF THE INN ARE PERSONAL FUNDS AND, IN ANY EVENT, WERE REIMBURSED WITHIN A COMMERCIALLY REASONABLE TIME

The Commission has also found reason to believe that the Friends of Bill Zeliff and John C. Naramore, as Treasurer, violated 2 U.S.C. § 441b by reimbursing the Inn for services and supplies provided from May of 1990 to December of 1990 approximately three to six months after the services were

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[8] See Kaslow Aff. at ¶ 2.

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invoiced.[9] As half-owner and operator of the Inn, Congressman Zeliff equitably owned half of all of the Inn's supplies, equipment and vehicles used for campaign purposes and had discretionary authority over their use. The August 21, 1991 Analysis recognizes this fact stating that "[g]iven his ownership of the property, it is certain that the candidate was one of those involved in the use of the Inn's facilities."[10] As equitably owned assets over which Congressman Zeliff exercised

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[9] From May of 1990 to December of 1990, the Inn sent the Committee invoices for services, supplies and equipment as follows:

Date	Amount	Payments	Balance
5/31/90	$1,957.93		$1,957.93
6/30/90	2,621.26		4,579.19
7/31/90	2,895.57		7,474.76
8/31/90	1,563.68		9,038.44
9/28/90	2,687.54		11,725.98
10/31/90	3,058.71		14,784.69
11/10/90	1,601.21		16,385.90
12/19/90		<$5,000.00>	11,385.90
12/17/90	1,957.14		13,343.04
1/28/91		<9,784.69>	3,558.35
3/6/91		<3,558.35>	- 0 -

The December 19, 1990 payment of $5,000 satisfied the May, June and part of the July invoices; thus, the Inn paid those invoices within six, five and four months respectively. The January 28, 1991 payment of $9,784.69 satisfied invoices for the remaining part of July, August, September and October; thus, the Inn paid those invoices within six, five, four and three months respectively. The March 6, 1991 payment of $3,558.35 satisfied the November and December invoices; thus the Inn paid those invoices within four and three months respectively.

[10] August 21, 1991 Factual And Legal Analysis at p. 22 (emphasis added).

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control, the use of these supplies, vehicles and equipment falls within the provisions of 11 C.F.R. § 110.10(b)(1). The Committee, therefore, was not even required to reimburse the Inn for the use of Congressman Zeliff's assets.

Nevertheless, Congressman Zeliff chose to have the Committee reimburse the Inn for his own sound business reasons, leading the Commission to find reason to believe that such reimbursements were not made within a commercially reasonable time. As outlined above, the Inn paid all invoices at issue within approximately three to six months. The August 21, 1991 Factual And Legal Analysis provides no definition of what period of time constitutes a "commercially reasonable time," and the Commission's treatment of three to six months as unreasonable thus appears arbitrarily determined.

According to the Inn's bookkeeper, Kenneth Kaslow, "[t]he Inn has in the past received credit extensions of three months from its vendors."[11] Thus, the timing of the Committee's payment is consistent with the Inn's ordinary course business practices with other businesses. Indeed, the Commission has even countenanced extensions of credit of twelve months for a campaign committee's payment for services where that period of time was

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[11] See Kaslow Aff. at ¶ 5.

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consistent with the vendor's regular business dealings.[12] In short, relative to the Inn's everyday business practices and Commission precedent, the Committee paid its invoices within a reasonable time by making all payments within a period of three to six months.

CONCLUSION

In conclusion, in 1977 the Zeliffs transferred the assets of their proprietorship to the Inn as a newly incorporated entity, and since that date they have been the sole owners, the sole operators, and the sole directors. Over the years they frequently drew money on an as-needed basis from the Inn's bank account for a variety of personal uses.[13] Congressman Zeliff continued this practice in his campaign for Congress in 1989 and 1990. Congressman Zeliff's use of assets which he owned and over which he had discretionary control meets the express requirements of personal funds as defined in 11 C.F.R. § 110.10(b)(1).

The Commission's recognition here of Congressman Zeliff's unique circumstances does not portend a slippery slope in the

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[12] See MUR 3070, First General Counsel's Report at p. 5 (Commission finding no reason to believe where committee did not pay invoice over twelve months after services were rendered and invoiced).

[13] See March 15, 1991 Affidavit of Kenneth Kaslow at ¶ 10, Attachment 2 to Respondents' March 19, 1991 Response.

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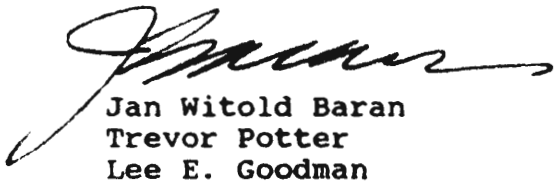
enforcement of 2 U.S.C. § 441b, for this is not to say that all Subchapter S corporations are exempt from 2 U.S.C. § 441b. In the limited circumstances presented here, Congressman Zeliff's use of his own assets should be treated as personal funds permitted under 11 C.F.R. § 110.10(b)(1) and not subject to 2 U.S.C. § 441b's prohibition. As a practical matter and because he had sole, discretionary access to and control over fifty-percent equity in all assets of the Inn as required by 11 C.F.R. § 110.10(b)(1), Congressman Zeliff complied with both the letter and intent of the Act and Commission regulations.

Congress Zeliff's use of supplies and equipment at the Inn also complied with 11 C.F.R. § 110.10(b)(1) and should not be considered a violation of 2 U.S.C. § 441b. In any event, the Committee reimbursed the Inn for all services used within three to six months of being invoiced and this timing is consistent with other business practices of the Inn and commercially reasonable under the circumstances. Accordingly, the Office of General Counsel should recommend that the Commission find no probable cause to believe that respondents violated the Act.

Sincerely,



Jan Witold Baran
Trevor Potter
Lee E. Goodman

Counsel for the Friends of Bill Zeliff Committee, The Hon. Bill Zeliff and Christmas Farm Inn, Inc.

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ATTACHMENT A

Corporate Filings With State of New Hampshire By Christmas Farm Inn, Inc.

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NEW HAMPSHIRE ANNUAL REPORT
SECRETARY OF STATE, CONCORD, N H

CHRISTMAS FARM INN INC.
WILLIAM H ZELIFF JR
JACKSON, NH 03846

INDICATE CHANGES IN ABOVE MAILING ADDRESS

S0018517PS

A $15 LATE FILING FEE IS DUE ON ALL REPORTS NOT RECEIVED ON OR BEFORE DUE DATE (RSA 293-A:141)

INFORMATION ON THIS REPORT SHALL BE AS OF JANUARY 1, 1989 FOR REPORT DUE APRIL 1, 1989

$60.00	REPORT FEE
$60.00	FRANCHISE FEE
$120.00	TOTAL DUE

#24128
3/6/89
CH

006853 Not to be Filled in:
Date
Check No.
Amount

FORM NO. 47 (9/88)

PLEASE TYPE OR PRINT

NAME OF CORPORATION
CHRISTMAS FARM INN INC.

AMENDMENT MUST BE FILED TO CHANGE NAME

FEDERAL ID #

CORRECTED ID # | | | — | | | | | | | |

COMPLETE INFORMATION AS OF JANUARY 1, 1989

PRINCIPAL OFFICE:
RT 16-B, BOX CC
JACKSON, NH 03846

CORRECTION IN ABOVE ADDRESS:
NO. STREET
TOWN/CITY STATE ZIP

INCORPORATED UNDER THE LAWS OF:
NH
STATE

CHARACTER OF BUSINESS IN NH:
Inn/restaurant/gas station-convenience

OFFICERS

PRESIDENT William H. Zeliff, Jr
ADDRESS: NO Box CC STREET Rt 16 B
TOWN/CITY Jackson STATE NH ZIP 03846

TREASURER Sydna T. Zeliff
ADDRESS: NO Box CC STREET Rt 16B
TOWN/CITY STATE ZIP

REGISTERED AGENT/SECRETARY

WILLIAM H ZELIFF JR
JACKSON, NH 03846

** TO CHANGE REGISTERED AGENT OR REGISTERED OFFICE, REQUEST FORM FROM SECRETARY OF STATE.

** AT LEAST ONE DIRECTOR REQUIRED

DIRECTOR William H. Zeliff, Jr.
ADDRESS NO. Box CC STREET Rt 16B
TOWN/CITY Jackson STATE NH ZIP 03846

DIRECTOR Sydna T. Zeliff
ADDRESS NO Box CC STREET Rt 16B
TOWN/CITY Jackson STATE NH ZIP 03846

DIRECTOR
ADDRESS NO STREET
TOWN/CITY STATE ZIP

IF THERE ARE ANY ADDITIONAL OFFICERS OR DIRECTORS, PLEASE ATTACH ADDITIONAL SHEET

I, THE UNDERSIGNED, BEING AN OFFICER OF THE ABOVE CORPORATION, DO HEREBY CERTIFY THAT THE STATEMENTS ON THIS REPORT ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF

TYPE OR PRINT NAME: William H. Zeliff, Jr.

TITLE: President

TO BE SIGNED BY THE PRESIDENT VICE PRESIDENT.

NEW HAMPSHIRE ANNUAL REPORT
SECRETARY OF STATE, CONCORD, N.H.

9

NAME OF CORPORATION
CHRISTMAS FARM INN INC.

AMENDMENT MUST BE FILED TO CHANGE NAME

FEDERAL ID #

CORRECTED ID #

COMPLETE INFORMATION AS OF JANUARY 1, 1990
PRINCIPAL OFFICE:

RT 16-B. BOX CC
JACKSON. NH 03846

CORRECTION IN ABOVE ADDRESS:

INCORPORATED UNDER THE LAWS OF:
STATE NH

CHARACTER OF BUSINESS IN NH:
Inn - Restaurant - Gas station/convenience store

OFFICE HELD

PRESIDENT
William H. Zeliff, Jr.
ADDRESS: NO. STREET
Box CC Rt 16B
TOWN/CITY STATE ZIP
Jackson NH 03846

TREASURER
Sydna T. Zeliff
ADDRESS: NO. STREET
Box CC Rt 16B
TOWN/CITY STATE ZIP
Jackson NH 03846

REGISTERED AGENT

WILLIAM H ZELIFF JR
JACKSON. NH 03846

TO CHANGE REGISTERED AGENT OR REGISTE
OFFICE, REQUEST FORM 9 FROM SECRETARY OF S

AT LEAST ONE DIRECTOR REQUIRED. NAME(S)
DIRECTOR(S) MUST BE ENTERED EVEN IF SAME
OFFICER(S).

DIRECTOR
William H. Zeliff, Sr.
ADDRESS NO. STREET
Box CC Rt 16B
TOWN/CITY STATE ZIP
Jackson NH 03846

DIRECTOR
Sydna T. Zeliff
ADDRESS NO. STREET
Box CC Rt 16B
TOWN/CITY STATE ZIP
Jackson NH 03846

DIRECTOR
ADDRESS NO. STREET
TOWN/CITY STATE ZIP

IF THERE ARE ANY ADDITIONAL OFFICERS OR
DIRECTORS, PLEASE ATTACH ADDITIONAL SHEET

I, THE UNDERSIGNED, BEING AN OFFICER OF THE ABOVE CORPORATION, DO HEREBY CERTIFY THAT THE STATEMENTS ON THIS REPORT ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

PRESIDENT TITLE

TYPE OR PRINT NAME: William H. Zeliff, Jr

TITLE: PRESIDENT

TO BE SIGNED BY THE PRESIDENT, VICE PRESIDENT, SECRETARY, ASSISTANT SECRETARY OR TREASURER

A LATE FILING FEE IS DUE ON ALL REPORTS NOT RECEIVED ON OR BEFORE DUE DATE. (SEE INSTRUCTIONS.)

INFORMATION ON THIS REPORT SHALL BE AS OF JANUARY 1, 1990 FOR REPORT DUE APRIL 1, 1990

006853

Not to be Filled in:
Date
Check No.
Amount

CHRISTMAS FARM INN INC.
WILLIAM H ZELIFF JR
JACKSON. NH 03846

INDICATE CHANGES IN ABOVE MAILING ADDRESS

$75.00 REPORT FEE
$60.00 FRANCHISE FEE
$135.00 TOTAL DUE

#26189
1/30/90
d+1

006853

No. 47 NH

ATTACHMENT B

Affidavit of Kenneth Kaslow
Dated November 8, 1991

9504362240

BEFORE THE FEDERAL ELECTION COMMISSION

COUNTY OF CARROLL)
) MUR 3191
STATE OF NEW HAMPSHIRE)

AFFIDAVIT OF KENNETH KASLOW

KENNETH KASLOW, first being duly sworn, deposes and says:

1. I am employed as the bookkeeper of Christmas Farm Inn, Inc. ("the Inn"), and have performed this service for the Inn since June 1, 1985. In my capacity as the bookkeeper, I am responsible for maintaining the financial records of the business, issuing invoices from the Inn for services and equipment it supplies, and for handling accounts receivable. I am familiar with the financial affairs of the Inn and its two owners, William H. Zeliff, Jr., and Sydna T. Zeliff. I previously swore to and signed an Affidavit in connection with Matter Under Review 3191 on March 15, 1991.

2. The Inn was incorporated as a Subchapter S corporation in 1977. At that time, William and Sydna Zeliff transferred their personal property used in connection with their former unincorporated business (known as Christmas Farm Inn) to the Inn. That personal property consisted of the Inn itself, all furnishings and equipment.

3. From January of 1989 through the 1990 election, William and Sydna Zeliff were the only two owners, directors and officers of the Inn. William H. Zeliff, Jr. served as President of the Inn and Sydna T. Zeliff served as Treasurer of the Inn. William Zeliff, as President, exercised discretionary authority to order any payments or loans made by the Inn.

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4. From May of 1990 to December of 1990, the Inn sent the Friends of Bill Zeliff Committee invoices totalling $18,343.04 for the use of supplies, equipment and vehicles. The Committee paid these invoices by payment of $5,000 on December 19, 1990, $9,784.69 on January 28, 1991, and $3,558.35 on March 6, 1991. At no time did an invoice from the Inn remain unpaid for more than six and one-half months, and several of the Inn's invoices were paid within three months.

5. The Inn has in the past received credit extensions of three months from its vendors.

KENNETH KASLOW

Signed and sworn to before me
this 8th day of November, 1991.

Notary Public

My Commission Expires: _____

95043662242

RESPONDENTS' RESPONSE TO INTERROGATORIES AND REQUEST FOR DOCUMENTS PROPOUNDED BY THE FEC IN LETTER OF AUGUST 21, 1991

9504366243

RESPONDENTS' RESPONSE TO INTERROGATORIES AND REQUEST FOR DOCUMENTS PROPOUNDED BY THE FEC IN LETTER OF AUGUST 21, 1991

I. INTERROGATORIES

1. Please account for the apparent discrepancy between the figures of $32,483.76 cited in your response to the complaint as the amount billed the Friends of Bill Zeliff Committee ("the Committee") by Christmas Farm Inn, Inc., during the 1989-90 campaign and the maximum total of $18,343 reported by the Committee as owed that corporation.

ANSWER: The $18,343 figure represents the total amount of services billed to the Committee from May 1, 1990 to December 31, 1990. The $32,483.76 figure represented in the March 15, 1991 Affidavit of Kenneth Kaslow covers services billed to the Committee "from August 1, 1989 to December 17, 1990." See Affidavit of Kenneth Kaslow at p. 3.

2. Please identify all individuals who used the facilities of Christmas Farm Inn, Inc., on behalf of the Zeliff campaign in 1989-90, stating whether each was an employee or volunteer with the Committee or an employee of the corporation, and describe the nature of the activities undertaken by each.

ANSWER: Christmas Farm Inn, Inc. ("the Inn"), which is owned and operated by William H. Zeliff, Jr. and Sydna T. Zeliff, provided various supplies, services, and use of vehicles in connection with Congressman Zeliff's campaign in 1989 and 1990. The Inn invoiced the Friends of Bill Zeliff Committee in the ordinary course of business for the fair market value of all services and supplies and has been paid in full for all amounts invoiced. Congressman Zeliff, Mrs. Zeliff and their son, Mike Zeliff, made use of some services and supplies of the Inn.

95043662244

Several volunteers and staff of the Friends of Bill Zeliff also used services, supplies and vehicles of the Inn.

II. **REQUEST FOR DOCUMENTS**

Please provide all documents relevant to the $209,000 in draws taken by William H. Zeliff, Jr., on equity in Christmas Farm Inn, Inc., and then loaned to the Committee, including any written agreement(s) entered into by the corporation and Mr. Zeliff and ledgers on which such draws were entered.

ANSWER: Attached hereto are the Inn's internal ledgers reflecting draws from the Inn's accounts by Congressman Zeliff for the 1989 and 1990 fiscal years. As the bookkeeper for the Inn, I recorded and retained these business records. These records were kept in the ordinary course of business and are true and correct copies of the actual ledgers in my custody at the Inn.

The above is true to the best of my knowledge and belief.

Kenneth Kaslow
Bookkeeper
Christmas Farm Inn, Inc.

Subscribed and sworn to before me on this 8th day of November, 1991.

Mary A. Holt
Notary Public

My Commission expires on:_____

9504366224 5

9 5 0 4 3 6 6 2 2 4 6

CFI

Fiscal 1990

Loans (from) stockholders

to

Date	Check Paper Purpose	Paid out	Rec'd	Balance (1005.23)
	# 24916 WH 100th	1000.00		
3/25	from C/R	58.00		52.77
6/26	# 24774 WH2 ground	100.00		152.77
7/12	# 24978 WH2 Merrill Lynch margin call	700.00		852.77
7/17	# 3847		700.00	152.77
9/26	out of CFI C/R WH2	25.00		177.77
10/5	" " " WH1	20.00		197.77
10/13	out of CFI C/R STZ	25.00		222.77
11/6	[for ambulance, Merrill Lynch check $1000.00 CFI acct 889 07184 10/11]			
11/20	# 25776 WH2	500.00		722.77
12/13	# 25843 (WH1)) Broadcasting to pay straight back to CFI	1500.00		2222.77
12/23	# 25971 WH2	1600.00		3822.77
12/28	out of C/R WH2	25.00		3847.77
2/6/90	out of CFI C/R WH2	30.00		3877.77
2/9/90	[illegible] WH2	400.00		4277.77
3/8/90	to 26432 WH1	1000.00		5277.77
4/9/90	26456 WH2 Zelle	150.00		5427.77
3/21/90	out of C/R WH2	40.00		5467.77
3/28/90	Refund from STZ		150.00	5317.77
4/5/90	WH2 from CFI C/R	40.00		5357.77
4/24/90	WH1 26465 (WH2)) Broadcasting to pay straight to CFI	700.00		5857.77
4/26/90	WH2 from CFI, C/R	15.00		5872.77
9/30/90	WH2 [illegible] Sacramento [illegible]	10,000.00		15,872.77
9/30/90	adj by Tom for [illegible]		10,656.11	5216.66
	payments to Merrill Lynch			

CFI 5216.66

WH2 1025.00

CORPORATION 6241.66 April 30, 1990

Date	Check Paper Purpose	Paid out	Rec'd	Balance
	Reimbursements			
	out of C/R 5/2/90	30.00		
	" "	20.00		50.00
	Refund 7/24/89 neg	1000.00		1050.00
	WH1 out of C/R 4/2/90	25.00		1075.00
	JC from [illegible] C/R	200.00		200.00
	pd JC cash		200.00	

9 5 0 4 3 6 6 2 2 4 7

CPI

FISCAL 1991

Loans (from) Stockholders

To

	Date	CPI Payee	Paid Out	Rec'd	Balance
1	5/7/90	#26796 001	10,000.00		15,218.66
2	5/11/90	on of cashing STZ	200.00		15,218.66
3	5/14/90	#26774 WHZ	5000.00		20,218.66
4	5/25/90	#26837 WHZ	250.00		20,468.66
5	6/1/90	#26890 WHZ	20000.00		40,468.66
6	6/9	#26932 STZ	1000.00		
7	6/12/90	#26993 STZ	50.00		40,618.66
8	6/26/90	#307 Woodstown		25000.00	15,618.66
9	6/26/90	#26994 J Hartzell	6597.78		22,216.44
10	7/17/90	#316 Woodstown WHZ		1000.00	21,216.44
11	7/20/90	Out of Bar Checking Acct WHZ	100.00		21,216.44
12	8/13/90	#27308 WHZ	20,000.00		41,216.44
13	9/20/90	#27348 STZ	25000.00		66,216.44
14	9/27/90	#27390 STZ	40000.00		106,216.44
15	9/28/90	#27426 STZ	500.00		106,716.44
16	9/28/90	#27435 STZ	60000.00		166,716.44
17	9/27/90	#27482 STZ	20000.00		186,716.44
18	9/27/90	#27538 J Hartzell	6597.78		193,314.22
19	10/17/90	#27705 J Woodworth	1300.00		194,614.22
20	11/20/90	#27869 STZ	5000.00		199,614.22
21	12/3/90	#27977 STZ	7500.00		207,114.22
22	12/10/90	#28066 J Woodworth	1000.00		208,114.22
23	12/20/90	Out of C/R - Xmas Gifts	20.00		208,134.22
24	12/27/90	#28035 Harley Hartzell	6597.78		214,732.00
25	1/1/91	Brown Mtn Oil	45.00		214,777.00
26	2/13/91	#3132 1000 > 1990 Int on Corp Bonds #3131 100 > 1991 GS Stock Loss		1441.65	216,218.65
27	3/22/91	#1049 Fr A Zeth Corman		3895.35	210,305.00
28	3/28/91	#1565 WHZ School Accounts		5000.00	205,305.00
29					
30					
31			Corporate 4/30/91		
32					
33		CPI	205,305.00		
34		Yesterday	3795.00		
35					
36			209,100.00		
37					
38					
39					
40					

		Paid Out	Rec'd	Balance
1	Stockholders - Fiscal 1991			1075.00
2				
3	4/19/90 Bailey/Choice mortgage #1974	500.00		1575.00
4	4/20/90 " " " #1906	500.00		2075.00
5	7/25 Out of C/R WHZ	0.00		2175.00
6	9/12 Out of C/R WHZ	300.00		2475.00
7	9/12 #2080 Choice Mortgage	1000.00		3475.00
8	11/20/90 Out of C/R WHZ	300.00		3775.00
9	11/20/90 Out of C/R	20.00		3795.00
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20	Jackson Corner - Fiscal 1991			0
21				
22				
23				
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1992

Jan Witold Baran, Esquire
Lee E. Goodman, Esquire
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

RE: MUR 3191
Friends of Bill Zeliff
John Naramore, as treasurer
William H. Zeliff, Jr.
Christmas Farm Inn, Inc.

95043662248

Dear Mr. Baran and Mr. Goodman:

During the course of our review of the responses and documents which you have provided on behalf of your clients in the above-cited matter, the need for certain additional information has become apparent. Once that information is in hand we are hopeful that we will be able to move on to the next stage of the enforcement process in short order.

First, there appears to be a discrepancy between the total reimbursements paid by the Friends of Bill Zeliff ("the Committee") to Christmas Farm Inn and the amounts reported by the Committee to the Commission in 1989, 1990 and 1991. In the response to the complaint and in the response to interrogatories signed by Kenneth Kaslow, the figure of $32,483.76 is given as the total of services billed to the Committee by Christmas Farm Inn between August 1, 1989, and December 17, 1990. However, this Office been able to locate only $28,341.57 in reimbursements in the Committee's reports during that period; these include $2,610.65 on August 5, 1989, three payments on December 20, 1989 (see below), $5,000 on December 19, 1990, $9,784.69 on January 28, 1991, and $3,558.35 on March 6, 1991. Please account for the difference in figures.

Secondly, the Committee's reports show a total of $9,998.53 in reimbursements to the Inn in 1989, one on August 5 for $2,610.65 ("payroll"), and four on December 20 in the amounts of $737.09 ("telephone reimbursement"), $4,333.30 ("salary reimbursement"), $1,828.04 ("travel reimbursement"), and $489.45 ("event reimbursement"). Please provide the following details and documents with regard to these reimbursements:

a. The dates of the original services provided;

b. The identities and/or positions of the persons or entities who provided the goods or services for which reimbursement was being paid;

c. Copies of all invoices and/or receipts related to these reimbursements.

Please provide the above requested information within fifteen days of your receipt of this request.

Thank you for yours and your clients' cooperation.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

95043662249

OGC 6219

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

August 31, 1992

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

WRITER'S DIRECT DIAL NUMBER
(202) 828-4960

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

BY HAND

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 AUG 31 PM 1:06

Attn: Anne A. Weissenborn, Esq.

Re: MUR 3191

Dear Mr. Noble:

This letter is in response to Anne Weissenborn's July 15, 1992 letter requesting additional information regarding the Friends of Bill Zeliff Committee's ("the Committee") payments for services in 1989.

As previously explained in the Committee's November 13, 1991 letter to the Commission, Congressman Zeliff equitably owns one-half of the Inn and its assets and exercises undisputed, discretionary control over use of the Inn's assets.[1] Therefore, the Inn's assets constitute Congressman Zeliff's personal funds under the express provisions of 11 C.F.R. § 110.10(b)(1).[2]

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[1] See November 13, 1991 Letter from Jan Witold Baran to Lawrence M. Noble at 6-8.

[2] The General Counsel cites MUR 2522 as support for its position that Inn assets were not personal funds. However, the General Counsel's Brief in MUR 2522 did not address the Commission's personal funds definition in making recommendations, the Respondent did not rely on the

(continued...)

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Because the Committee was under no obligation to repay Congressman Zeliff for the use of his equitably owned assets, detailing each individual invoice and payment is unnecessary to a resolution of this Matter. Further, the General Counsel's August 21, 1991 Factual And Legal Analyses did not address 1989 invoices and payments, thus they were not the subject of the Commission's reason to believe finding.[2] Nevertheless, in an effort to resolve this matter as promptly as possible, the requested information is provided below.

In 1989 and 1990, the Inn invoiced the Committee a total of $35,094.40 for the use of supplies, vehicles and services. The Committee's responses to the Commission's interrogatories stated that the Committee was billed $32,483.76 from August 1, 1989 to December 17, 1990. The Committee was also billed $2,610.64 on July 28, 1989, and the Committee's August 5, 1989 payment of that invoice was reported on Schedule B of the 1989 Year End Report. As previously represented to the Commission, the Committee paid all invoices in full. The Committee's ordinary course payment history is outlined below:

---

[2](...continued)
definition, and the Commission apparently did not consider it in making findings. Therefore, MUR 2522 has no precedential value in this Matter.

[3] See August 21, 1991 Factual And Legal Analysis for Respondent Christmas Farm Inn at 23; August 21, 1991 Factual And Legal Analysis for Respondent Friends of Bill Zeliff Committee at 14.

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8/5/89	$2,610.64
12/20/89	7,387.88
4/29/90	6,752.84[4]
12/19/90	5,000.00
1/28/91	9,784.69
3/6/91	3,558.35

Total Payments = $35,094.40

The Commission has also requested information regarding invoices the Committee paid on December 5, 1989 and December 20, 1989. Each of those payments is explained below.

<u>August 5, 1989 Payment Of $2,610.64</u>

On August 5, 1989, the Committee paid in full a July 31, 1989 invoice for services, supplies, food and beverages supplied by the Inn in June and July 1989. (<u>See</u> July 31, 1989 Invoice attached hereto as Attachment A). The Committee thus paid for the services rendered in June and July 1989 approximately eight days after being invoiced. Consistent with the precedent established by the Commission in MUR 3070, a Committee's payment made eight days after being invoiced is commercially reasonable.

The Committee's report denoted the August 5, 1989 payment as "payroll" which included payment of one-half of Judy Galluzzo's salary for secretarial services she provided the Committee. <u>See</u> Attachment A.

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[4] Congressman Zeliff personally reimbursed the Inn $6,752.84 by personal check on April 29, 1990. The Committee is in the process of amending its reports to reflect this payment.

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December 20, 1989 Payment Of $737.09

On December 20, 1989, the Committee paid invoices for telephone usage by campaign volunteers and campaign staff. The payment of $737.09 paid in full telephone charges from the following invoices:

Invoice Date	Amount	Time From Receipt Of Invoice To Payment
8/31/89	$100.00	4 months
9/29/89	143.77	3 months
10/27/89	126.05	2 months
11/24/89	164.25	1 month
12/19/89	203.02	1 day
Total	$737.09	

(See August 31, 1989 Invoice; September 29, 1989 Invoice; October 27, 1989 Invoice; November 24, 1989 Invoice; and December 19, 1989 Invoice, collectively attached hereto as Attachment B).

The Committee paid the Inn for telephone usage in a commercially reasonable time and the Committee reported its payment of all telephone charges as one entry denoted "telephone reimbursement" on its 1989 Year End Report.

December 20, 1989 Payment Of $4,333.30

On December 20, 1989, the Committee paid the Inn pro-rated salaries of two Inn employees, Judy Galluzzo and Lois Nelson, who performed secretarial services for both the Inn and the

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Committee. The Committee paid in full the pro-rated salaries as follows:

Invoice Date	Amount	Time From Receipt Of Invoice To Payment
8/31/89	$ 957.50	4 months
9/29/89	191.50	3 months
10/27/89	1,378.80	2 months
11/24/89	957.50	1 month
12/19/89	848.00	1 day
Total	$4,333.30	

(See Attachment B). The Committee reported all pro-rated salary payments together on its 1989 Year End Report. This treatment of secretarial services was consistent with the Commission's precedent established in MUR 1741 and reaffirmed recently in MUR 3435.

December 20, 1989 Payment Of $1,828.04

On December 20, 1989, the Committee paid the Inn in full for the campaign volunteers' and staff's use of the Inn's van. The payment of $1,828.04 satisfied the following invoices in a commercially reasonable time:

Invoice Date	Amount	Time From Receipt Of Invoice To Payment
8/31/89	$500.00	4 months
9/29/89	279.00	3 months
10/27/89	535.68	2 months
11/24/89	412.92	1 month
12/19/89	100.44	1 day
Total	$1,828.04	

9 5 0 4 3 6 6 2 2 5 4

(See Attachment B). The Committee reported its payment for van usage as one entry denoted "travel reimbursement" on its 1989 Year End Report.

December 20, 1989 Payment Of $489.45

On December 20, 1989, the Committee paid the Inn in full for food and beverages the Inn provided a campaign dinner held on November 1, 1989. The Inn invoiced the Committee for the November 1 event on its November invoice dated November 24, 1989. (See November 24, 1989 Invoice, Attachment B). The Committee paid the invoice on December 20, 1989, twenty-six (26) days after receipt of the invoice, and reported the payment on its 1989 Year End Report.

I trust that this letter sufficiently provides the requested information. Should you have any further questions, please contact me.

Sincerely,

Jan Witold Baran
Lee E. Goodman

Attachments

9504366225 5

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 AUG 31 PM 1:06

ATTACHMENT A

9 5 0 4 3 6 6 2 2 5 6

(P1)

14 21 / 0 / 4 / 0

To: Cecil for Congress

From: Christians Firm/Inc

For expenses thru 6/5/89 - 7/31/89

Personnel: Judy Gallucci 6/5 - 7/28/89 8 weeks @ 175 = 1400.00
½ of her salary

8% FUT	11.20
.7% NHC2	9.80
workers comp	5.86
Employer FICA	105.14

1532.00

Cabana charge - 7/12/89 25.66 ✓

Cookout - 5/25/89 ~~60% deposit~~ 250 ~~Bal. Forward~~ - 317.00 ✓

Office market charges: 6/16, 6/20, 6/22, 6/23, 6/26 - 267.81 ✓
7/6, 7/17, 7/20 43.17

~~Yard sale advertising~~ ~~25.00~~

Plain stationary - ~~3~~ 1 cases 94.00 ~~283.24~~

Coffee + sodas - volunteer days - est. $5.00 day @ 6 days 30.00

Newspapers taken for clippings - 2 per day (.30 wkdy avg. 1.13 sunday avg.) 16.25 ~~34.50~~

Est. Copies, faxes, phone calls on cell lines, postage, stationary, supplies $ 350.00 ~~750.00~~

subtotal $ ~~[illegible]~~

DUE: $ 2676.19

A/R

Jonnie May
½ of her time
Since July 1 [illegible] 178.00
.8% Fut [illegible]
.7% Fica 1.39
Workers Com .86
Employer Fica 14.87
65.55 [illegible]

PO #1024 8/5
26/064

2/[illegible]
$ 3523.38

9504366225 7

ATTACHMENT B

9 5 0 4 3 6 6 2 2 0 8

9 5 0 4 3 6 6 2 2 9

TO Zeta for Congress
from christmas farm inn
for expenses 8/1/89 - 8/31/89

Personnel:	Judy Gallego 8/29 - 8/31 - 5 weeks @ 175.	875.00	
	1/2 monthly		
	.8% FUT	7.00	
	.7% MUTA	6.13	
	workers comp	3.66	
	1,499 Employer FICA	65.71	957.50
	allowed copies of phone o/g + mailing meals		100.09
	Coffee & sodas - volunteers day on 8/5.00 - 5 days		25.00
	20.00		
	Newspapers - 1 per day - 6x .30 1.8.13 - 5 weeks		19.65
	Copies		50.00
	5 weeks		
	Phone: [illegible]		
	Agency mtg charge	-17	
	7/1/89 - 6/6/89: 17 hours/month	9.1 employee	100.00
		92.79	
		2.82 3% tax	
	8/18/89	95.55	
	999: Gasoline for expense vehicle		
	Sub - 15.6/gal 39.9		
	.2064/gal 31.1		500.00
	Lat 15.1/gal 31.85		
	.2064/gal 27.9	1 trip to mailing each week	
		approx 100 miles per week	
		1 - 27.9 mile	
	Total travel cost 27.9 mile	5 weeks	
		A/R	T 179224

TO: Zeta for Congress
from: CFL, Inc. 8/1/89
Sommer CHARLES thru 8/29/89

Phone:	mile (in) 8/1/89 39.8 hours		
	- 17 agency		
	22.8 hours		
	x 10.30		131.84
	Fax transmissions:		
	8/8 .92 / 8/23 .07		
	8/9 .52 / 8/24 .24		
	8/14 .52 / 8/25 2.22		
	8/17 1.40 / 8/26 .46		9.35
	8/22 .23		
	8/24 .27 / Bal Due 3%	.27	
	Alt out time		
	Overtime on 4/3 & 4/13	2.50/hr 2.50	193.77
Food	Coffee & sodas - volunteer day on 8/5.00 - 5 day		25.00
	Newspapers 1 per day 6x .30 1.13 - 4 weeks		11.72
	Office supplies - 1 case copy paper - 1 case labels		100.45
Personnel:	Judy Gallego 8/25-29 1 week	175.00	
	.8% FUT	1.40	
	.7% MUTA	1.23	
	workers comp	.73	
	Employer FICA	13.39	191.50
Gas/mileage	Mileage: 1 trip	100 miles	
	Person was Sommer	Bus	
		1000 miles	
		x .279	
		279.00	279.00
		A/R	T 751.44

9 5 0 4 3 6 6 2 2 6 0

To: Zeiff for Congress
from: CPI, Inc

October charges - 9/20/89 - 10/27/89

A/R
11/27/89

PHONE: WATS LINE 25 + hours 10/1/89
- 17 business
8.2
x 10.30 rate
84.46
fees + 41.59
phone calls
+ tax
$ 126.05

LIQUOR: Manchester party 10/6/89 - at cost
$ 77.85

OFFICE SUPPLIES: Bpx - 1 case copy paper 89.50
- office market items 25.19
16.06
6.99
1.75
11.34
$ 148.80

GAS: @ Manchester 200 miles
Lyme - Hanover 320
TOTAL 1920 x .279
$ 535.68

$ 20.00

PARTS: order, mailing, market [illegible]
[illegible] 1 per day - 62.50 [illegible] - [illegible]
$ 16.72

Personnel: Sandy Gallagher: 10/2 - 10/27 - 28 working days total
Manchester campaign 10/3, 5, 6, 9, 10, 12 - 8 days full
20 days : 1/2
10 days $ 350 wage + 5 days $ 70 day
+ 8
18 days
x 70
$ 1260.00
6% tax 100.08
.7% wkcp 8.82
working days 5.27
employee fica 94.63

current due : 2298.70
[illegible] + 1797.24
[illegible] + 701.14
TOTAL DUE : $ 4797.58

To: Zeiff for Congress
from: CPI, Inc

November charges - 10/28 - 11/27/89

PHONE: [illegible] 16.8 hours
.17 over
9.8 usage
x 5.77
+ 5% tax
10.83
Calls to Hanover 11.6 OH
50.88
+ 5% tax
53.42
$ 164.25

11/1 Dinner: Food - @ cost 28 x $15 = 420
Liquor @ cost 69.45
$ [illegible]

Personnel: Sandy Gallagher 5 weeks @ 175 = $ 875.00
.82 FICA 7.18
.7% wkcp 6.13
working days 3.68
employee FICA 65.71
$ 957.50

MISC: 3 [illegible] scale @ 10.00 31.50
Caller - 7 days 18 20.00
Thank you!
$ 51.50

Newspapers: 1 per day [illegible] x 5 weeks
TOTAL
TAX
$ 14.65

Office Supplies: office market 89.38
newspaper 36.50
$ 126.08

GAS: 5 trips Manchester @ 200 = 1000 miles
3 trips Portsmouth @ 140 = 420
1420 miles
@ .279
$ 412.92

Total November $ 2216.35
outstanding + 4797.58

Total Due to CPI : $ 7013.93

9 5 0 4 3 6 6 2 2 6 1

To: Zelle for Congress
from CFI Inc.

December charges 11/25/89 - 12/20/89

pm 1/19/90

Phone:	units 315 hrs -17 195 .0177 / calls 1 hour		
	15-17 x 37.18 =	9.67 =	$ 203.02
Postage:	Federal Express bill of 12/8/89		$ 99.50
Misc:	Coffee - 1 pound		$ 20.00
Personnel:	Judy G. 1 week @ 175 = 175		
	Lois Nelson 3 weeks @ 200 = 600		
		775.00	
	.08 FICA	6.20	
	.0145 Med Ins	5.97	$ 848.00
	unemployment	3.17	
	Employee FICA	58.20	
Supplies:	Office market + B.B.W.		$ 65.55
Transportation:	Airfare 1 trip 160		
	Mileage 1 trip @ 200		
	360 x .279		$ 100.44
		Total December	$ 1335.51

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1993

Jan Witold Baran, Esquire
Lee E. Goodman, Esquire
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

RE: MUR 3191
Friends of Bill Zeliff Committee
John C. Naramore, as treasurer
Christmas Farm Inn, Inc.

Dear Mr. Baran and Mr. Goodman:

This Office is in the process of reviewing all responses and documents which you have provided on behalf of your clients in MUR 3191.

During the course of this review it has become clear that, with regard to the issue involving reimbursements made by the Friends of Bill Zeliff Committee ("the Committee") to the Christmas Farm Inn for goods and services provided in 1989 and 1990, this Office is in need of the invoices submitted by the Inn to the Committee in 1990 and 1991. These invoices will permit this Office to apply meaningfully the provisions of 11 C.F.R. § 114.9 to all of the expenditures made to the Inn by the Committee in connection with the 1990 campaign. We would also ask for larger and/or more legible copies of the 1989 invoices which you supplied on August 31, 1992, if possible.

We also ask that you provide more details as to who exactly was involved in the uses of the Inn's facilities and services for which the Committee was charged in 1989 and 1990. For example, was it the candidate/stockholder who made the trips using the Inn's vehicles cited on the 1989 invoices, was it another employee, or was it another person unconnected with the corporation. For whom did Judy Galluzzo perform secretarial services, Mr. Zeliff or volunteers or both? Who used the Watts line and transmitted materials by fax machine?

The Inn's invoice for facilities and services provided in November, 1989, lists a dinner on November 1 for which $489.45 was charged. Please state whether or not this dinner was held at the Inn. If the answer is affirmative, please state whether or not it would have been in the ordinary course of the Inn's business to be the site of such a dinner and what the usual and normal charge would have been.

9 5 0 4 3 6 6 2 2 6 2

Finally, please explain the absence of any charges for space rental on the Inn's invoices, particularly in light of Ms. Galluzzo's involvement in the campaign and, given the provision of refreshments for volunteers, the apparent use by such persons of space in the Inn for their activities.

Please provide the requested information and documents within fifteen days of your receipt of this letter.

Thank you again for yours and your clients' cooperation.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

9504366223

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F.E.C.
SECRETARIAT

93 JUL -9 PM 4:56

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Friends of Bill Zeliff	)	MUR 3191
Robert D. Goodman, as treasurer	)	
Christmas Farm Inn, Inc.	)	
William H. Zeliff, Jr.	)	

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer; Christmas Farm Inn, Inc.; and William H. Zeliff, Jr., based on the assessment of the information presently available.

7/9/93
Date

Lawrence M. Noble
General Counsel

9504366224

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FEDERAL ELECTION
COMMISSION
MAIL ROOM
FEB 18 1 38 PM '93

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

FACSIMILE
(202) 429-7049
TELEX 248348 WYRN UR

WRITER'S DIRECT DIAL NUMBER
(202) 828-4960

February 18, 1993

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

BY HAND

93 FEB 18 PM 3:16
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Attn: Anne A. Weissenborn, Esq.

Re: MUR 3191

Dear Mr. Noble:

This letter is in response to Anne Weissenborn's January 29, 1993 letter requesting additional information regarding the provision of goods and services by Christmas Farm Inn ("the Inn") to the Friends of Bill Zeliff Committee ("the Committee") in 1989 and 1990 and the Committee's payments for those services. In response to Ms. Weissenborn's request, we enclose the clearest copies we have of all invoices the Inn submitted to the Committee in 1989 and 1990.[1] The Committee paid all of these invoices in full.

In response to Ms. Weissenborn's specific inquiries, we submit the following responses based on information provided to counsel by Mr. Ken Kaslow, the Inn's bookkeeper.

- Congressman Zeliff, who equitably owns one-half of all Inn assets and who exercises undisputed control over all Inn assets, used the Inn's van for travel. Although the Committee was under no obligation to repay Congressman Zeliff for his use of his own assets,[2] the

---

[1] The Committee did not utilize services or goods of the Inn in 1991, and thus no invoices were submitted in 1991.

[2] As noted previously in Respondents' August 31, 1992 letter to the Commission, the General Counsel's Brief in MUR 2522 did not address the Commission's personal funds definition in making recommendations, the respondent did not

(continued...)

9 5 0 4 3 6 6 2 2 6 5

Committee paid AAA rates for the use of the van. Sometimes a campaign volunteer would drive Congressman Zeliff in his van.

- Judy Galluzzo performed secretarial services for Congressman Zeliff, and the Committee paid the Inn pro-rated salaries for her services, consistent with the Commission's precedent established in MUR 1741 and reaffirmed recently in MUR 3435.

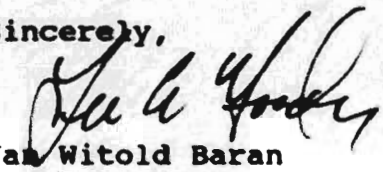
- Congressman Zeliff, Judy Galluzzo and one campaign volunteer used the telefax machine and Watts line, and the Committee reimbursed the Inn in full for all usage.

- The November 1, 1989 dinner was held at the Inn. The Inn operates a restaurant in the ordinary course of its business. The Inn complied with 2 U.S.C. § 431(8)(B)(iii) in charging all food and beverage costs.

- Ms. Galluzzo and some campaign volunteers performed all campaign-related activities in Congressman Zeliff's personal residence which is located on the Inn's premises.

We trust this letter provides the requested information.

Sincerely,



Jan Witold Baran
Lee E. Goodman
Counsel for the Friends of Bill Zeliff Committee, The Hon. Bill Zeliff and Christmas Farm Inn, Inc.

Enclosures

9 5 0 4 3 6 6 2 2 6 6

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[2](...continued)
rely on the definition, and the Commission apparently did not consider it in making findings. Therefore, MUR 2522 cannot serve as support here for the proposition that Congressman Zeliff's equitable ownership and control over the Inn and its assets does not qualify Inn assets as personal funds pursuant to 11 U.S.C. § 110.10(b)(1).

TO: Zeliff for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

Date 12/17/90

POSTAGE: Federal Express Packages 21.75 24.25 9.00 22.50 — 77.50

PHONE: Int Electric 49.65
Intrastate 29.00
Star Collection 343.67
Int Telephone 111.70 — 534.02

12/17/90 Party @ CFI Food 590.00
Liq 504.00
Tax 87.52
Gratt 164.10 — 1345.62

Dec 1990 B.11 — 1957.14

OUTSTANDING — 16385.90

Paid 12/20/90 — 5000.00

TOTAL DUE CFI — $ 13,343.04

paid 1/30/91 #1029 — 9784.69

2/13/91
Fr. B.11 Zeliff #

Rec'd
#1032 4000.00
#1041 1000.00
5000.00

3558.35

2 checks at bank pd. 3558.35

on receivables Ø

144.65 [redacted]
on loan
Stockholders

3558.35 on receivables

9504366220 1

TO: Zenith for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

11/10/90

PHONE

Inc Elect	116 99	
National	29 00	
Star Cellular	236 99	
AT&T Phone	371 26	754.24

AUTO

Van	11/7	39938			
	10/31	-38499			
		1439 × .28		402.92	
Rental	11/9	33738			730.22
	10/30	- 32647			
		1091 × .30		327.30	

FOOD + LIQUOR

Bus trip / barn	11/6/90	Liq cost	52.00		95.00
		Food cost	43.00		

POSTAGE

Fed Express	11/6/90	21.75

Due for Nov. 10, 1990 $ 1601.21

outstanding + 14,784.69

TOTAL NOW DUE: $ 16,385.90
Rec'd $5,000 12/20/90 - 5,000.00
11,385.90

9504366228

TO: Zeliff for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

Date Oct. 31, 1990

PHONE:
27.00
53.48
29.00
237.93
377.29 — 720.70

GAS: Red truck
campaign tour start Oct. 12 mileage
32647 mileage 10/30
31177
1470 x .30 = 441.00

Van Sept 28 first odometer
38499 mileage 10/30
32063
6436 x .28 = 1802.08

2293.11

Jackson Corner Gazette - signs - T. Knapp 50.03

Conway Supply - stakes for signs 21.90

Fed Express mailing to headquarters 23.00

TOTAL DUE - October 1990 3058.71

outstanding balance + 11725.98

DUE TO CFI $14,784.69

9504366202 69

TO: Zeliff for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

Period ending: 9/28/90

AUTO Expenses: Red truck - Sept 1 - 18 (return of truck)

30884
- 28682 (8/24)

2202
x .30 — 660.60

Van odometer

est. make

29063 (8/24)

est mile 3000 x. 28 — 840.00

Jackson corner cass slips. Thomas Knapp "signs" — 304.45 — 1805.05

MISC: American Express Bill 9/10 — 193.76
checks. - stakes for signs — 82.65

TELEPHONE: calls, texas, cellular, texas
7.91
29.00
261.17
308.00 — 606.08

September Bill — 2687.54

Unpaid: August 1990 + 1563.68
July 1990 + 2895.57
June 1990 + 2621.26
May 1990 + 1957.93

TOTAL: DUE TO CFI A.S.A.P. — $11,725.98

9 0 4 3 6 6 2 2 / 0

TO: Zelliff for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

AUGUST 31, 1990

* Auto Expenses:

van odometer 8/29/90 29063

Previously billed 1/1 - 7/31 - 28605

458 x .28 = 128.24

Red CFI Truck Aug 1 - Sept 1

odometer 8/29 28682

beg odometer - 25450

3232 x .30 = 969.60 — 1097.84

* Telephone

calls, faxes, cellular, taxes
31.95
29.00
133.16
161.10 — 355.21

* Conways supply - truck signs 62.65

CFI paid out of c/Recept - campaign lunch 47.98 — 110.63

AUGUST BILL	1563.68
unpaid July Bill	2895.57
unpaid June Bill	2621.26
unpaid May Bill	1957.93
TOTAL DUE:	$ 9038.44

9504366221

TO: Zeliff for Congress

From: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

7/31/90

* Auto Expenses - per Karen 7/31/90

Manchester area trips	15 @ 200	=	3000	
Exeter-Kingston area	5 @ 210	=	1050	
Merrimack area	2 @ 220		440	
Portsmouth Kingston area	9 @ 175	=	1575	
Concord area	6 @ 175	=	1050	
Wolfeboro area	7 @ 100	=	700	
Boston area	1 @ 60	=	60	
S Carroll City Madison, Ossipee	5 @ 60	=	300	
			8175 @ .28	= $2289.00

odometer reading 28605

odometer reading 25042

* Telephone - 7/6 Bill

calls, taxes, tax, cellular charges	13255
	2975
	1444
	750
	2900
	1500
	$295 75

* Conway Supply invoice - [illegible]

for sign making $310 82

		2895 57
May outstanding	+	1957.95
June outstanding	+	262.00
Total Due	:	$7474.70

JE
7/31/90

9504366222

To: Zeliff for Congress

From: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

6/30/90

* Auto expenses - per Karen 6/27/90

Manchester area	round trips	14 @ 200	2800
Wolfeboro/Laconia	round trips	7 @ 100	700
Concord area	round trips	6 @ 175	1050
Portsmouth area	round trips	8 @ 175	1400
2 side trips to Boston @ 60		=	120
N. Conway area	mileage	=	100
Nashua area	from Manchester round trips	3 @ 100 =	300
		6470 miles @ .28	= $1811.60

* Telephone from 6/6 Bill

calls, faxes, tax, cellular charges	128.11 44.55 23.46 20.00	$ 275.12

* Cooler - borrowed from Jackson Corner - lost $ 27.00

* meals:

6/2 Dinner	food 307.25		
	liq 103.25		$ 507.54
	tax 32.04	507.54	
	grat 65.00		

June charges	$ 2621.26
May Outstanding	+ 1957.93
Due:	$ 4579.19

Please pay ASAP

9504366221 3

TO: Zeliff for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

5/31/90

* American Express Charges paid by CFI
for campaign 283.77 + 138.61 $ 422.38

* Postage - Federal Express mailing 32.75

* Auto Expenses: per Karen 5/29/90

Bournival Inc	repair charges	280.55	
Manchester area	11 round trips @ 200	= 2200	
Wolfeboro area	3 round trips @ 100	= 300	
Portsmouth/Dover area	8 round trips @ 175	= 1400	
Concord area	2 round trips @ 150	= 300	
		4200	
s/b van mileage. 14,948		× .28	1956.55
have billed: 13,960 campaign		1176.00	

* Telephone - from 5/6/90 #11
calls, toners, tax 46.25

Due: $ 1957.93

Please pay ASAP

9504366224

To: Zeliff for Congress

From: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

Charges: 4/1/90 - 4/30/90

PHONE: WATTS LINE from 4/6/B.H

20.7
-17.0 avg
3.7
x .10 .37
41.84 + 85.54 calls, taxes, tax $127.38

FOOD: 4/25 McCain meeting - breakfast - yesterdays 11.03
4/3 Announcement dinner CFI 680.72 691.75

Transportation: per Curtis 4/26/90 (van mileage 4/26/90 - 10,060)

Manchester area trips (9) @ 200 =			1800
Dover/Hampton area	7 @	160 =	1120
Laconia area	4 @	100 =	400
Boston area	1 @	300	300
Nashua area	1 @	260	260
			3880
			x .279
			1082.52

1082.52

April 1 90 Bill $1901.65
outstanding + 4851.19

Due: $6752.84

Rec'd check
3944 4/29/90

9504362221

TO: Zeliff for Congress
From: CFI
Re: Charges 2/24/90 - 3/31/90

PHONE - WATTS LINE 47.5 hrs 3/6 to 3/8
- 17. avg
30.5
x 10.77 tot
344.91 + 86.35 calls hours tax

431.26

LIQUOR: from CFI Sunday Ski with Z 3/18/90
at cost

25.65

Office supplies: copy paper 53.34

53.34

Chips + plates from Jackson Corners Store 3/18/90

3.19

FOOD lunch @ Yesterdays 3/19 33.44
3/20 23.86

57.30

Transportation: Manchester area trips (6) @ 200 = 1200
Rochester area trips (5) @ 160 = 800
Laconia/Meredith trips (3) @ 100 = 300
(per conv. w Sue M.O. on 3/27/90) 2300
x .279

641.70

March 1990 due 1212.44
previous balance + 3638.75

TOTAL - DUE $ 4851.19

9504366222/6

To: Zeiff for Congress
From: CFI
Re: Charges 1/27/90 - 2/23/90

Phone:

WATTS Line 438 hrs - 17 avg = 268 hrs × .0777 = 28.864 + calls & taxes 133.07 + tax 21.09 = $442.80

Office Supplies:

approx 27,000 copies × .0147 to cross on CFI maintenance agreement for copier = $397.00

BEO - paper/toner 100.45

Jackson Corner Store (misc.) 48.45

Office Market 169.55

$715.45

Personnel:

Lois Nelson - no office time devoted to campaign this month. Ø

Transportation:

1 Trip Corona/Walterboro @ 100 = 100
2 Trips Manchester @ 200 = 400
6 Trips Rochester @ 160 = 960
from appt book 1460
× .1279 mb

$187.34

Total Feb. 1990 Bill $1565.59

outstanding + 2073.16

DUE: $3638.75

9504322/7

to Zelitt for Cam[illegible]
from Christmas Farm Inn
for charges 12/30/89 - 1/26/90

Phone: Walls line 1/1/90 Bill
33 1/2 hrs
- 17 avg.
16 1/2 hrs
x 11.98

	toll calls	tax 5%	
197.67 +	22.05 +	11.04 =	231.76

Office Supplies: office market charges 86.30
Conway Supply 1/15 14.79 — 101.09

FOOD: Coffee, lean, supplies 67.00 — 187.27
Yesterdays 12/26/89 42.27
Liquor cost 1/25 Sullivan 78.00

Personnel: Lois Nelson - no office time devoted to campaign this month per W.H.Z. — Ø

Transportation:
4 trips Cottonsto area @ 100 = 400
7 trips Manchester area @ 200 = 1400
2 trips Rochester area @ 160 = 320 miles
(from appt book) 2120
x .279 — 591.48

January 1990 Bill 1111.60
outstanding balance 961.56

TOTAL DUE TO CFI $ 2073.16

9504362228

To: Zeliff for Congress
from: CFI, Inc.

December charges 11/25/89 - 12/29/89

on 12/19 ck

PHONE:				
	walks	calls + long	tax	
	315 hrs			
	-17			
	145			
	x 10.77			
	1561.7	+ 37.18 +	9.67 =	$ 203.02
POSTAGE	Federal Express bill of 12/18/89			$ 98.50
MISC:	Coffee - 1 per day			$ 20.00
PERSONNEL:	Judy G.	1 week @ 175	175	
	Lars Nelson 4/9 - 12/29	3 weeks @ 200	600	
			775.00	
		.8 FUTA	6.20	
		.7 MC 2%	5.43	$ 848.00
		workers comp	3.17	
		employer FICA	58.20	
Office supplies:	Office Mart + B.E.U.			$ 65.55
Transportation:	Portsmouth	1 trip	160	
	Manchester	1 trip @	200	
			360 x .279	$ 100.44

Total December $1335.51

9503622/

To: Zeliff for Congress
From: CEI, INC.

November charges · 10/28 – 11/24/89

PHONE:

Watts Line 26.8 hours
- .17 avg
9.8 usage
x 10.77
+ 5% tax
110.83

Calls & hours from 116 All 50.88
+ 5% tax
53.42

$164.25

11/1 Dinner

Food · @ cost 28 x $15 = 420.
Liquor @ cost 69.45

$489.45

Personnel

Judy Gallozzo 5 weeks @ 175 = $875.00
18% FUTA 7.00
.7% UICZ 6.13
Worker comp 3.68
Employer FICA 65.71

$957.50

Misc

3 cases soda @ 10.50. 31.50
Coffee - 9 days x 5 = 20.00

$51.50

Newspapers: 1 per day 6 x .30 1 x 1.13 x 5 weeks.

$14.65

Office Supplies: office market 29.58
wp + paper 96.50
BEU · thermal

$126.08

GAS: 5 trips Manchester @ 200 = 1000 miles
3 trips Portsmouth @ 160 = 480
1480 miles
@ .279

$412.92

Total November $2216.35
Outstanding + 4797.58

Total Due to CEI : $7013.93

To: Zeliff for Cong
from: CFI, Inc.

October charges - 9/30/89 - 10/27/89

A/R
10/24/89

PHONE: WATTS LINE: 25.2 hours 10/1/89
- 17. hours away
8.2
x 10.30 rate
8446
+ 41.59
hours + phone calls + tax — $ 126.05

LIQUOR: Manchester party 10/11/89 - at cost — $ 77.85

OFFICE SUPPLIES: B.E.V. - 1 case copy paper 88.50
Office Market mixers 25.14, 16.08, 5.99, 1.75, 11.34 — $ 148.80

GAS: 8 trips - Manchester @ 200 = 1600
2 trips - Concord @ 160 = 320
1920 miles x .279 = — $ 535.68

MISC: Coffee, sodas, snacks - volunteers - 24 @ $5.00 cost x 4 day — $ 20.00
Newspapers 1 per day - 6 x .30 1 x 1.13 - 4 weeks — $ 11.72

Personnel: Judy Gallozzo: 10/2 - 10/27 - 28 working days total — $ 1378.80
Manchester campaign 10/3, 4, 5, 6, 9, 10, 11, 12 - 8 days: full
20 days: 1/2
$350 week = 5 days: $70 day

10 days
+ 8
18 days
x 70
$1260.00

.5% FUT 10.08
.7% WEC2 8.82
Workers comp 5.27
Employer FICA 94.63

OCTOBER BILL: 2298.90
OUTSTANDING AUG + 1747.24
OUTSTANDING SEPT. + 751.44
TOTAL DUE: $ 4797.58

9504366 2

TO: Zeiff for Congress
from: CFI, inc

SEPTEMBER CHARGES: 9/1/89 - thru 9/29/89

PHONE:

WATS line: 9/6/89 29.8 Hours
- 17 average
12.8 hours
x 10.30 → $131.84

FAX transmissions:

8/8	.92	8/23	2.07
8/8	.52	8/23	.23
8/17	1.20	8/25	3.22
8/22	.23	8/25	.46
8/22	.23	Fed Tax 3%	.27

$ 9.35

misc call from Boardroom on 4314/4313 2.50 + tax 2.58 — 143.77

FOOD

Coffee + sodas - volunteer day est $5.00 - 5 day — 25.00

Newspapers 1 per day 6 x 30 1.1.3 - 4 weeks — 11.72

Office supplies - 1 case copy paper - 1 case toner — 100.45

PERSONNEL:

Judy Gallizzo 9/25-29 1 week @ 175.00
.8% FUT 1.40
.7% NJC2 1.23
workers comp .73
Employer FICA 13.14 — 191.50

GAS & MILEAGE

Manchester 1 trip 200 miles
Portsmouth 5 trips @ 160 800
1000 miles
Gyd car 20K miles/year AAA rate x .279
279.00 — 279.00

on 9/27 ck — A/R — $ 751.44

950436622082

TO: Zel.4 for Comp[illegible]
from christmas Fam[illegible]n
for: Expenses 8/1/89 - 8/31/89

Personnel:

Judy Galluzzo 7/29 - 8/31 · 5 weeks @ 175. 875.00
1/2 of salary
.8% FUT 7.00
.7% NHC 2 6.13
workers comp 3.66
Employer FICA 65.71 $ 957.50 ✓

Food:

attached copies of cabana, d/R + eating meals 100.09 ✓

Coffee + sodas - volunteers day est $5.00 - 5 days 25.00 ✓

Newspapers. 1 per day 6 x .30 1 x 1.13 : 5 weeks 14.65 ✓

Misc. estimated

Copies 20 copies a day average. estimated 5 weeks @ .10¢ each : 50.00

Phone: watts line usage 8/6/89-9/4 26.1 hours
- 17
Average watts usage .cal
9.1 campaign
7/6/88 - 6/6/89 = 17 hours/month x 10.30 multiplier 100.00
93.73
+ 2.82 3% tax
96.55
8/18/89

GAS:

AAA: Rates to operate vehicle

8cyl - 15K/year . 34.9¢
- 20K/year 31.1¢
Jackson - Portland 160 round trip
Jackson - Montana approx 200 miles round trip 500.00
6cyl 15K/year 31.5¢
20K/year 27.9¢
1 trip to each city each week
approx 400 miles per week
x .279¢ mile
x 5 weeks
Take lowest rate 27.9¢ mile

A/R $ 1747.24

9504366223

(p.1)

14 25 / 0 / 7 26 / 3 5 0

TO. Zeiff for Congress

from Christmas Farm Inn

for. expenses thru 6/5/89 - 7/31/89

Personnel:	Judy Gallozzo ½ of her salary	6/5 - 7/28/89	8 weeks @ 175 = 1400.00	
			8% FUT	11.20
			.7% NHCZ	9.80
			workers comp	5.86
			Employer FICA	105.64
				1532.00

Cabana charge . 7/12/89 — 25.66

Cookout - 5/25/89 67 liquor 250 215 food . — 317.00

Office market charges. 6/16, 6/20, 6/22, 6/23, 6/26 — 267.81

7/6, 7/17, 7/20 — 43.47

~~Yard sale advertising~~ — ~~25.00~~

Plain stationary - ~~3~~ 1 cases — 94.00 ~~283.24~~

Coffee + sodas - volunteer days - est. $5.00 day @ 6 days — 30.00

Newspapers taken for clippings - 2 per day (.30 avg. weekday 1.13 avg. sunday) — 16.25 ~~32.50~~

Est. Copies, faxes, phone calls on WATS + CFI lines, postage, stationary, supplies — $ 350.00 ~~750.00~~

subtotal $ ~~3[illegible]~~ 2676.19

OWE:

A/R

Jonnie May
½ of her time
since July 1 [illegible] 198.00
.8% FUT 1.58
.7% NHCZ 1.39
workers comp .86
Employer FICA 14.87
[illegible] 97.00

pd #1024 8/5 26/064

2/[illegible]/90 $ 3523.38

9504366622284

RECEIVED
F.E.C.
SECRETARIAT
93 JUL 15 PM 12:21

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1993

SENSITIVE

Jan Witold Baran, Esquire
Lee E. Goodman, Esquire
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

RE: MUR 3191
Friends of Bill Zeliff Committee
John C. Naramore, as treasurer
Christmas Farm Inn, Inc.
William H. Zeliff, Jr.

Dear Mr. Baran and Mr. Goodman:

Based on a complaint filed with the Federal Election Commission on November 30, 1990 and on information supplied by your clients, the Commission on August 13, 1991 and September 26, 1991 found that there was reason to believe your clients had violated 2 U.S.C. § 441b. Earlier, on February 27, 1991, the Commission had found reason to believe that the Friends of Bill Zeliff ("the Committee") had violated 2 U.S.C. § 434(a)(6). The Commission instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

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

If you are unable to file a responsive brief or briefs within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosures
Briefs (3)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3191
	)	
Friends of Bill Zeliff Committee	)	
Robert D. Goodman, as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

In response to the filing of a complaint, the Commission on August 13, 1991 found reason to believe that the Friends of Bill Zeliff Committee ("the Committee") and its treasurer had violated 2 U.S.C. § 441b by knowingly receiving loans made with funds obtained from Christmas Farm Inn, ("the Corporation"), and by using other assets of the Corporation, to support the 1990 campaign of William H. Zeliff, Jr., ("the candidate") for the United States House of Representatives. Earlier, on February 27, 1991, the Commission had found reason to believe that the Committee and its treasurer had violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to two loans from the candidate. These latter loans were the same as two of those involved in the violations of 2 U.S.C. § 441b. The Committee's present treasurer is Robert D. Goodman.

II. ANALYSIS

A. Draws on Equity in Subchapter S Corporation

According to amended reports filed with the Commission by the Committee, William H. Zeliff, Jr. made $216,000 in loans to the Committee from funds other than bank loans during the 1989-90 election cycle. Information provided in response to the complaint

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indicated that $209,000 of the $216,000 was made up of draws against Mr. Zeliff's equity in Christmas Farm Inn, Inc. The Corporation is a close corporation which is jointly owned by William H. Zeliff, Jr. and Sydna T. Zeliff, and which has elected Subchapter S tax status.

1. Statutory and Regulatory Provisions

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits the knowing acceptance by a political committee of contributions from "any corporation whatever" in connection with an election to federal office. 2 U.S.C. § 441b. Candidates for the office of United States Representative may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) [l]egal and rightful title, or (ii) [a]n equitable interest." 11 C.F.R. § 110.10(b)(1). A candidate may use as personal funds his or her portion of assets jointly held with his or her spouse, the portion to be considered personal being the candidate's share according to the instrument of conveyance or ownership. "If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate." 11 C.F.R. § 110.10(b)(3).

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2. Subchapter S Corporations

The purpose of the Subchapter S provisions in the Internal Revenue Code is to permit small incorporated businesses, or close corporations, to avoid double taxation, i.e., of the corporation and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses may also be passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C. § 1366(c) and (d). See generally Byrne v. C.I.R., 361 F.2d 939 (7th Cir. 1966). Unreimbursed payments by a Subchapter S corporation of the personal expenses of shareholders must be recorded as distributions of income and must be reported as taxable income. American Trading Partners, L.P. v. A-1 International Importing Enterprises, Ltd., 770 F. Supp. 273, 275 (E.D. Pa. 1991).

3. Responses

Counsel for the Committee and all other respondents in this matter have submitted a response to the Commission's Factual and Legal Analyses, as well as answers to interrogatories and numerous documents, the latter including a second affidavit signed by Kenneth Kaslow, bookkeeper for the Corporation. Mr. Kaslow's initial affidavit was submitted with counsel's response to the

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complaint. Additional responses to follow-up questions and document requests have also been received.

In his second affidavit, Mr. Kaslow states that Christmas Farm Inn was "incorporated as a Subchapter S corporation in 1977. At that time, William and Sydna Zeliff transferred their personal property used in connection with their former unincorporated business (known as Christmas Farm Inn) to the Inn. That personal property consisted of the Inn itself, all furnishings and equipment." Mr. Kaslow goes on to state,

> From January of 1989 through the 1990 election, William and Sydna Zeliff were the only two owners, directors and officers of the Inn. William H. Zeliff, Jr., served as President of the Inn and Sydna T. Zeliff served as Treasurer of the Inn. William Zeliff, as President, exercised discretionary authority to order any payments or loans made by the Inn.[1]

During the 1989-90 election cycle the Committee reported the following assertedly personal loans from Mr. Zeliff:

3/30/90	-	$10,000
4/18/90	-	5,000
5/3/90	-	3,000
8/7/90	-	30,000
8/14/90	-	20,000
8/20/90	-	25,000
8/28/90	-	40,000
9/4/90	-	57,000
9/11/90	-	20,000
12/3/90	-	6,000
		$216,000

In response to the complaint, counsel stated that $7,000 of the $216,000 came from Mr. Zeliff's salary and other income, while

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1. In an earlier affidavit Mr. Kaslow stated that Christmas Farm Inn, Inc., is made up of "three separate local small businesses: Christmas Farm Inn, a country inn, Yesterday's Restaurant, located at the Inn, and the Jackson Corner Store. Each of these three businesses is located in Jackson, New Hampshire."

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$209,000 was in the form of checks drawn from the Inn's account which represented cash draws against Mr. Zeliff's equity in the Corporation. Mr. Kaslow stated in his first affidavit that "[a]ccording to Christmas Farm Inn, Inc's records, from May 1, 1989, to December 31, 1990, William H. Zeliff, as a half owner, drew from Christmas Farm Inn, Inc., a total of $209,000 for campaign purposes."[2] These draws were recorded by the Corporation as loans.[3] As of the Committee's 1992 Year End Report either $26,008 or $33,008 of the $209,000 had been repaid by the Committee to Mr. Zeliff, depending upon whether $7,000 of the

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2. In his first affidavit Mr. Kaslow stated that the corporation's assets were appraised at in September, 1989. As of December 31, 1990, the corporation had outstanding mortgages and debts of leaving joint equity available to the owners of Thus, the value of Mr. Zeliff's equity interest at the end of 1990 was

3. Certain of the loans reported by the Committee can be matched by date with the loans recorded on the Corporation's written record. The following lists the apparent matches:

Loan from Corporation	Loan to Committee
5/9/90 - $10,000	
6/1/90 - 20,000	8/7/90 - $30,000
8/13/90 - 20,000	8/14/90 - 20,000
8/25/90 - 25,000	8/20/90 - 25,000
8/17/90 - 40,000	8/28/90 - 40,000
9/4/90 - 60,000	9/4/90 - 57,000
9/11/90 - 20,000	9/11/90 - 20,000
12/3/90 - 7,500	12/3/90 - 6,000

It is not possible to pair the earlier loans to the Committee with particular loans from the Corporation. The following are the apparently unmatched loans:

Loan from Corporation	Loan to Committee
4/30/90 - $10,000	3/30/90 - $10,000
	4/17/90 - 5,000
	5/3/90 - 3,000

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$33,008 in repayments is considered to have covered the loan from Mr. Zeliff's salary and other income.

In response to the Commission's finding of reason to believe that respondents had violated 2 U.S.C. § 441b in connection with the $209,000 in loans, counsel for the Committee argued that the monies which Mr. Zeliff obtained from the Corporation to make the loans to the Committee were his personal funds, pursuant to 11 C.F.R. § 110.10(b)(1). Counsel further asserted that, while it is correct that a Subchapter S corporation's profits remain the property of the corporation until a dividend or profit is declared by the shareholders,

> [t]his conclusion pertains solely to legal title. While legal title may vest in the corporation, the [Commission's Factual and Legal] Analyses ignore Congressman Zeliff's equitable interest in one-half of the Inn's assets. Section 110.10(b)(1) of the Commission's regulations specifies that personal funds are any assets to which the candidate has legal title or an equitable interest. (Emphasis in original).

Further, counsel stated that

> Congressman Zeliff, as President of the Inn, had 'legal right of access to' and had discretionary 'control over' the assets of the Inn. At his discretion, Congressman Zeliff had the power to withdraw monies from the Inn's bank accounts, sell assets, forgive loans and declare dividends. Because he could exercise these powers exclusively, there was no attendant risk of undue influence upon him by a third party, not even by his wife, Sydna Zeliff.

Counsel also argued that, in contrast to situations involving the use of reimburseable drawing accounts by corporate officials,

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Mr. Zeliff in effect owed the amounts of the loans at issue to himself.

> [G]iven his authority at the Inn, he could forgive the loan and declare it a dividend should he choose to do so. In short, . . . Congressman Zeliff is beholden to no one but himself. (Emphasis in original.)

Counsel stated further:

> This conclusion is consistent with the Inn's treatment of accounts receivable as assets of the Inn . . . . If 11 C.F.R. § 110.10(b)(1) means what it expressly states -- that personal funds are "any assets controlled and equitably owned by the candidate" -- then the loan receivables were similarly assets of Congressman Zeliff. He indeed had discretionary right of control over and equity interest in fifty percent of the Inn's assets, including its loan receivables (i.e., Congressman Zeliff had an equitable interest in his own "receivables").
>
> Far from any intention to subvert the integrity of the political process, Congressman Zeliff's choice to repay drawn amounts merely reflects his effort not to diminish his own estate which consists primarily of the Inn. The Inn's property was originally the Zeliffs' personal property and was transferred to the Inn upon its incorporation in 1977. Congressman and Mrs. Zeliff have spent the last sixteen years of their lives developing, operating and nurturing the Inn. Over their many years of ownership, the Zeliffs have treated the Inn's assets as their own personal assets. Congressman Zeliff did so again in 1989 and 1990 when he ran for Congress.

4. Legal and Factual Analysis

2 U.S.C. § 441b "prohibits corporations from using treasury funds to make expenditures 'in connection with' any federal election . . . ." FEC v. Massachusetts Citizens for Life, Inc., ("MCFL"), 479 U.S. 238, 241 (1986). This same prohibition extends to contributions made with treasury funds.

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A corporation, including a corporation which elects Subchapter S tax status, acquires, by the act of incorporation, a legal identity separate from that of its investors, and is subject to regulation as such. See generally, United States v. Richardson, 469 F.2d 349, 350 (10th Cir. 1972) ("the legislative history of Subchapter S negates any inference that Congress intended" corporations to lose their corporate character).[4] Corporations retain separate legal identities from their investors no matter how they are taxed under the Internal Revenue Code.[5] Therefore, the fact that a candidate may have invested his or her personal property in a Subchapter S corporation does not mean that the corporation's treasury funds can be viewed as the "personal funds" of the candidate for purposes of the Federal Election Campaign Act, ("the Act"). Nor does the fact that the corporation's income is passed through to the shareholders for taxation purposes change the corporate nature of the new entity. (See MUR 3119).

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4. "Electing to file as a Subchapter S corporation does not make [the corporation] anything less than a valid corporation . . . ." Reiherzer v. Shannon, 581 F.2d 1266, 1273 (7th Cir, 1978). "As a general rule, courts and legislatures adhere to the notion that a corporation is a legal entity separate from its shareholders." 1 F. O'Neal & R. Thompson, Close Corporations, § 1.10 (3rd ed. 1986). "Whatever the factual context, courts rarely permit a corporation to be disregarded for the benefit of its own shareholders. Persons who chose the corporate form of doing business are held to the consequences of that decision." Id., § 1.10(E).

5. "The congressional desire to provide an alternative form of doing business [as Subchapter S corporations] does not suggest an intention to treat electing corporations as partnerships or proprietorships for tax purposes." Johnson v. U.S., 386 F. Supp. 374, 377 (E.D. Kentucky, 1974).

In the present matter, Christmas Farm Inn, Inc., possesses all the characteristics of a corporate entity prohibited from making contributions or expenditures under Section 441b. It is readily distinguishable from a corporation exempted, pursuant to MCFL, from the prohibitions of this statutory provision in that it was formed to engage in business activities for profit, not to promote political ideas. 479 U.S. at 264.[6] Therefore, Christmas Farm Inn fits the description of the "type of 'traditional corporatio[n] organized for economic gain,' . . . that has been the focus of regulation of corporate political activity" sustained by the Supreme Court. Id. at 259, quoting FEC v. National Conservative Political Action Committee, 470 U.S. 480, 500 (1985).

Counsel argues that while Mr. Zeliff may not have legal right or title to the Corporation's assets, he "equitably owns one-half of the Inn and exercises undisputed, discretionary control over use of the Inn's assets. Therefore, the Inn's assets constitute Congressman Zeliff's personal funds under the express provisions of 11 C.F.R. § 110.10(b)(1)."

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6. The Supreme Court in MCFL held that the Act's prohibition on corporate expenditures could not be constitutionally applied to nonprofit incorporated organizations that meet three essential criteria: (1) the corporation was formed for the express purpose of promoting political ideas, not to engage in business activities; (2) it has no shareholders or other persons affiliated with it who would have a claim on its assets or earnings; and (3) it was not established by a business corporation or labor union and does not accept contributions from such entities. 479 U.S.C. at 264. The Court's distinction was between the use for political purposes of profits accumulated through the corporate form and the activities of corporations created for purposes of disseminating idea, "not to amass capital." 479 U.S. at 259.

While it is accurate that Section 110.10(b)(1) defines a candidate's personal funds as including assets in which the candidate has an equitable interest, this provision must not be read in isolation, but rather in conjunction with all provisions of the Act. The Act's prohibition against corporate contributions is broad and is intended to prevent any corporate funds from flowing into campaigns for federal office.[7] Section 110.10 was intended by the Commission to clarify a candidate's personal relationship to the contribution and expenditure limitations imposed by 2 U.S.C. § 441a, particularly in light of the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 51-54 (1976) regarding the unconstitutionality of limitations on a candidate's own expenditures from personal funds. Section 110.10 was not intended to provide an exception to 2 U.S.C. § 441b for the use by candidates of corporate assets. In the present matter, the loans provided to the Zeliff campaign came from the Corporation's general treasury account and thus resulted in the prohibited infusion of corporate funds into the campaign, whether or not Mr. Zeliff had an equitable claim to the monies involved.

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7. Prior to enactment of the Federal Election Campaign Act corporate contributions in federal elections were prohibited by 18 U.S.C. § 610. This provision was transferred to the Act in 1971, with the addition of a new paragraph defining "'contribution or expenditure' to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee or political party or organization. . . ." H.R. Rep. No. 92-752, 92d Cong., 1st Sess. 30, reprinted in FEC, Legislative History of the Federal Election Campaign Act of 1971, at 817, 846 (1981).

Nor does Counsel's emphasis upon the control which Mr. Zeliff exerted over the assets of the Corporation diminish the corporate nature of those assets. Because the funds at issue came in the form of loans which Mr. Zeliff was obligated to repay, the funds were controlled by the Corporation, not by Mr. Zeliff. Mr. Zeliff could have obtained these funds from the Corporation through various means other than loans, (e.g., directing a disbursement, liquidating his interest in the Corporation and using the proceeds from that liquidation, using his interest as collateral for a bank loan, or loaning his shares in the Corporation to the Committee); however, the method he chose, namely his borrowing of the monies from the Corporation's treasury and then his lending of those funds to the Committee, resulted in the flow of corporate monies into his campaign.

5. Recommendation

The Office of the General Counsel recommends that the Commission find probable cause to believe the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 441b(a) by knowingly accepting $209,000 in loans which had been made with monies obtained from Christmas Farm Inn, Inc.

B. Corporate Advances

The Commission has also found reason to believe that the Committee and its treasurer violated 2 U.S.C. § 441b by knowingly accepting corporate in-kind contributions in the form of goods and services for which the Corporation was not reimbursed within a commercially reasonable time.

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1. Statutory and Regulatory Provisions

As stated above, 2 U.S.C. § 441b(a) prohibits the knowing acceptance of corporate contributions in connection with elections to federal office. 2 U.S.C. § 441b(b)(2) defines "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money . . . or anything of value . . . in connection with any election" to federal office.

11 C.F.R. § 116.3(b), which is part of the regulatory scheme addressing debts owed by political committees or candidates, provides that "[a] corporation in its capacity as a commercial vendor may extend credit to a candidate, political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business . . . ." (Emphasis added.) 11 C.F.R. § 116.1(c) defines "commercial vendor" as "any persons providing goods and services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services."

"Ordinary course of business" encompasses both the nature and conduct of the creditor's business and the timing involved in the extension of credit. See, e.g., MUR 1741. The payment by a corporation of amounts owed by a political committee to another vendor would not generally be within the ordinary course of business of the payor, exceptions being found in the provision of certain types of consultant or managerial services where purchases or sub-contracts are part of an agreement with a committee regarding the services to be rendered.

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Pursuant to 11 C.F.R. § 114.9(a)(1), stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of that corporation's facilities "for individual volunteer activity in connection with a Federal election" and must reimburse the corporation only to the extent that the operating costs or overhead of the corporation are increased. 11 C.F.R. § 114.9(a)(1). "Occasional, isolated, or incidental use" is defined to mean activity by a stockholder during working hours which does not interfere with the normal activities of the corporation, activity by employees which does not prevent the completion of the normal amount of work usually accomplished by those employees, and "[a]ny such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours . . . ." 11 C.F.R. § 114.9(a)(1).

If stockholders or employees make more than occasional, isolated or incidental use of corporate facilities, they must reimburse the corporation "within a commercially reasonable time for the normal and usual charge . . . for the use of such facilities." 11 C.F.R. § 114.9(a)(2).

The provisions of 11 C.F.R. § 114.9(a)(1) and (2) are meant to provide a limited avenue for stockholders and employees to use corporate facilities in connection with their own volunteer campaign activity. These provisions require that the stockholder or employee providing volunteer services personally reimburse the corporation for his or her own use of its facilities. See General Counsel's Brief, MUR 2185. If the stockholder or employee does

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make the required reimbursement, that repayment is still subject to examination with regard to amount and timing.

11 C.F.R. § 114.9(c) permits any person other than a stockholder or employee of a corporation, including a political committee, to use corporate facilities to produce materials for a federal campaign as long as the corporation is reimbursed "within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market." Persons, including political committees, who are not stockholders or employees may also use such corporate facilities as telephones, typewriters or furniture in connection with a federal election, as long as the corporation is reimbursed for the use of these facilities "within a commercially reasonable time" for "the normal and usual rental charge . . . for the use of the facilities." 11 C.F.R. § 114.9(d). A candidate, candidate's agent, or other person traveling on behalf of a candidate who uses a means of transportation owned or leased by a corporation, such as vans and trucks, must reimburse the corporation for such use "within a commercially reasonable time . . . at the normal and usual rental charge." 11 C.F.R. § 114.9(e)(2). In this last instance the reimbursement must be made with campaign funds.

"Commercially reasonable time" is not defined in the regulations. In situations in which a corporation normally operates as a vendor of the goods and services involved, the Commission has compared billing and payment timing accorded a political committee/customer with that accorded other customers of the same corporation. In situations in which a corporation does

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not normally provide the goods and services at issue, as when its facilities are used by volunteers, it becomes necessary to compare its charging and collection processes with those of outside vendors who do normally provide such goods or services.

2. Factual Responses

In response to the complaint in the present matter, and later in response to interrogatories and follow-up questions, counsel have explained that between July 28, 1989 and December 17, 1990 the Corporation billed the Committee for a total of $35,094.40 in goods and services. A review of the Committee's reports shows payments by the Committee to Christmas Farm Inn of $2,610.64 on August 5, 1989, and of $737.09, $4,333.30, $1,828.04 and $489.45 on December 20, 1989, bringing the total of reported expenditures to the Corporation in 1989 to $9,998.52.

On April 29, 1990 Mr. Zeliff personally reimbursed the Corporation in the amount of $6,752.84, a payment not reflected in the Committee's reports.[8] During the period beginning with the second quarter of 1990 and ending on December 31 of that year the Committee reported an accumulation of $18,343 in debts owed the Corporation,[9] against which the Committee paid the Corporation $5,000 on December 19, 1990 and $9,784.69 on January 28, 1991, and the candidate paid $3,558.35 on March 6, 1991.

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8. Counsel have indicated that an amended report will be filed reflecting this payment. None had apparently been filed as of the date of this brief.

9. The Inn's charges were reported on the Committee's quarterly reports as debts incurred during the relevant period.

In their August 31, 1992 response to follow-up questions, counsel stated that the Committee's $2,610.64 expenditure to the Corporation on August 5, 1989 was in full payment of a July 31, 1989 invoice "for services, supplies, food, and beverages supplied by the Inn in June and July, 1989." The attached invoice shows a total of $2,676.19 in expenses from which $65.55 was deducted for unexplained reasons. The $2,676.19 included a $1,532 salary cost related to Judy Galluzzo's secretarial work for the Committee between June 5 and July 28, 1989; that amount equaled one half of her salary for that period. The remaining itemized charges included $317 for a cookout, $25.66 for a cabana charge, $267.81 and $43.47 in "Office Market charges" (apparently for office supplies), $94 for stationery, $30 for coffee and soda for volunteers, $16.25 for newspapers, and $350 as a combined estimate for "copies, faxes, phone calls on Watts and CFI lines, postage, stationery, supplies."

The Committee reported a December 20, 1989 repayment of $737.09 as having been for "telephone reimbursement." According to counsel's responses and the attached invoices, this reimbursement covered five invoiced amounts for telephone usage as follows:

Date[10]	Amount
8/31/89	$100.00
9/29/89	143.77
10/27/89	126.05
11/24/89	164.25
12/29/89	203.02
	$737.09

10. In each instance the date is that of the invoice.

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According to counsel, the Committee's reported payment of $4,333.30 on December 20, 1989 was for the "prorated salaries of two Inn employees . . . who performed secretarial services for both the Inn and the Committee." This payment covered the following invoiced amounts paid to Judy Galluzzo and, for three weeks in December, to Lois Nelson:

Date	Amount
8/31/89	$ 957.50
9/29/89	191.50
10/27/89	1,378.80
11/24/89	957.50
12/29/89	848.00
	$4,333.30

The Committee's payment of $1,828.04 on December 20, 1989 was for the use of the Corporation's van. It covered the following invoiced amounts:

Date	Amount
8/31/89	$ 500.00
9/29/89	279.00
10/27/89	535.68
11/24/89	412.92
12/29/89	100.44
	$1,828.04

The final December 20, 1989 expenditure of $489.45 was in full payment for food and beverages provided by the Corporation for a dinner held on November 1, 1989. This amount was included on the November 24, 1989 invoice sent to the Committee.

Mr. Zeliff's payment to the Committee of $6,752.84 on April 29, 1990 apparently covered $961.56 in items included in the invoices submitted to the Committee by the Corporation between July and December, 1989, but not covered by the Committee's December 20 payments, plus invoices totaling $5,791.28 received between January

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and the end of April, 1990. According to the invoices presented to the Committee, the $961.56 covered the 1989 services and charges grouped below by purpose:

Date	Amount	Purpose
12/29/89	$ 98.50	Postage
9/29/89	$ 100.45	Office supplies
10/27/89	148.80	
11/24/89	126.08	
12/29/89	65.55	
	$ 440.88	
8/31/89	$ 14.65	Newspapers
9/29/89	11.72	
10/27/89	11.72	
11/24/89	14.65	
	$ 52.74	
8/31/89	$ 125.09	Food (including liquor, coffee & sodas)
9/29/89	25.00	
10/27/89	77.85	(Manchester party, at cost)
	20.00	
11/24/89	51.50	
12/29/89	20.00	
	$ 319.44	
8/31/89	$ 50.00	Copying

The January - April, 1990 charges covered by the remaining $5,791.28 of Mr. Zeliff's April 29, 1990 payment covered the following:

Date	Amount	Purpose
1/26/90	$ 231.76	Telephone (Watts line) Faxes
2/23/90	442.80	
3/31/90	431.26	
4/30/90	127.38	
	$1,233.20	
1/26/90	$ 591.48	Transportation (Van: Based on mileage)
2/23/90	407.34	
3/31/90	641.70	
4/30/90	1,082.52	
	$2,723.04	

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Date	Amount	Purpose
1/26/90	$ 101.09	Office Supplies
2/23/90	318.45	
3/31/90	53.34	
4/30/90	0	
	$ 472.88	
2/23/90	$ 397.00	Copying
1/26/90	$ 187.27	Food (includes coffee,
2/23/90	0	liquor, etc.)
3/31/90	86.14	
4/30/90	691.75	(including announcement
	$ 965.16	dinner - $680.72)

As indicated above, no reimbursements were made to the Corporation between May and mid-December, 1990. During that period debts totaling $18,343.04 accrued as follows:

Date	Amount	Purpose
5/31/90	$ 46.25	Telephone
6/30/90	275.12	
7/31/90	295.75	
8/31/90	355.21	
9/28/90	606.08	
10/31/90	720.70	
11/10/90	754.24	
12/17/90	534.02	
	$3,587.37	
5/31/90	$1,456.55	Transportation (van
6/30/90	1,811.60	and truck)
7/31/90	2,289.00	
8/31/90	1,097.84	
9/28/90	1,805.05	
10/31/90	2,293.11	
11/10/90	730.22	
	$11,483.37	
5/31/90	$ 32.75	Postage
10/31/90	23.00	
11/10/90	21.75	
12/17/90	77.50	
	$ 155.00	
5/31/90	$ 422.38	Credit card charges
9/28/90	193.76	
	$ 616.14	

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Date	Amount	Purpose
6/30/90 (including 6/2 dinner)	$ 534.54	Food, beverages, and related equipment
8/31/90	47.98	
11/10/90	95.00	
12/17/90 (12/17 party)	1,345.62	
	$2,023.14	
7/31/90	$ 310.82	Supplies for signs
8/31/90	62.65	
9/28/90	82.65	
10/31/90	21.90	
	$ 478.02	

As stated above, the Committee made a $5,000 payment to the Corporation on December 20, 1990, thereby reducing the total due to $13,343.04. This payment was reported as being for "expense reimbursement." According to the invoices and the Committee's reports, another payment, this time of $9,784.69, was made on January 30, 1991 for "postage, phone, milage [sic]." According to a notation on the December, 1990 invoice, the remaining $3,558.35 was paid by William Zeliff on February 13, 1991. The Committee reported this last payment as having been made on March 6, 1991, and as having been for "postage, phone, milage [sic]."

In response to questions posed by this Office, counsel on February 18, 1993 provided additional information as to which individuals were involved in the various uses of the Inn's facilities. According to counsel, the secretarial services at issue were performed by Judy Galluzzo for Mr. Zeliff and the Committee paid a pro rata share of her salary. Mr. Zeliff, Ms. Galluzzo and "one campaign volunteer" were those who used the Inn's telefax machine and Watts line. The Inn's van was used by Mr. Zeliff, with a campaign volunteer sometimes acting as driver.

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The November 1, 1989 dinner was held at the Inn which operates a restaurant "in the ordinary course of its business." Finally, "Ms. Galluzzo and some campaign volunteers performed all campaign-related activities in Congressman Zeliff's personal residence which is located on the Inn's premises."

3. Legal Response

Counsel have argued that Mr. Zeliff "equitably owned half of all of the Inn's supplies, equipment and vehicles used for campaign purposes and had discretionary authority over their use." Thus, the use of these assets assertedly fell within the definition of "personal funds" at 11 C.F.R. § 110.10(b)(1). Counsel further argue that Mr. Zeliff "chose to have the Committee reimburse the Inn for his own sound business reasons . . . ." and that all of the invoices were paid within a commercially reasonable time.

Regarding the timing of reimbursements, it is also asserted that because "commercially reasonable time" is not defined, "the Commission's treatment of three to six months as unreasonable . . . appears arbitrarily determined." Counsel argue that the Corporation has received credit extensions of three months from vendors, and that the Commission has "countenanced extensions of credit of twelve months for a campaign committee's payment for services where that period of time was consistent with the vendor's regular business dealings." (Emphasis in original.)

Counsel also rely upon three enforcement matters as precedents for the respondents' actions in the present matter.

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These matters are MUR 3070, MUR 1741, and MUR 3428/3435.[11]

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11. It is important to note that MUR 1741 and MUR 3428/3435 involved partnerships; thus, the provisions of 11 C.F.R. § 114.9 were not applied in those matters.

In MUR 3070, the Commission addressed a complaint which alleged that outstanding debts owed a consulting firm for as much as two years after they had been incurred constituted in-kind corporate contributions to the political committee which had received the goods and services involved. The Commission approved the recommendation of this Office that the Commission find no reason to believe that a violation occurred because the corporation had "established a business relationship with the [committee] for consulting services provided in connection with the 1988 campaign . . ." and the terms of the relationship were "substantially similar to extensions of credit to nonpolitical debtors." The corporation had sent past due notices to the committee and had made verbal inquiries regarding payment over a period of more than twelve months. Thus, the corporation's extension of credit to the respondent political committee was found to have been within its ordinary course of business.

MUR 1741 involved the rental of office space and the provision of goods and services by a law firm to a political action committee. In that matter the investigation showed that the partnership involved had an established practice of renting portions of its space to subtenants and of providing such subtenants with services, e.g., a receptionist, telephone call charges, telephone equipment, postage, photocopying, furniture and use of a conference room. The investigation also revealed that the timing of billings sent to these other tenants for rent and most of the other services was generally comparable to that applied to the respondent committee, and thus this Office did not recommend findings of probable cause to believe that late billing for such costs constituted a violation of the Act. On the other hand, this Office did recommend, and the Commission found, probable cause to believe that the timing of billings specifically for telephone equipment charges totaling $19,285.97 was outside the ordinary course of the firm's business; these charges were billed after delays of up to 26-27 months and the respondent was the only subtenant or client provided such equipment.

In July, 1992, the Commission again addressed the issue of services provided by a law firm in MUR 3428/3435. In this matter the complainants alleged that an authorized committee had received in-kind contributions from the partnership in the forms of office space, equipment and support staff. The committee provided one invoice dated October 17, 1991, which covered charges totaling $4,715.64 for services provided between August 19 and October 15, 1991; the charges covered "secretarial services and overtime," "document preparation," "communication costs" and "transportation

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4. **Legal and Factual Analysis**

As stated above at pages 7-11, the investment of a shareholder's personal assets in a corporation does not shield those assets from an application of 2 U.S.C. § 441b. Whether or not the shareholders retain equitable interests in them, the assets become those of the corporation. Therefore, for the same reasons as those given above with regard to the use of corporate treasury funds, any use in the present matter of corporate assets on behalf of the Committee must be examined in light of 2 U.S.C. § 441b and of the regulations which interpret this provision.

Based upon respondents' invoices and Committee reports, the Corporation billed the Committee in 1989 and 1990 for $35,094.40 in goods and services. When aggregated by categories, the charges included:

Salaries	-	$ 5,865.30
Telephone use	-	5,557.66
Use of corporate vehicles	-	16,034.45
Office supplies	-	1,319.04
Postage	-	253.50
Food, beverages & related equip.	-	4,169.85
Newspapers	-	68.99

(Footnote 11 continued from previous page)
and refreshments". Thus, this invoice covered a two-month period. A second invoice dated November 15, 1991, covered charges totaling $2,016.40 for "secretarial services and overtime," "document preparation," and "communication costs". These two invoices were paid by the committee one and ten days respectively after the invoices were issued.

In this most recent matter the Commission rejected by a 4-2 vote the recommendations of this Office to find reason to believe that the law firm had provided services to the committee outside the ordinary course of business. The Statement of Reasons issued by the Commissioners who had opposed such action emphasized that "the law firm segregated and billed the Committee for 100 percent of the salaries and expenses it incurred . . . . The responses provided documentation that these bills were promptly paid . . . ."

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Materials for signs	-	478.02
Copying	-	447.00
Credit card charges	-	616.14
Undifferentiated payment	-	350.00
		$35,159.95
	-	65.55[12]
		$35,094.40

a. Use of Corporate Facilities by Stockholders/Employees

As discussed above, 11 C.F.R. § 114.9(a) permits the use of a corporation's own facilities by stockholders or employees who use those facilities for individual volunteer activity in connection with a federal election. The types of facilities covered by this regulation include, inter alia, telephones, telefax machines, and copying machines. (The use of corporate vehicles is addressed at 11 C.F.R. § 114.9(e)(2) and thus is discussed separately below.) If use of such facilities by a stockholder or employee is only "occasional, isolated or incidental," reimbursement need only be made to the extent that the corporation's overhead is increased. If such use is on more than an occasional, isolated or incidental basis, reimbursement must be made within a commercially reasonable time at the usual and normal rental charge. 11 C.F.R. § 114.9(a) also states that it is the stockholder or employee who must reimburse the corporation in such a situation, not a third party.

Application of these regulations in the present matter means that Mr. Zeliff, as shareholder, was required to reimburse the Inn himself for his use of the types of facilities covered by 11 C.F.R. § 114.9(a). Mr. Zeliff did personally reimburse the Inn

12. As is noted above, the reason for this deduction on one invoice is not known.

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for a total of $2,242.42 in telephone, telefax and copying charges. (See more detailed discussion below.) But, because the Committee rather than Mr. Zeliff reimbursed the Inn for a total of $4,112.46 in telephone, telefax and $350 in undifferentiated charges for, inter alia, phone calls, faxes and copying, the $4,112.46 automatically constituted an impermissible corporate contribution under 2 U.S.C. § 441b.

Further, based upon information contained in the monthly invoices sent to the Committee by the Inn, Mr. Zeliff's use of the Corporation's facilities was steady and ongoing, not occasional, isolated or incidental. Thus, even if one does not assume that the amount reimbursed by the Committee was a corporate contribution because it was repaid by the Committee rather than Mr. Zeliff, the requirement in 11 C.F.R. § 114.9(a)(2) that repayment must be made at a normal and usual rental charge within a commercially reasonable time is also applicable. In the present matter, application of a commercially reasonable standard of thirty days for measuring the timing of the reimbursements by both Mr. Zeliff and the Committee of the bills for telephone, telefax, and copying charges, plus the charges covered by the Committee's payment of $350, leads to the conclusion that the Corporation made prohibited contributions. In addition, one of the amounts billed the Committee and paid by Mr. Zeliff for copying costs was based upon a faulty assumption as to the standard to be applied and therefore was apparently understated.

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1. **Telephone, Telefax Machines**

Mr. Zeliff and the Committee reimbursed the Inn for a total of $5,557.66 in telephone and telefax charges billed over more than a year. According to counsel's most recent response, the telefax machine and Watts line involved in these charges were used by the stockholder/candidate, the Inn's secretary, and one campaign volunteer. Of the $5,557.66 owed, Mr. Zeliff personally paid $1,233.20 on April 29, 1990, and $562.22 on February 13 or March 6, 1991,[13] leaving $3,762.24 to the Committee.

The Corporation's charges for the use of the Watts line were based upon a formula which assumed that the Inn itself used the line an average of 17 hours a month with the remainder of the $10.30 hourly charge being allocable to the Committee. Fax transmissions were billed on a cost per transmission basis. It, therefore, appears that Mr. Zeliff's personal reimbursements for telephone and telefax use represented usual and normal charges.

Commercially reasonable timing of the payment of telephone and telefax charges would permit a thirty-day lapse between the date the bill is received and payment. Mr. Zeliff's April 29, 1990 personal payment of $1,233.20 was applied against four charges billed the Committee by the Inn between January 26, 1990 and April 30, 1990. Application of a thirty-day payment window

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13. Because Mr. Zeliff's reimbursement of $3,558.35 in February or March was reported as covering multiple categories of services, this Office has prorated the telephone charges by determining the ratio of all telephone charges to total charges billed the Committee (15.8%) and applying that percentage to Mr. Zeliff's payment. This procedure results in the allocation of $562.22 to telephones.

leaves $674.56 as not having been reimbursed within a commercially reasonable time.

If one first applies Mr. Zeliff's personal, telephone-related payment of $562.22 in February or March, 1991 to the telephone charge of $534.02 contained in the December 17, 1990 invoice, and if one assumes that the payment was made in February as per the notation on the December invoice, this payment still falls outside the thirty-day time frame, again resulting in a corporate contribution of $562.22.

With regard to the remaining $3,762.46 in reimbursements for telephones and telefaxes made by the Committee, the timing of these repayments would place much of the $3,762.40 outside the thirty-day period and thus outside a commercially reasonable time. Of the $737.09 payment on December 20, 1989, $369.82 in charges was invoiced more than thirty days before the payment; of the $3,587.37 covered by payments in January, February or March, 1991, approximately $3,053 was invoiced more than thirty days before the first payment. Thus, a minimum of $3,422.82 for telephone and telefax usage would have constituted corporate contributions by the Inn even if reimbursements by the Committee were permitted.

2. Copying

Mr. Zeliff's reimbursements on April 29, 1990, covered a $50 debt for copying incurred in August, 1989 and an additional $397 incurred in February, 1990. The $50 represented 20 copies a day at $.10 a copy for five weeks. The $397 charge represented "approx. 27,000 copies x .0147 for excess on CFI maintenance agreement for copier."

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Payments for the copying charges were made by the appropriate person, pursuant to 11 C.F.R. § 114.9(a); however, because Mr. Zeliff's overall use of the Inn's facilities was more than occasional, isolated or incidental, the appropriate repayment standards are those at § 114.9(a)(2). The $50 charge appears to have met the requirements of this regulation with regard to method of calculation; however, payment of the $50 took place eight months after the charge was billed, taking it outside the regulation's "commercially reasonable time" requirement. A thirty-day payment period is standard in the copying business.[14]

The $397 charge was apparently reached by the Committee's application of 11 C.F.R. § 114.9(a)(1) which permits charges for occasional, isolated, or incidental use to be based upon the amount by which a corporation's overhead is increased. However, as stated above, the appropriate regulation, given Mr. Zeliff's extended use of corporate facilities, is 11 C.F.R. § 114.9(a)(2). Thus, the proper charge for the 27,000 copies would have been the normal and usual rental charge for the use of the copying machine, not the amount by which the corporation's maintenance agreement was exceeded. Application to the 27,000 copies of the $.10 per copy approach used by the corporation in connection with the August, 1989, bill for $50 discussed above would result in a required reimbursement of $2,700 and an actual under-reimbursement of $2,303 ($2,700 - $397). Given the thirty-day standard payment

14. A conversation by staff with a small, Washington copying business confirmed the thirty-day standard period.

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period in the copying business, even the Committee's $397 repayment was out of time. Thus, a corporate contribution of the full $2,700 resulted from this later use of the Corporation's copier.

3. Undifferentiated Reimbursement

The Committee's August 5, 1989, payment of $2,610.64 to the Inn covered an estimated charge of $350 for "copies, faxes, phone calls on Watts and CFI lines, postage, stationery, supplies" used during June and July of that year. No breakdown of the $350 charge by category has been provided, nor is information in hand as to the exact month in which these charges accrued. However, all of the items listed apparently were used by Mr. Zeliff as stockholder/candidate and/or by his secretary and thus were eligible to come within the coverage of 11 C.F.R. § 114.9(a)(2). However, because it was the Committee, not the stockholder, who made the reimbursement, the requirements of this regulation were not met.

b. Transportation Using Corporate Vehicles

11 C.F.R. § 114.9(e)(2) permits the use of corporation-owned or leased means of transportation such as cars or vans by a candidate, a candidate's agent or another person traveling on behalf of the candidate, who must reimburse the corporation at the normal and usual rental charge within a commercially reasonable time. Reimbursement must be made with campaign funds.

In the present matter, the candidate, Mr. Zeliff, used a van owned or leased by the Inn to make campaign-related trips. Through April, 1990 the Inn charged the Committee a rate of $.279

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per mile, a figure assertedly based upon AAA estimated costs for operating a vehicle; in May, 1990 this rate was raised to $.28. According to the invoices, beginning in August, 1990, and continuing through the November election, a second vehicle, a "red CFI truck" was also used for campaign purposes. The Committee was charged $.30 per mile for use of the truck.[15]

Mr. Zeliff and the Committee, as required by 11 C.F.R. § 114.4.9(e)(2), reimbursed the Corporation for a total of $16,034.45 in charges related to the use of the Inn's van. The following are the charges made by the Inn for van and truck usage and the dates of payment:

Date Incurred	Date Billed	Amount	Date Paid
8/89	8/31/89	$ 500.00	12/29/89
9/89	9/29/89	279.00	12/29/89
10/89	10/27/89	535.68	12/29/89
11/89	11/24/89	412.92	12/29.89
12/89	12/29/89	100.24	12/20/89
1/90	1/26/90	591.48	4/29/90
2/90	2/23/90	407.34	4/29/90
3/90	3/31/90	641.70	4/29/90
4/90	4/30/90	1,082.52	4/29/90
5/90	5/31/90	1,456.55	12/20/90; 1/30/91 & 2/13/91
6/90	6/30/90	1,811.60	12/20/90; 1/30/91 & 2/13/91
7/90	7/31/90	2,289.00	12/20/90; 1/30/91 & 2/13/91
8/90	8/31/90	1,097.84	12/20/90; 1/30/91 & 2/13/91
9/90	9/28/90	1,805.05	12/20/90; 1/30/91 & 2/13/91
10/90	10/31/90	2,293.11	12/20/90; 1/30/91 & 2/13/91
11/90	11/10/90	730.22	12/20/90; 1/30/91 & 2/13/91
	Total	$16,034.25	

15. These figures for costs per mile were apparently taken from a AAA publication entitled "Your Driving Costs." The cost per mile figures take into account gasoline and oil, maintenance, tires and ownership costs such as insurance and depreciation.

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Apparently the rates charged the Committee for use of the van and truck represented normal and usual charges. Thus, the remaining issue is whether the reimbursements were made within a commercially reasonable time.

Again, there is no evidence in hand that it was the usual practice of the Corporation to provide vehicles for use by customers. Within the rental car business it is apparently a relatively common practice to provide a thirty-day payment period.[16] Application of this approach to the Committee and candidate's reimbursements for vehicle use results in at least $11,751.97 in late repayments.[17]

c. Corporate Advances to Third-Party Vendors

The provisions of 11 C.F.R. § 114.9 permit the use by certain persons of a corporation's own facilities for campaign-related activities. They do not cover corporate advances on behalf of candidates or their committees in the form of corporate payments of bills submitted by third party vendors to such committees for which reimbursements are later made to the corporation. See MUR 3143. 11 C.F.R. § 116.3 permits corporations to extend credit to

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16. Alamo provides for this length of payment period. Some companies such as Avis require the use of a credit card and thus immediate payment.

17. Because the $5,000 payment made by the Committee on December 20, 1990 was reported generally as being for expense reimbursement, it is necessary to determine what fraction of that payment should be allocated to vehicle expenses. The overall payments for this purpose represented 45.7% of the total reimbursements paid the Inn. Using this percentage, $2,285 of the $5,000 should be allocated to vehicle costs. The $730.22 charge for December was therefore covered by this payment, taking this charge out of the total of corporate contributions.

political committees, but only if the credit is extended in the ordinary course of the corporation's own business.

According to the invoices submitted by the Inn, certain of the charges to the Committee apparently covered payments made by the Inn on behalf of the Committee to other vendors, including payments to Office Market, Conway Supply, Jackson Corner Store and B.E.V. for office supplies, to Federal Express for postage, to unnamed vendors for newspapers, to Conway Supply for materials for signs, and to unnamed vendors in the form of credit card charges. These payments totaled at least $3,040.14.[18] The charges did not involve the use of the Inn's own facilities; nor is there evidence that the Inn paid these types of charges for its customers in the ordinary course of its business. Thus, these charges do not fall within the requirements of either 11 C.F.R. § 114.9 or 11 C.F.R. § 116.3(b) and, consequently, must be treated as advances and, therefore, contributions to the Committee in violation of 2 U.S.C. § 441b. See, again, MUR 3143.

d. Secretarial Services

As is also stated above, two individuals, Judy Galluzzo and Lois Nelson, provided secretarial services for Mr. Zeliff in connection with his campaign starting in June of 1989 and extending through the last half of that year. The election-related shares of these individuals' salaries totaled $5,865.30.

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18. The undifferentiated payment of $350 in August, 1989, included reimbursements for "postage, stationery, supplies", as well as "copies, Watts line and Faxes." No portion of this payment is included in the total of $3,040.14.

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11 C.F.R. § 114.9 "applies only to the use of corporate facilities and does not include the use of the paid services of corporate employees. Therefore, this section cannot be read as supporting or authorizing . . . reimbursement . . . regarding the compensation paid to . . . employees for the political services rendered to Federal candidates." Advisory Opinion 1984-24. The question in the present matter then becomes whether the provision of such services was within the ordinary course of business of the Corporation, pursuant to 11 C.F.R. § 116.3. There is no indication that the Inn extended credit for, or even provided, secretarial services to its customers in the ordinary course of its business. Thus, the provisions of Section 116.3 would also not apply. The Inn's payments of the secretaries' salaries constituted advances and, accordingly, corporate contributions totaling $5,865.30, in violation of 2 U.S.C. § 441b.

Even if one were to include the provision of secretarial services as a use of corporate facilities, the fact that the costs of these services were reimbursed by the Committee, not by Mr. Zeliff as stockholder, would take them outside the provisions of 11 C.F.R. § 114.9(a)(2). Nor did the timing of certain the payments meet the requirements of this regulation. While the Committee's payment of $1,532 on August 5, 1989, came within five days of receipt of the relevant invoice, the payment of $4,333.30 on December 20, 1989, covered five months of invoices, three of which were paid more than thirty days after the dates of the invoices. The charges for secretarial services covered by these three invoices totaled $2,527.80.

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e. Food and Beverages

Mr. Zeliff and the Committee together made expenditures to the Inn totaling $4,169.85 to cover the invoiced costs of food and beverages, including charges for a dinner held on November 1, 1989, at the Inn ($420), an announcement dinner held on April 3, 1990, at the Inn ($680.72), and a party held on December 17, 1990, at the Inn ($1,345.62). Also included on the invoices were, inter alia, other meals at the Inn's restaurant, coffee and sodas for volunteers, and a cabana charge.

Counsel has stressed that the Inn's business includes food services. Therefore, it appears that the dinners and other food and beverage-related items included on the invoices from the Corporation involved extensions of credit in the ordinary course of the Inn's business as permitted by 11 C.F.R. § 116.3.

The timing of certain of the payments, however, appears to have been longer than that accorded other customers. As noted above, in his affidavit attached to counsel's November 13, 1991 response to interrogatories, the Inn's bookkeeper, Kenneth Kaslow, stated that "[t]he Inn has in the past received credit extensions of three months from its vendors." No such statement was included with regard to the Inn's practice of extending credit to its own customers.

The dates on which the debts here at issue were incurred and billed, and the dates of payment are as follows:

Date Incurred	Date Billed	Amount	Date Paid
5/25/89	7/31/89	$317.00	8/5/89
7/12/89	7/31/89	25.66	8/5/89
6/5-7/31/89	7/31/89	30.00	8/5/89
11/1/89	11/24/89	489.45	12/20/89

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Date Incurred	Date Billed	Amount	Date Paid
8/1-8/31/89	8/31/89	100.09	4/29/90
8/1-8/31/89	8/31/89	25.00	4/29/90
9/1-9/30/89	9/29/89	25.00	4/29/90
9/30-10/27/89	10/27/89	20.00	4/29/90
10/11/89	10/27/89	77.85	4/29/90
10/28-11/24/89	11/24/89	51.50	4/29/90
11/25/89-12/29/89	12/29/89	20.00	4/29/90
12/30/89-1/26/90	1/26/90	67.00	4/29/90
12/26/89	1/26/90	42.27	4/29/90
1/25/90	1/26/90	78.00	4/29/90
3/18/90	3/31/90	25.65	4/29/90
3/18/90	3/31/90	3.19	4/29/90
3/19/90	3/31/90	33.44	4/29/90
3/20/90	3/31/90	23.86	4/29/90
4/3/90	4/30/90	680.72	4/29/90
4/25/90	4/30/90	11.03	4/29/90
6/2/90	6/30/90	507.54	12/20, 1990; 1/30 & 2/13, 1991
6/90	6/30/90	27.00	12/20, 1990; 1/30 & 2/13, 1991
8/90	8/31/90	47.98	12/20, 1990; 1/30 & 2/13, 1991
11/6/90	11/10/90	95.00	12/20, 1990; 1/30 & 2/13, 1991
12/17/90	12/17/90	1,345.62	12/20, 1990; 1/30 & 2/13, 1991
	Total	$4,169.85	

As stated above, counsel has cited MUR 3070 as precedent for permitting outstanding amounts to be owed a vendor for more than a year after the debts were incurred. In that matter, however, the committee, prior to incurring the $12,198 debt at issue, had paid the vendor almost $45,000 as consulting fees and for expenses incurred on the campaign's behalf over a period of four months in 1987 and 1988. On that basis and on the basis of statements received from the vendor concerning its general practices regarding the collection of debts, it was determined that the vendor had established a business arrangement with the candidate committee for consulting services in connection with the 1988 election. The vendor had apparently proceeded in the ordinary

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course of its business, including extending credit in a manner substantially similar to that extended other, nonpolitical debtors.

In the present matter it has not been shown that it was the usual practice of the Inn to extend any credit to its customers. Therefore, it appears reasonable to apply at most a thirty-day time limit to the period between the receipt of an invoice and payment, beyond which a corporate contribution would result.[19]

Application of a thirty-day standard to the charges listed above results in at least $3,422.44 in corporate advances for food and beverages not repaid within a commercially reasonable time. The late payments resulted in corporate contributions to the Committee in violation of 2 U.S.C. § 441b.

f. Summary and Recommendation

The above analysis of particular categories of advances and reimbursements results in the following total amount of corporate contributions:

Third party vendors	-	$3,040.14
Salaries	-	5,865.30
Telephone, telefax	-	4,999.02
Copying	-	2,700.00
Undifferentiated payment	-	350.00
Vehicles	-	11,751.97
Food and beverages	-	3,422.44
		$32,128.87

The Office of the General Counsel recommends that the Commission find probable cause to believe that the Friends of Bill Zeliff Committee, and Robert D. Goodman, as treasurer, violated

19. Application of a thirty-day period extends the benefit of the doubt to respondents and also acknowledges that several charges were for parties rather than individual meals.

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2 U.S.C. § 441b(a) by knowingly accepting advances made by Christmas Farm Inn, Inc. on behalf of the Committee, and by knowingly accepting the use of corporate facilities without the requirements of 11 C.F.R. § 114.9 having been met.

C. Failure to File 48 Hour Notices

2 U.S.C. § 434(a)(6)(A) requires principal campaign committees of federal candidates to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives, or the Commission, as appropriate, and the Secretary of State, of each contribution totaling $1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. This statute requires notification within 48 hours after the receipt of the contribution, including the name of the candidate and the office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. This notification is in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

On February 27, 1991, the Commission found reason to believe in MUR 3226 that the Friends of Bill Zeliff Committee and its treasurer had violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to certain candidate loans received prior to the September 11, 1990 New Hampshire primary election. The Commission offered at that time to enter into preprobable cause conciliation. On April 5, 1991, counsel for the respondents requested that further proceedings be deferred in MUR 3226 until the Commission had acted in the present matter. Counsel also asked

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that the two matters be merged. On August 23, 1991 the Commission voted for merger, with the matter to be designated MUR 3191.

The Commission's reason to believe determination involved the Committee's failure to file required notices for two loans totaling $97,000 which it had received from the candidate. These loans included one in the amount of $40,000 received on August 28, 1990, and a second in the amount of $57,000 received on September 4, 1990. The Committee has not contested the Commission's finding.

The Office of the General Counsel recommends that the Commission find probable cause to believe that the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 434(a)(6).

III. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe that the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 441b and 2 U.S.C. § 434(a)(6).

7/14/93
Date

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 3191
	)	
Christmas Farm Inn, Inc.	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

In response to the filing of a complaint, the Commission on August 13, 1991 found reason to believe that Christmas Farm Inn, Inc. ("the Corporation") had violated 2 U.S.C. § 441b by making loans, and by permitting the use of other assets of the Corporation by the William H. Zeliff, Jr. ("the candidate") and the Friends of Bill Zeliff Committee ("the Committee"), to support Mr. Zeliff's 1990 campaign for the United States House of Representatives.

II. ANALYSIS

A. Draws on Equity in Subchapter S Corporation

According to amended reports filed with the Commission by the Committee, William H. Zeliff, Jr. made $216,000 in loans to the Committee from funds other than bank loans during the 1989-90 election cycle. Information provided in response to the complaint indicated that $209,000 of the $216,000 was made up of draws against Mr. Zeliff's equity in Christmas Farm Inn, Inc. The Corporation is a close corporation which is jointly owned by William H. Zeliff, Jr. and Sydna T. Zeliff, and which has elected Subchapter S tax status.

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1. Statutory and Regulatory Provisions

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits "any corporation whatever" from making contributions in connection with an election to federal office. 2 U.S.C. § 441b. Candidates for the office of United States Representative may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) [l]egal and rightful title, or (ii) [a]n equitable interest." 11 C.F.R. § 110.10(b)(1). A candidate may use as personal funds his or her portion of assets jointly held with his or her spouse, the portion to be considered personal being the candidate's share according to the instrument of conveyance or ownership. "If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate." 11 C.F.R. § 110.10(b)(3).

2. Subchapter S Corporations

The purpose of the Subchapter S provisions in the Internal Revenue Code is to permit small incorporated businesses, or close corporations, to avoid double taxation, i.e., of the corporation and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses may also be

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passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C. § 1366(c) and (d). See generally Byrne v. C.I.R., 361 F.2d 939 (7th Cir. 1966). Unreimbursed payments by a Subchapter S corporation of the personal expenses of shareholders must be recorded as distributions of income and must be reported as taxable income. American Trading Partners, L.P. v. A-1 International Importing Enterprises, Ltd., 770 F. Supp. 273, 275 (E.D. Pa. 1991).

3. Responses

Counsel for the Corporation and for all other respondents in this matter have submitted a response to the Commission's Factual and Legal Analyses, as well as answers to interrogatories and numerous documents, the latter including a second affidavit signed by Kenneth Kaslow, bookkeeper for the Corporation. Mr. Kaslow's initial affidavit was submitted with counsel's response to the complaint. Additional responses to follow-up questions and document requests have also been received.

In his second affidavit, Mr. Kaslow states that Christmas Farm Inn was "incorporated as a Subchapter S corporation in 1977. At that time, William and Sydna Zeliff transferred their personal property used in connection with their former unincorporated business (known as Christmas Farm Inn) to the Inn. That personal

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property consisted of the Inn itself, all furnishings and equipment." Mr. Kaslow goes on to state,

> From January of 1989 through the 1990 election, William and Sydna Zeliff were the only two owners, directors and officers of the Inn. William H. Zeliff, Jr., served as President of the Inn and Sydna T. Zeliff served as Treasurer of the Inn. William Zeliff, as President, exercised discretionary authority to order any payments or loans made by the Inn.[1]

During the 1989-90 election cycle the Committee reported the following assertedly personal loans from Mr. Zeliff:

3/30/90	-	$10,000
4/18/90	-	5,000
5/3/90	-	3,000
8/7/90	-	30,000
8/14/90	-	20,000
8/20/90	-	25,000
8/28/90	-	40,000
9/4/90	-	57,000
9/11/90	-	20,000
12/3/90	-	6,000
		$216,000

In response to the complaint, counsel stated that $7,000 of the $216,000 came from Mr. Zeliff's salary and other income, while $209,000 was in the form of checks drawn from the Inn's account which represented cash draws against Mr. Zeliff's equity in the Corporation. Mr. Kaslow stated in his first affidavit that "[a]ccording to Christmas Farm Inn, Inc.'s records, from May 1, 1989, to December 31, 1990, William H. Zeliff, as a half owner, drew from Christmas Farm Inn, Inc., a total of $209,000 for

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1. In an earlier affidavit Mr. Kaslow stated that Christmas Farm Inn, Inc., is made up of "three separate local small businesses: Christmas Farm Inn, a country inn, Yesterday's Restaurant, located at the Inn, and the Jackson Corner Store. Each of these three businesses is located in Jackson, New Hampshire."

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campaign purposes."[2] These draws were recorded by the Corporation as loans.[3] As of the Committee's 1992 Year End Report, either $26,008 or $33,008 of the $209,000 had been repaid by the Committee to Mr. Zeliff, depending upon whether $7,000 of the $33,008 in repayments is considered to have covered the loan from Mr. Zeliff's salary and other income.

In response to the Commission's finding of reason to believe that the Corporation had violated 2 U.S.C. § 441b in connection with the $209,000 in loans, counsel argued that the monies which Mr. Zeliff obtained from the Corporation to make the loans to the

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2. In his first affidavit Mr. Kaslow stated that the corporation's assets were appraised at in September, 1989. As of December 31, 1990, the corporation had outstanding mortgages and debts of , leaving joint equity available to the owners of Thus, the value of Mr. Zeliff's equity interest at the end of 1990 was

3. Certain of the loans reported by the Committee can be matched by date with the loans recorded on the Corporation's written record. The following lists the apparent matches:

Loan from Corporation	Loan to Committee
5/9/90 - $10,000	
6/1/90 - 20,000	8/7/90 - $30,000
8/13/90 - 20,000	8/14/90 - 20,000
8/25/90 - 25,000	8/20/90 - 25,000
8/17/90 - 40,000	8/28/90 - 40,000
9/4/90 - 60,000	9/4/90 - 57,000
9/11/90 - 20,000	9/11/90 - 20,000
12/3/90 - 7,500	12/3/90 - 6,000

It is not possible to pair the earlier loans to the Committee with particular loans from the Corporation. The following are the apparently unmatched loans:

Loan from Corporation	Loan to Committee
4/30/90 - $10,000	3/30/90 - $10,000
	4/17/90 - 5,000
	5/3/90 - 3,000

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Committee were his personal funds, pursuant to 11 C.F.R. § 110.10(b)(1). Counsel further asserted that, while it is correct that a Subchapter S corporation's profits remain the property of the corporation until a dividend or profit is declared by the shareholders,

> [t]his conclusion pertains solely to legal title. While legal title may vest in the corporation, the [Commission's Factual and Legal] Analyses ignore Congressman Zeliff's equitable interest in one-half of the Inn's assets. Section 110.10(b)(1) of the Commission's regulations specifies that personal funds are any assets to which the candidate has legal title or an equitable interest. (Emphasis in original).

Further, counsel stated that

> Congressman Zeliff, as President of the Inn, had 'legal right of access to' and had discretionary 'control over' the assets of the Inn. At his discretion, Congressman Zeliff had the power to withdraw monies from the Inn's bank accounts, sell assets, forgive loans and declare dividends. Because he could exercise these powers exclusively, there was no attendant risk of undue influence upon him by a third party, not even by his wife, Sydna Zeliff.

Counsel also argued that, in contrast to situations involving the use of reimburseable drawing accounts by corporate officials, Mr. Zeliff in effect owed the amounts of the loans at issue to himself.

> [G]iven his authority at the Inn, he could forgive the loan and declare it a dividend should he choose to do so. In short, . . . Congressman Zeliff is beholden to no one but himself. (Emphasis in original.)

Counsel stated further:

> This conclusion is consistent with the Inn's treatment of accounts receivable as assets of the Inn . . . . If 11 C.F.R. § 110.10(b)(1) means what it expressly states -- that personal funds are "any assets controlled and equitably owned by the

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candidate" -- then the loan receivables were similarly assets of Congressman Zeliff. He indeed had discretionary right of control over and equity interest in fifty percent of the Inn's assets, including its loan receivables (i.e., Congressman Zeliff had an equitable interest in his own "receivables").

Far from any intention to subvert the integrity of the political process, Congressman Zeliff's choice to repay drawn amounts merely reflects his effort not to diminish his own estate which consists primarily of the Inn. The Inn's property was originally the Zeliffs' personal property and was transferred to the Inn upon its incorporation in 1977. Congressman and Mrs. Zeliff have spent the last sixteen years of their lives developing, operating and nurturing the Inn. Over their many years of ownership, the Zeliffs have treated the Inn's assets as their own personal assets. Congressman Zeliff did so again in 1989 and 1990 when he ran for Congress.

4. Legal and Factual Analysis

2 U.S.C. § 441b "prohibits corporations from using treasury funds to make expenditures 'in connection with' any federal election . . . ." FEC v. Massachusetts Citizens for Life, Inc., ("MCFL"), 479 U.S. 238, 241 (1986). This same prohibition extends to contributions made with treasury funds.

A corporation, including a corporation which elects Subchapter S tax status, acquires, by the act of incorporation, a legal identity separate from that of its investors, and is subject to regulation as such. See generally, United States v. Richardson, 469 F.2d 349, 350 (10th Cir. 1972) ("the legislative history of Subchapter S negates any inference that Congress

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intended" corporations to lose their corporate character).[4] Corporations retain separate legal identities from their investors no matter how they are taxed under the Internal Revenue Code.[5] Therefore, the fact that a candidate may have invested his or her personal property in a Subchapter S corporation does not mean that the corporation's treasury funds can be viewed as the "personal funds" of the candidate for purposes of the Federal Election Campaign Act, ("the Act"). Nor does the fact that the corporation's income is passed through to the shareholders for taxation purposes change the corporate nature of the new entity. (See MUR 3119).

In the present matter, Christmas Farm Inn, Inc., possesses all the characteristics of a corporate entity prohibited from making contributions or expenditures under Section 441b. It is readily distinguishable from a corporation exempted, pursuant to MCFL, from the prohibitions of this statutory provision in that it was formed to engage in business activities for profit, not to

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4. "Electing to file as a Subchapter S corporation does not make [the corporation] anything less than a valid corporation . . . ." Reiherzer v. Shannon, 581 F.2d 1266, 1273 (7th Cir, 1978). "As a general rule, courts and legislatures adhere to the notion that a corporation is a legal entity separate from its shareholders." 1 F. O'Neal & R. Thompson, Close Corporations, § 1.10 (3rd ed. 1986). "Whatever the factual context, courts rarely permit a corporation to be disregarded for the benefit of its own shareholders. Persons who chose the corporate form of doing business are held to the consequences of that decision." Id., § 1.10(E).

5. "The congressional desire to provide an alternative form of doing business [as Subchapter S corporations] does not suggest an intention to treat electing corporations as partnerships or proprietorships for tax purposes." Johnson v. U.S., 386 F. Supp. 374, 377 (E.D. Kentucky, 1974).

promote political ideas. 479 U.S. at 264.[6] Therefore, Christmas Farm Inn fits the description of the "type of 'traditional corporatio[n] organized for economic gain,' . . . that has been the focus of regulation of corporate political activity" sustained by the Supreme Court. Id. at 259, quoting FEC v. National Conservative Political Action Committee, 470 U.S. 480, 500 (1985).

Counsel argues that while Mr. Zeliff may not have legal right or title to the Corporation's assets, he "equitably owns one-half of the Inn and exercises undisputed, discretionary control over use of the Inn's assets. Therefore, the Inn's assets constitute Congressman Zeliff's personal funds under the express provisions of 11 C.F.R. § 110.10(b)(1)."

While it is accurate that Section 110.10(b)(1) defines a candidate's personal funds as including assets in which the candidate has an equitable interest, this provision must not be read in isolation, but rather in conjunction with all provisions of the Act. The Act's prohibition against corporate contributions is broad and is intended to prevent any corporate funds from

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6. The Supreme Court in MCFL held that the Act's prohibition on corporate expenditures could not be constitutionally applied to nonprofit incorporated organizations that meet three essential criteria: (1) the corporation was formed for the express purpose of promoting political ideas, not to engage in business activities; (2) it has no shareholders or other persons affiliated with it who would have a claim on its assets or earnings; and (3) it was not established by a business corporation or labor union and does not accept contributions from such entities. The Court's distinction was between the use for political purposes of profits accumulated through the corporate form and the activities of corporations created for purposes of disseminating ideas, "not to amass capital." 479 U.S. at 259.

flowing into campaigns for federal office.[7] Section 110.10 was intended by the Commission to clarify a candidate's personal relationship to the contribution and expenditure limitations imposed by 2 U.S.C. § 441a, particularly in light of the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 51-54 (1976) regarding the unconstitutionality of limitations on a candidate's own expenditures from personal funds. Section 110.10 was not intended to provide an exception to 2 U.S.C. § 441b for the use by candidates of corporate assets. In the present matter, the loans provided to the Zeliff campaign came from the Corporation's general treasury account and thus resulted in the prohibited infusion of corporate funds into the campaign, whether or not Mr. Zeliff had an equitable claim to the monies involved.

Nor does Counsel's emphasis upon the control which Mr. Zeliff exerted over the assets of the Corporation diminish the corporate nature of those assets. Because the funds at issue came in the form of loans which Mr. Zeliff was obligated to repay, the funds were controlled by the Corporation, not by Mr. Zeliff. Mr. Zeliff could have obtained these funds from the Corporation through various means other than loans, (e.g., directing a

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7. Prior to enactment of the Federal Election Campaign Act corporate contributions in federal elections were prohibited by 18 U.S.C. § 610. This provision was transferred to the Act in 1971, with the addition of a new paragraph defining "'contribution or expenditure' to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee or political party or organization. . . ." H.R. Rep. No. 92-752, 92d Cong., 1st Sess. 30, reprinted in FEC, Legislative History of the Federal Election Campaign Act of 1971, at 817, 846 (1981).

disbursement, liquidating his interest in the Corporation and using the proceeds from that liquidation, using his interest as collateral for a bank loan, or loaning his shares in the Corporation to the Committee); however, the method he chose, namely his borrowing of the monies from the Corporation's treasury and then his lending of those funds to the Committee, resulted in the flow of corporate monies into his campaign.

5. Recommendation

The Office of the General Counsel recommends that the Commission find probable cause to believe that Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b(a) by making loans totaling $209,000 to William D. Zeliff, Jr. which he then lent to the Friends of Bill Zeliff Committee.

B. Corporate Advances

The Commission has also found reason to believe that the Corporation violated 2 U.S.C. § 441b by making corporate in-kind contributions to the Committee in the form of goods and services for which the Corporation was not reimbursed within a commercially reasonable time.

1. Statutory and Regulatory Provisions

As stated above, 2 U.S.C. § 441b(a) prohibits the making of corporate contributions in connection with elections to federal office. 2 U.S.C. § 441b(b)(2) defines "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money . . . or anything of value . . . in connection with any election" to federal office.

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11 C.F.R. § 116.3(b), which is part of the regulatory scheme addressing debts owed by political committees or candidates, provides that "[a] corporation in its capacity as a commercial vendor may extend credit to a candidate, political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business . . . ." (Emphasis added.) 11 C.F.R. § 116.1(c) defines "commercial vendor" as "any persons providing goods and services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services."

"Ordinary course of business" encompasses both the nature and conduct of the creditor's business and the timing involved in the extension of credit. See, e.g., MUR 1741. The payment by a corporation of amounts owed by a political committee to another vendor would not generally be within the ordinary course of business of the payor, exceptions being found in the provision of certain types of consultant or managerial services where purchases or sub-contracts are part of an agreement with a committee regarding the services to be rendered.

Pursuant to 11 C.F.R. § 114.9(a)(1), stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of that corporation's facilities "for individual volunteer activity in connection with a Federal election" and must reimburse the corporation only to the extent that the operating costs or overhead of the corporation are increased. 11 C.F.R. § 114.9(a)(1). "Occasional, isolated, or incidental use" is

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defined to mean activity by a stockholder during working hours which does not interfere with the normal activities of the corporation, activity by employees which does not prevent the completion of the normal amount of work usually accomplished by those employees, and "[a]ny such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours . . . ." 11 C.F.R. § 114.9(a)(1).

If stockholders or employees make more than occasional, isolated or incidental use of corporate facilities, they must reimburse the corporation "within a commercially reasonable time for the normal and usual charge . . . for the use of such facilities." 11 C.F.R. § 114.9(a)(2).

The provisions of 11 C.F.R. § 114.9(a)(1) and (2) are meant to provide a limited avenue for stockholders and employees to use corporate facilities in connection with their own volunteer campaign activity. These provisions require that the stockholder or employee providing volunteer services personally reimburse the corporation for his or her own use of its facilities. See General Counsel's Brief, MUR 2185. If the stockholder or employee does make the required reimbursement, that repayment is still subject to examination with regard to amount and timing.

11 C.F.R. § 114.9(c) permits any person other than a stockholder or employee of a corporation, including a political committee, to use corporate facilities to produce materials for a federal campaign as long as the corporation is reimbursed "within a commercially reasonable time for the normal and usual charge for

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producing such materials in the commercial market." Persons, including political committees, who are not stockholders or employees may also use such corporate facilities as telephones, typewriters or furniture in connection with a federal election, as long as the corporation is reimbursed for the use of these facilities "within a commercially reasonable time" for "the normal and usual rental charge . . . for the use of the facilities." 11 C.F.R. § 114.9(d). A candidate, candidate's agent, or other person traveling on behalf of a candidate who uses a means of transportation owned or leased by a corporation, such as vans and trucks, must reimburse the corporation for such use "within a commercially reasonable time . . . at the normal and usual rental charge." 11 C.F.R. § 114.9(e)(2). In this last instance the reimbursement must be made with campaign funds.

"Commercially reasonable time" is not defined in the regulations. In situations in which a corporation normally operates as a vendor of the goods and services involved, the Commission has compared billing and payment timing accorded a political committee/customer with that accorded other customers of the same corporation. In situations in which a corporation does not normally provide the goods and services at issue, as when its facilities are used by volunteers, it becomes necessary to compare its charging and collection processes with those of outside vendors who do normally provide such goods or services.

2. Factual Responses

In response to the complaint in the present matter, and later in response to interrogatories and follow-up questions, counsel

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explained that between July 28, 1989 and December 17, 1990 the Corporation billed the Committee for a total of $35,094.40 in goods and services. A review of the Committee's reports shows payments by the Committee to Christmas Farm Inn of $2,610.64 on August 5, 1989, and of $737.09, $4,333.30, $1,828.04 and $489.45 on December 20, 1989, bringing the total of reported expenditures to the Corporation in 1989 to $9,998.52.

On April 29, 1990 Mr. Zeliff personally reimbursed the Corporation in the amount of $6,752.84, a payment not reflected in the Committee's reports.[8] During the period beginning with the second quarter of 1990 and ending on December 31 of that year the Committee reported an accumulation of $18,343 in debts owed the Corporation,[9] against which the Committee paid the Corporation $5,000 on December 19, 1990 and $9,784.69 on January 28, 1991, and the candidate paid $3,558.35 on March 6, 1991.

In their August 31, 1992 response to follow-up questions, counsel stated that the Committee's $2,610.64 expenditure to the Corporation on August 5, 1989 was in full payment of a July 31, 1989 invoice "for services, supplies, food, and beverages supplied by the Inn in June and July, 1989." The attached invoice shows a total of $2,676.19 in expenses from which $65.55 was deducted for unexplained reasons. The $2,676.19 included a $1,532 salary cost related to Judy Galluzzo's secretarial work for the Committee between June 5

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8. Counsel have indicated that an amended report will be filed reflecting this payment. None had apparently been filed as of the date of this brief.

9. The Inn's charges were reported on the Committee's quarterly reports as debts incurred during the relevant period.

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and July 28, 1989; that amount equaled one half of her salary for that period. The remaining itemized charges included $317 for a cookout, $25.66 for a cabana charge, $267.81 and $43.47 in "Office Market charges" (apparently for office supplies), $94 for stationery, $30 for coffee and soda for volunteers, $16.25 for newspapers, and $350 as a combined estimate for "copies, faxes, phone calls on Watts and CFI lines, postage, stationery, supplies."

The Committee reported a December 20, 1989 repayment of $737.09 as having been for "telephone reimbursement." According to counsel's responses and the attached invoices, this reimbursement covered five invoiced amounts for telephone usage as follows:

Date[10]	Amount
8/31/89	$100.00
9/29/89	143.77
10/27/89	126.05
11/24/89	164.25
12/29/89	203.02
	$737.09

According to counsel, the Committee's reported payment of $4,333.30 on December 20, 1989 was for the "prorated salaries of two Inn employees . . . who performed secretarial services for both the Inn and the Committee." This payment covered the following invoiced amounts paid to Judy Galluzzo and, for three weeks in December, to Lois Nelson:

Date	Amount
8/31/89	$ 957.50
9/29/89	191.50
10/27/89	1,378.80
11/24/89	957.50
12/29/89	848.00
	$4,333.30

10. In each instance the date is that of the invoice.

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The Committee's payment of $1,828.04 on December 20, 1989 was for the use of the Corporation's van. It covered the following invoiced amounts:

Date	Amount
8/31/89	$ 500.00
9/29/89	279.00
10/27/89	535.68
11/24/89	412.92
12/29/89	100.44
	$1,828.04

The final December 20, 1989 expenditure of $489.45 was in full payment for food and beverages provided by the Corporation for a dinner held on November 1, 1989. This amount was included on the November 24, 1989 invoice sent to the Committee.

Mr. Zeliff's payment to the Committee of $6,752.84 on April 29, 1990 apparently covered $961.56 in items included in the invoices submitted to the Committee by the Corporation between July and December, 1989, but not covered by the Committee's December 20 payments, plus invoices totaling $5,791.28 received between January and the end of April, 1990. According to the invoices presented to the Committee, the $961.56 covered the 1989 services and charges grouped below by purpose:

Date	Amount	Purpose
12/29/89	$ 98.50	Postage
9/29/89	$ 100.45	Office supplies
10/27/89	148.80	
11/24/89	126.08	
12/29/89	65.55	
	$ 440.88	
8/31/89	$ 14.65	Newspapers
9/29/89	11.72	
10/27/89	11.72	
11/24/89	14.65	
	$ 52.74	

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Date	Amount	Purpose
8/31/89	$ 125.09	Food (including liquor, coffee & sodas)
9/29/89	25.00	
10/27/89	77.85	(Manchester party, at cost)
	20.00	
11/24/89	51.50	
12/29/89	20.00	
	$ 319.44	
8/31/89	$ 50.00	Copying

The January - April, 1990 charges covered by the remaining $5,791.28 of Mr. Zeliff's April 29, 1990 payment covered the following:

Date	Amount	Purpose
1/26/90	$ 231.76	Telephone (Watts line) Faxes
2/23/90	442.80	
3/31/90	431.26	
4/30/90	127.38	
	$1,233.20	
1/26/90	$ 591.48	Transportation (Van: Based on mileage)
2/23/90	407.34	
3/31/90	641.70	
4/30/90	1,082.52	
	$2,723.04	
1/26/90	$ 101.09	Office Supplies
2/23/90	318.45	
3/31/90	53.34	
4/30/90	0	
	$ 472.88	
2/23/90	$ 397.00	Copying
1/26/90	$ 187.27	Food (includes coffee, liquor, etc.)
2/23/90	0	
3/31/90	86.14	
4/30/90	691.75	(including announcement dinner - $680.72)
	$ 965.16	

As indicated above, no reimbursements were made to the Corporation between May and mid-December, 1990. During that period debts totaling $18,343.04 accrued as follows:

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Date	Amount	Purpose
5/31/90	$ 46.25	Telephone
6/30/90	275.12	
7/31/90	295.75	
8/31/90	355.21	
9/28/90	606.08	
10/31/90	720.70	
11/10/90	754.24	
12/17/90	534.02	
	$3,587.37	
5/31/90	$1,456.55	Transportation (van and truck)
6/30/90	1,811.60	
7/31/90	2,289.00	
8/31/90	1,097.84	
9/28/90	1,805.05	
10/31/90	2,293.11	
11/10/90	730.22	
	$11,483.37	
5/31/90	$ 32.75	Postage
10/31/90	23.00	
11/10/90	21.75	
12/17/90	77.50	
	$ 155.00	
5/31/90	$ 422.38	Credit card charges
9/28/90	193.76	
	$ 616.14	
6/30/90 (including 6/2 dinner)	$ 534.54	Food, beverages, and related equipment
8/31/90	47.98	
11/10/90	95.00	
12/17/90	1,345.62	
(12/17 party)	$ 2,023.14	
7/31/90	$ 310.82	Supplies for signs
8/31/90	62.65	
9/28/90	82.65	
10/31/90	21.90	
	$ 478.02	

As stated above, the Committee made a $5,000 payment to the Corporation on December 20, 1990, thereby reducing the total due to $13,343.04. This payment was reported as being for "expense reimbursement." According to the invoices and the Committee's

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reports, another payment, this time of $9,784.69, was made on January 30, 1991 for "postage, phone, milage [sic]." According to a notation on the December, 1990 invoice, the remaining $3,558.35 was paid by William Zeliff on February 13, 1991. The Committee reported this last payment as having been made on March 6, 1991, and as having been for "postage, phone, milage [sic]."

In response to questions posed by this Office, counsel on February 18, 1993 provided additional information as to which individuals were involved in the various uses of the Inn's facilities. According to counsel, the secretarial services at issue were performed by Judy Galluzzo for Mr. Zeliff and the Committee paid a pro rata share of her salary. Mr. Zeliff, Ms. Galluzzo and "one campaign volunteer" were those who used the Inn's telefax machine and Watts line. The Inn's van was used by Mr. Zeliff, with a campaign volunteer sometimes acting as driver. The November 1, 1989 dinner was held at the Inn which operates a restaurant "in the ordinary course of its business." Finally, "Ms. Galluzzo and some campaign volunteers performed all campaign-related activities in Congressman Zeliff's personal residence which is located on the Inn's premises."

3. <u>Legal Response</u>

Counsel have argued that Mr. Zeliff "equitably owned half of all of the Inn's supplies, equipment and vehicles used for campaign purposes and had discretionary authority over their use." Thus, the use of these assets assertedly fell within the definition of "personal funds" at 11 C.F.R. § 110.10(b)(1). Counsel further argue that Mr. Zeliff "chose to have the Committee

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reimburse the Inn for his own sound business reasons . . ." and that all of the invoices were paid within a commercially reasonable time.

Regarding the timing of reimbursements, it is also asserted that because "commercially reasonable time" is not defined, "the Commission's treatment of three to six months as unreasonable . . . appears arbitrarily determined." Counsel argue that the Corporation has received credit extensions of three months from vendors, and that the Commission has "countenanced extensions of credit of twelve months for a campaign committee's payment for services where that period of time was consistent with the vendor's regular business dealings." (Emphasis in original.)

Counsel also rely upon three enforcement matters as precedents for the respondents' actions in the present matter. These matters are MUR 3070, MUR 1741, and MUR 3428/3435.[11]

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11. It is important to note that MUR 1741 and MUR 3428/3435 involved partnerships; thus, the provisions of 11 C.F.R. § 114.9 were not applied in those matters.

In MUR 3070, the Commission addressed a complaint which alleged that outstanding debts owed a consulting firm for as much as two years after they had been incurred constituted in-kind corporate contributions to the political committee which had received the goods and services involved. The Commission approved the recommendation of this Office that the Commission find no reason to believe that a violation occurred because the corporation had "established a business relationship with the [committee] for consulting services provided in connection with the 1988 campaign . . ." and the terms of the relationship were "substantially similar to extensions of credit to nonpolitical debtors." The corporation had sent past due notices to the committee and had made verbal inquiries regarding payment over a period of more than twelve months. Thus, the corporation's extension of credit to the respondent political committee was found to have been within its ordinary course of business.

MUR 1741 involved the rental of office space and the

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4. **Legal and Factual Analysis**

As stated above at pages 7-11, the investment of a shareholder's personal assets in a corporation does not shield

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(Footnote 11 continued from previous page)
provision of goods and services by a law firm to a political action committee. In that matter the investigation showed that the partnership involved had an established practice of renting portions of its space to subtenants and of providing such subtenants with services, e.g., a receptionist, telephone call charges, telephone equipment, postage, photocopying, furniture and use of a conference room. The investigation also revealed that the timing of billings sent to these other tenants for rent and most of the other services was generally comparable to that applied to the respondent committee, and thus this Office did not recommend findings of probable cause to believe that late billing for such costs constituted a violation of the Act. On the other hand, this Office did recommend, and the Commission found, probable cause to believe that the timing of billings specifically for telephone equipment charges totaling $19,285.97 was outside the ordinary course of the firm's business; these charges were billed after delays of up to 26-27 months and the respondent was the only subtenant or client provided such equipment.

In July, 1992, the Commission again addressed the issue of services provided by a law firm in MUR 3428/3435. In this matter the complainants alleged that an authorized committee had received in-kind contributions from the partnership in the forms of office space, equipment and support staff. The committee provided one invoice dated October 17, 1991, which covered charges totaling $4,715.64 for services provided between August 19 and October 15, 1991; the charges covered "secretarial services and overtime," "document preparation," "communication costs" and "transportation and refreshments". Thus, this invoice covered a two-month period. A second invoice dated November 15, 1991, covered charges totaling $2,016.40 for "secretarial services and overtime," "document preparation," and "communication costs". These two invoices were paid by the committee one and ten days respectively after the invoices were issued.

In this most recent matter the Commission rejected by a 4-2 vote the recommendations of this Office to find reason to believe that the law firm had provided services to the committee outside the ordinary course of business. The Statement of Reasons issued by the Commissioners who had opposed such action emphasized that "the law firm segregated and billed the Committee for 100 percent of the salaries and expenses it incurred . . . . The responses provided documentation that these bills were promptly paid . . . ."

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those assets from an application of 2 U.S.C. § 441b. Whether or not the shareholders retain equitable interests in them, the assets become those of the corporation. Therefore, for the same reasons as those given above with regard to the use of corporate treasury funds, any use in the present matter of corporate assets on behalf of the Committee must be examined in light of 2 U.S.C. § 441b and of the regulations which interpret this provision.

Based upon respondents' invoices and Committee reports, the Corporation billed the Committee in 1989 and 1990 for $35,094.40 in goods and services. These charges, when aggregated by categories, included:

Salaries	-	$ 5,865.30
Telephone use	-	5,557.66
Use of corporate vehicles	-	16,034.45
Office supplies	-	1,319.04
Postage	-	253.50
Food, beverages & related equip.	-	4,169.85
Newspapers	-	68.99
Materials for signs	-	478.02
Copying	-	447.00
Credit card charges	-	616.14
Undifferentiated payment	-	350.00
		$35,159.95
	-	65.55[12]
		$35,094.40

a. Use of Corporate Facilities by Stockholders/Employees

As discussed above, 11 C.F.R. § 114.9(a) permits the use of a corporation's own facilities by stockholders or employees who use those facilities for individual volunteer activity in connection with a federal election. The types of facilities covered by this

12. As is noted above, the reason for this deduction on one invoice is not known.

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regulation include, inter alia, telephones, telefax machines, and copying machines. (The use of corporate vehicles is addressed at 11 C.F.R. § 114.9(e)(2) and thus is discussed separately below.) If use of such facilities by a stockholder or employee is only "occasional, isolated or incidental," reimbursement need only be made to the extent that the corporation's overhead is increased. If such use is on more than an occasional, isolated or incidental basis, reimbursement must be made within a commercially reasonable time at the usual and normal rental charge. 11 C.F.R. § 114.9(a) also states that it is the stockholder or employee who must reimburse the corporation in such a situation, not a third party.

Application of these regulations in the present matter means that Mr. Zeliff, as shareholder, was required to reimburse the Inn himself for his use of the types of facilities covered by 11 C.F.R. § 114.9(a). Mr. Zeliff did personally reimburse the Inn for a total of $2,242.42 in telephone, telefax and copying charges. (See more detailed discussion below.) But, because the Committee rather than Mr. Zeliff reimbursed the Inn for a total of $4,112.46 in telephone, telefax and $350 in undifferentiated charges for, inter alia, phone calls, faxes and copying, the $4,112.46 automatically constituted an impermissible corporate contribution under 2 U.S.C. § 441b.

Further, based upon information contained in the monthly invoices sent to the Committee by the Inn, Mr. Zeliff's use of the Corporation's facilities was steady and ongoing, not occasional, isolated or incidental. Thus, even if one does not assume that the amount reimbursed by the Committee was a corporate contribution

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because it was repaid by the Committee rather than Mr. Zeliff, the requirement in 11 C.F.R. § 114.9(a)(2) that repayment must be made at a normal and usual rental charge within a commercially reasonable time is also applicable. In the present matter, application of a commercially reasonable standard of thirty days for measuring the timing of the reimbursements by both Mr. Zeliff and the Committee of the bills for telephone, telefax, and copying charges, plus the charges covered by the Committee's payment of $350, leads to the conclusion that the Corporation made prohibited contributions. In addition, one of the amounts billed the Committee and paid by Mr. Zeliff for copying costs was based upon a faulty assumption as to the standard to be applied and therefore was apparently understated.

1. **Telephone, Telefax Machines**

Mr. Zeliff and the Committee reimbursed the Inn for a total of $5,557.66 in telephone and telefax charges billed over more than a year. According to counsel's most recent response, the telefax machine and Watts line involved in these charges were used by the stockholder/candidate, the Inn's secretary, and one campaign volunteer. Of the $5,557.66 owed, Mr. Zeliff personally paid $1,233.20 on April 29, 1990, and $562.22 on February 13 or March 6, 1991,[13] leaving $3,762.24 to the Committee.

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13. Because Mr. Zeliff's reimbursement of $3,558.35 in February or March was reported as covering multiple categories of services, this Office has prorated the telephone charges by determining the ratio of all telephone charges to total charges billed the Committee (15.8%) and applying that percentage to Mr. Zeliff's payment. This procedure results in the allocation of $562.22 to telephones.

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The Corporation's charges for the use of the Watts line were based upon a formula which assumed that the Inn itself used the line an average of 17 hours a month with the remainder of the $10.30 hourly charge being allocable to the Committee. Fax transmissions were billed on a cost per transmission basis. It, therefore, appears that Mr. Zeliff's personal reimbursements for telephone and telefax use represented usual and normal charges.

Commercially reasonable timing of the payment of telephone and telefax charges would permit a thirty-day lapse between the date the bill is received and payment. Mr. Zeliff's April 29, 1990 personal payment of $1,233.20 was applied against four charges billed the Committee by the Inn between January 26, 1990 and April 30, 1990. Application of a thirty-day payment window leaves $674.56 as not having been reimbursed within a commercially reasonable time.

If one first applies Mr. Zeliff's personal, telephone-related payment of $562.22 in February or March, 1991 to the telephone charge of $534.02 contained in the December 17, 1990 invoice, and if one assumes that the payment was made in February as per the notation on the December invoice, this payment still falls outside the thirty-day time frame, again resulting in a corporate contribution of $562.22.

With regard to the remaining $3,762.46 in reimbursements for telephones and telefaxes made by the Committee, the timing of these repayments would place much of the $3,762.40 outside the thirty-day period and thus outside a commercially reasonable time. Of the $737.09 payment on December 20, 1989, $369.82 in charges was

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invoiced more than thirty days before the payment; of the $3,587.37 covered by payments in January, February or March, 1991, approximately $3,053 was invoiced more than thirty days before the first payment. Thus, a minimum of $3,422.82 for telephone and telefax usage would have constituted corporate contributions by the Inn even if reimbursements by the Committee were permitted.

2. Copying

Mr. Zeliff's reimbursements on April 29, 1990, covered a $50 debt for copying incurred in August, 1989 and an additional $397 incurred in February, 1990. The $50 represented 20 copies a day at $.10 a copy for five weeks. The $397 charge represented "approx. 27,000 copies x [$].0147 for excess on CFI maintenance agreement for copier."

Payments for the copying charges were made by the appropriate person, pursuant to 11 C.F.R. § 114.9(a); however, because Mr. Zeliff's overall use of the Inn's facilities was more than occasional, isolated or incidental, the appropriate repayment standards are those at § 114.9(a)(2). The $50 charge appears to have met the requirements of this regulation with regard to method of calculation; however, payment of the $50 took place eight months after the charge was billed, taking it outside the regulation's commercially reasonable time" requirement. A thirty-day payment period is standard in the copying business.[14]

14. A conversation by staff with a small, Washington copying business confirmed the thirty-day standard period.

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The $397 charge was apparently reached by the Committee's application of 11 C.F.R. § 114.9(a)(1) which permits charges for occasional, isolated, or incidental use to be based upon the amount by which a corporation's overhead is increased. However, as stated above, the appropriate regulation, given Mr. Zeliff's extended use of corporate facilities, is 11 C.F.R. § 114.9(a)(2). Thus, the proper charge for the 27,000 copies would have been the normal and usual rental charge for the use of the copying machine, not the amount by which the corporation's maintenance agreement was exceeded. Application to the 27,000 copies of the $.10 per copy approach used by the corporation in connection with the August, 1989, bill for $50 discussed above would result in a required reimbursement of $2,700 and and actual under-reimbursement of $2,303 ($2,700 - $397). Given the thirty-day standard payment period in the copying business, even the Committee's $397 repayment was out of time. Thus, a corporate contribution of the full $2,700 resulted from this later use of the Corporation's copier.

3. <u>Undifferentiated Reimbursement</u>

The Committee's August 5, 1989, payment of $2,610.64 to the Inn covered an estimated charge of $350 for "copies, faxes, phone calls on Watts and CFI lines, postage, stationery, supplies" used during June and July of that year. No breakdown of the $350 charge by category has been provided, nor is information in hand as to the exact month in which these charges accrued. However, all of the items listed apparently were used by Mr. Zeliff as stockholder/candidate and/or by his secretary and thus were eligible to come within the coverage of 11 C.F.R. § 114.9(a)(2). However, because

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it was the Committee, not the stockholder, who made the reimbursement, the requirements of this regulation were not met.

b. Transportation Using Corporate Vehicles

11 C.F.R. § 114.9(e)(2) permits the use of corporation-owned or leased means of transportation such as cars or vans by a candidate, a candidate's agent or another person traveling on behalf of the candidate, who must reimburse the corporation at the normal and usual rental charge within a commercially reasonable time. Reimbursement must be made with campaign funds.

In the present matter, the candidate, Mr. Zeliff, used a van owned or leased by the Inn to make campaign-related trips. Through April, 1990 the Inn charged the Committee a rate of $.279 per mile, a figure assertedly based upon AAA estimated costs for operating a vehicle; in May, 1990 this rate was raised to $.28. According to the invoices, beginning in August, 1990, and continuing through the November election, a second vehicle, a "red CFI truck" was also used for campaign purposes. The Committee was charged $.30 per mile for use of the truck.[15]

Mr. Zeliff and the Committee, as required by 11 C.F.R. § 114.4.9(e)(2), reimbursed the Corporation for a total of $16,034.45 in charges related to the use of the Inn's van. The following are the charges made by the Inn for van and truck usage and the dates of payment:

15. These figures for costs per mile were apparently taken from a AAA publication entitled "Your Driving Costs." The cost per mile figures take into account gasoline and oil, maintenance, tires and ownership costs such as insurance and depreciation.

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Date Incurred	Date Billed	Amount	Date Paid
8/89	8/31/89	$ 500.00	12/29/89
9/89	9/29/89	279.00	12/29/89
10/89	10/27/89	535.68	12/29/89
11/89	11/24/89	412.92	12/29.89
12/89	12/29/89	100.24	12/20/89
1/90	1/26/90	591.48	4/29/90
2/90	2/23/90	407.34	4/29/90
3/90	3/31/90	641.70	4/29/90
4/90	4/30/90	1,082.52	4/29/90
5/90	5/31/90	1,456.55	12/20/90; 1/30/91 & 2/13/91
6/90	6/30/90	1,811.60	12/20/90; 1/30/91 & 2/13/91
7/90	7/31/90	2,289.00	12/20/90; 1/30/91 & 2/13/91
8/90	8/31/90	1,097.84	12/20/90; 1/30/91 & 2/13/91
9/90	9/28/90	1,805.05	12/20/90; 1/30/91 & 2/13/91
10/90	10/31/90	2,293.11	12/20/90; 1/30/91 & 2/13/91
11/90	11/10/90	730.22	12/20/90; 1/30/91 & 2/13/91
	Total	$16,034.25	

Apparently the rates charged the Committee for use of the van and truck represented normal and usual charges. Thus, the remaining issue is whether the reimbursements were made within a commercially reasonable time.

Again, there is no evidence in hand that it was the usual practice of the Corporation to provide vehicles for use by customers. Within the rental car business it is apparently a relatively common practice to provide a thirty-day payment period.[16] Application of this approach to the Committee and candidate's

16. Alamo provides for this length of payment period. Some companies such as Avis require the use of a credit card and thus immediate payment.

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reimbursements for vehicle use results in at least $11,751.97 in late repayments.[17]

c. Corporate Advances to Third-Party Vendors

The provisions of 11 C.F.R. § 114.9 permit the use by certain persons of a corporation's own facilities for campaign-related activities. They do not cover corporate advances on behalf of candidates or their committees in the form of corporate payments of bills submitted by third party vendors to such committees for which reimbursements are later made to the corporation. See MUR 3143. 11 C.F.R. § 116.3 permits corporations to extend credit to political committees, but only if the credit is extended in the ordinary course of the corporation's own business.

According to the invoices submitted by the Inn, certain of the charges to the Committee apparently covered payments made by the Inn on behalf of the Committee to other vendors, including payments to Office Market, Conway Supply, Jackson Corner Store and B.E.V. for office supplies, to Federal Express for postage, to unnamed vendors for newspapers, to Conway Supply for materials for signs, and to unnamed vendors in the form of credit card charges.

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17. Because the $5,000 payment made by the Committee on December 20, 1990 was reported generally as being for expense reimbursement, it is necessary to determine what fraction of that payment should be allocated to vehicle expenses. The overall payments for this purpose represented 45.7% of the total reimbursements paid the Inn. Using this percentage, $2,285 of the $5,000 should be allocated to vehicle costs. The $730.22 charge for December was therefore covered by this payment, taking this charge out of the total of corporate contributions.

These payments totaled at least $3,040.14.[18] The charges did not involve the use of the Inn's own facilities; nor is there evidence that the Inn paid these types of charges for its customers in the ordinary course of its business. Thus, these charges do not fall within the requirements of either 11 C.F.R. § 114.9 or 11 C.F.R. § 116.3(b) and, consequently, must be treated as advances and, therefore, contributions to the Committee in violation of 2 U.S.C. § 441b. See, again, MUR 3143.

d. Secretarial Services

As is also stated above, two individuals, Judy Galluzzo and Lois Nelson, provided secretarial services for Mr. Zeliff in connection with his campaign starting in June of 1989 and extending through the last half of that year. The election-related shares of these individuals' salaries totaled $5,865.30.

11 C.F.R. § 114.9 "applies only to the use of corporate facilities and does not include the use of the paid services of corporate employees. Therefore, this section cannot be read as supporting or authorizing . . . reimbursement . . . regarding the compensation paid to . . . employees for the political services rendered to Federal candidates." Advisory Opinion 1984-24. The question in the present matter then becomes whether the provision of such services was within the ordinary course of business of the Corporation, pursuant to 11 C.F.R. § 116.3. There is no indication that the Inn extended credit for, or even provided,

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18. The undifferentiated payment of $350 in August, 1989, included reimbursements for "postage, stationery, supplies", as well as "copies, Watts line and Faxes." No portion of this payment is included in the total of $3,040.14.

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secretarial services to its customers in the ordinary course of its business. Thus, the provisions of Section 116.3 would also not apply. The Inn's payments of the secretaries' salaries constituted advances and, accordingly, corporate contributions totaling $5,865.30, in violation of 2 U.S.C. § 441b.

Even if one were to include the provision of secretarial services as a use of corporate facilities, the fact that the costs of these services were reimbursed by the Committee, not by Mr. Zeliff as stockholder, would take them outside the provisions of 11 C.F.R. § 114.9(a)(2). Nor did the timing of certain the payments meet the requirements of this regulation. While the Committee's payment of $1,532 on August 5, 1989, came within five days of receipt of the relevant invoice, the payment of $4,333.30 on December 20, 1989, covered five months of invoices, three of which were paid more than thirty days after the dates of the invoices. The charges for secretarial services covered by these three invoices totaled $2,527.80.

e. Food and Beverages

Mr. Zeliff and the Committee together made expenditures to the Inn totaling $4,169.85 to cover the invoiced costs of food and beverages, including charges for a dinner held on November 1, 1989, at the Inn ($420), an announcement dinner held on April 3, 1990, at the Inn ($680.72), and a party held on December 17, 1990, at the Inn ($1,345.62). Also included on the invoices were, inter alia, other meals at the Inn's restaurant, coffee and sodas for volunteers, and a cabana charge.

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Counsel has stressed that the Inn's business includes food services. Therefore, it appears that the dinners and other food and beverage-related items included on the invoices from the Corporation involved extensions of credit in the ordinary course of the Inn's business as permitted by 11 C.F.R. § 116.3.

The timing of certain of the payments, however, appears to have been longer than that accorded other customers. As noted above, in his affidavit attached to counsel's November 13, 1991 response to interrogatories, the Inn's bookkeeper, Kenneth Kaslow, stated that "[t]he Inn has in the past received credit extensions of three months from its vendors." No such statement was included with regard to the Inn's practice of extending credit to its own customers.

The dates on which the debts here at issue were incurred and billed, and the dates of payment are as follows:

Date Incurred	Date Billed	Amount	Date Paid
5/25/89	7/31/89	$317.00	8/5/89
7/12/89	7/31/89	25.66	8/5/89
6/5-7/31/89	7/31/89	30.00	8/5/89
11/1/89	11/24/89	489.45	12/20/89
8/1-8/31/89	8/31/89	100.09	4/29/90
8/1-8/31/89	8/31/89	25.00	4/29/90
9/1-9/30/89	9/29/89	25.00	4/29/90
9/30-10/27/89	10/27/89	20.00	4/29/90
10/11/89	10/27/89	77.85	4/29/90
10/28-11/24/89	11/24/89	51.50	4/29/90
11/25/89-12/29/89	12/29/89	20.00	4/29/90
12/30/89-1/26/90	1/26/90	67.00	4/29/90
12/26/89	1/26/90	42.27	4/29/90
1/25/90	1/26/90	78.00	4/29/90
3/18/90	3/31/90	25.65	4/29/90
3/18/90	3/31/90	3.19	4/29/90
3/19/90	3/31/90	33.44	4/29/90
3/20/90	3/31/90	23.86	4/29/90
4/3/90	4/30/90	680.72	4/29/90
4/25/90	4/30/90	11.03	4/29/90

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Date Incurred	Date Billed	Amount	Date Paid
6/2/90	6/30/90	507.54	12/20, 1990; 1/30 & 2/13, 1991
6/90	6/30/90	27.00	12/20, 1990; 1/30 & 2/13, 1991
8/90	8/31/90	47.98	12/20, 1990; 1/30 & 2/13, 1991
11/6/90	11/10/90	95.00	12/20, 1990; 1/30 & 2/13, 1991
12/17/90	12/17/90	1,345.62	12/20, 1990; 1/30 & 2/13, 1991
	Total	$4,169.85	

As stated above, counsel has cited MUR 3070 as precedent for permitting outstanding amounts to be owed a vendor for more than a year after the debts were incurred. In that matter, however, the committee, prior to incurring the $12,198 debt at issue, had paid the vendor almost $45,000 as consulting fees and for expenses incurred on the campaign's behalf over a period of four months in 1987 and 1988. On that basis and on the basis of statements received from the vendor concerning its general practices regarding the collection of debts, it was determined that the vendor had established a business arrangement with the candidate committee for consulting services in connection with the 1988 election. The vendor had apparently proceeded in the ordinary course of its business, including extending credit in a manner substantially similar to that extended other, nonpolitical debtors.

In the present matter it has not been shown that it was the usual practice of the Inn to extend any credit to its customers. Therefore, it appears reasonable to apply at most a thirty-day

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time limit to the period between the receipt of an invoice and payment, beyond which a corporate contribution would result.[19]

Application of a thirty-day standard to the charges listed above results in at least $3,422.44 in corporate advances for food and beverages not repaid within a commercially reasonable time. The late payments resulted in corporate contributions to the Committee in violation of 2 U.S.C. § 441b.

f. Summary and Recommendation

The above analysis of particular categories of advances and reimbursements results in the following total amount of corporate contributions:

Third party vendors	-	$3,040.14
Salaries	-	5,865.30
Telephone, telefax	-	4,999.02
Copying	-	2,700.00
Undifferentiated payment	-	350.00
Vehicles	-	11,751.97
Food and beverages	-	3,422.44
		$32,128.87

The Office of the General Counsel recommends that the Commission find probable cause to believe that Christmas Farm Inn, Inc. violated 2 U.S.C § 441b by making advances on behalf of the Committee and by permitting the use of corporate facilities without the requirements of 11 C.F.R. § 114.9 having been met.

19. Application of a thirty-day period extends the benefit of the doubt to respondents and also acknowledges that several charges were for parties rather than individual meals.

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III. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe that Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b.

7/14/93
Date

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 3191
	)	
William H. Zeliff, Jr.	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

In response to the filing of a complaint, the Commission on September 26, 1991 found reason to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b as a result of his involvement as a candidate and as the officer of a corporation in the making and receipt of loans made in 1990 to the Friends of Bill Zeliff Committee with monies obtained from Christmas Farm Inn, Inc.

II. ANALYSIS

A. Draws on Equity in Subchapter S Corporation

According to amended reports filed with the Commission by the Committee, William H. Zeliff, Jr. made $216,000 in loans to the Committee from funds other than bank loans during the 1989-90 election cycle. Information provided in response to the complaint indicated that $209,000 of the $216,000 was made up of draws against Mr. Zeliff's equity in Christmas Farm Inn, Inc. The Corporation is a close corporation which is jointly owned by William H. Zeliff, Jr. and Sydna T. Zeliff, and which has elected Subchapter S tax status.

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1. Statutory and Regulatory Provisions

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits any candidate, political committee, or other person from knowingly accepting contributions from "any corporation whatever" in connection with an election to federal office. The Act also prohibits any officer or director of a corporation from consenting to the making of a corporate contribution. 2 U.S.C. § 441b(a).

Candidates for the office of United States Representative may make unlimited campaign expenditures from personal funds. 11 C.F.R. § 110.10(a). Personal funds are defined as "[a]ny assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) [l]egal and rightful title, or (ii) [a]n equitable interest." 11 C.F.R. § 110.10(b)(1). A candidate may use as personal funds his or her portion of assets jointly held with his or her spouse, the portion to be considered personal being the candidate's share according to the instrument of conveyance or ownership. "If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate." 11 C.F.R. § 110.10(b)(3).

2. Subchapter S Corporations

The purpose of the Subchapter S provisions in the Internal Revenue Code is to permit small incorporated businesses, or close corporations, to avoid double taxation, i.e., of the corporation

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and then again of shareholders. Pursuant to this provision, a small business corporation may elect to have its income passed through and taxed to its shareholders as ordinary income rather than pay corporate income tax. Net operating losses may also be passed through. A shareholder's gross income is deemed to include his or her pro rata share of the gross income of the corporation, while the aggregate amount of losses and deductions which the shareholder may take into account may not exceed the adjusted basis of the shares held by the individual and the adjusted basis of any indebtedness to that individual. 26 U.S.C. § 1366(c) and (d). See generally Byrne v. C.I.R., 361 F.2d 939 (7th Cir. 1966). Unreimbursed payments by a Subchapter S corporation of the personal expenses of shareholders must be recorded as distributions of income and must be reported as taxable income. American Trading Partners, L.P. v. A-1 International Importing Enterprises, Ltd., 770 F. Supp. 273, 275 (E.D. Pa. 1991).

3. Responses

Counsel for Mr. Zeliff and for all other respondents in this matter have submitted a response to the Commission's Factual and Legal Analyses, as well as answers to interrogatories and numerous documents, the latter including a second affidavit signed by Kenneth Kaslow, bookkeeper for the Corporation. Mr. Kaslow's initial affidavit was submitted with counsel's response to the complaint. Additional responses to follow-up questions and document requests have also been received.

In his second affidavit, Mr. Kaslow states that Christmas Farm Inn was "incorporated as a Subchapter S corporation in 1977.

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At that time, William and Sydna Zeliff transferred their personal property used in connection with their former unincorporated business (known as Christmas Farm Inn) to the Inn. That personal property consisted of the Inn itself, all furnishings and equipment." Mr. Kaslow goes on to state,

> From January of 1989 through the 1990 election, William and Sydna Zeliff were the only two owners, directors and officers of the Inn. William H. Zeliff, Jr., served as President of the Inn and Sydna T. Zeliff served as Treasurer of the Inn. William Zeliff, as President, exercised discretionary authority to order any payments or loans made by the Inn.[1]

During the 1989-90 election cycle the Committee reported the following assertedly personal loans from Mr. Zeliff:

3/30/90 -	$10,000
4/18/90 -	5,000
5/3/90 -	3,000
8/7/90 -	30,000
8/14/90 -	20,000
8/20/90 -	25,000
8/28/90 -	40,000
9/4/90 -	57,000
9/11/90 -	20,000
12/3/90 -	6,000
	$216,000

In response to the complaint, counsel stated that $7,000 of the $216,000 came from Mr. Zeliff's salary and other income, while $209,000 was in the form of checks drawn from the Inn's account which represented cash draws against Mr. Zeliff's equity in the Corporation. Mr. Kaslow stated in his first affidavit that "[a]ccording to Christmas Farm Inn, Inc.'s records, from May 1,

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1. In an earlier affidavit Mr. Kaslow stated that Christmas Farm Inn, Inc., is made up of "three separate local small businesses: Christmas Farm Inn, a country inn, Yesterday's Restaurant, located at the Inn, and the Jackson Corner Store. Each of these three businesses is located in Jackson, New Hampshire."

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1989, to December 31, 1990, William H. Zeliff, as a half owner, drew from Christmas Farm Inn, Inc., a total of $209,000 for campaign purposes."[2] These draws were recorded by the Corporation as loans.[3] As of the Committee's 1992 Year End Report, either $26,008 or $33,008 of the $209,000 had been repaid by the Committee to Mr. Zeliff, depending upon whether $7,000 of the $33,008 in repayments is considered to have covered the loan from Mr. Zeliff's salary and other income.

In response to the Commission's finding of reason to believe that Mr. Zeliff had violated 2 U.S.C. § 441b in connection with the

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2. In his first affidavit Mr. Kaslow stated that the corporation's assets were appraised at in September, 1989. As of December 31, 1990, the corporation had outstanding mortgages and debts of leaving joint equity available to the owners of Thus, the value of Mr. Zeliff's equity interest at the end of 1990 was

3. Certain of the loans reported by the Committee can be matched by date with the loans recorded on the Corporation's written record. The following lists the apparent matches:

Loan from Corporation	Loan to Committee
5/9/90 - $10,000	
6/1/90 - 20,000	8/7/90 - $30,000
8/13/90 - 20,000	8/14/90 - 20,000
8/25/90 - 25,000	8/20/90 - 25,000
8/17/90 - 40,000	8/28/90 - 40,000
9/4/90 - 60,000	9/4/90 - 57,000
9/11/90 - 20,000	9/11/90 - 20,000
12/3/90 - 7,500	12/3/90 - 6,000

It is not possible to pair the earlier loans to the Committee with particular loans from the Corporation. The following are the apparently unmatched loans:

Loan from Corporation	Loan to Committee
4/30/90 - $10,000	3/30/90 - $10,000
	4/17/90 - 5,000
	5/3/90 - 3,000

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$209,000 in loans, counsel argued that the monies which Mr. Zeliff obtained from the Corporation to make the loans to the Committee were his personal funds, pursuant to 11 C.F.R. § 110.10(b)(1). Counsel further asserted that, while it is correct that a Subchapter S corporation's profits remain the property of the corporation until a dividend or profit is declared by the shareholders,

> [t]his conclusion pertains solely to legal title. While legal title may vest in the corporation, the [Commission's Factual and Legal] Analyses ignore Congressman Zeliff's equitable interest in one-half of the Inn's assets. Section 110.10(b)(1) of the Commission's regulations specifies that personal funds are any assets to which the candidate has legal title or an equitable interest. (Emphasis in original).

Further, counsel stated that

> Congressman Zeliff, as President of the Inn, had 'legal right of access to' and had discretionary 'control over' the assets of the Inn. At his discretion, Congressman Zeliff had the power to withdraw monies from the Inn's bank accounts, sell assets, forgive loans and declare dividends. Because he could exercise these powers exclusively, there was no attendant risk of undue influence upon him by a third party, not even by his wife, Sydna Zeliff.

Counsel also argued that, in contrast to situations involving the use of reimburseable drawing accounts by corporate officials, Mr. Zeliff in effect owed the amounts of the loans at issue to himself.

> [G]iven his authority at the Inn, he could forgive the loan and declare it a dividend should he choose to do so. In short, . . . Congressman Zeliff is beholden to no one but himself. (Emphasis in original.)

Counsel stated further:

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> This conclusion is consistent with the Inn's treatment of accounts receivable as assets of the Inn . . . . If 11 C.F.R. § 110.10(b)(1) means what it expressly states -- that personal funds are "any assets controlled and equitably owned by the candidate" -- then the loan receivables were similarly assets of Congressman Zeliff. He indeed had discretionary right of control over and equity interest in fifty percent of the Inn's assets, including its loan receivables (i.e., Congressman Zeliff had an equitable interest in his own "receivables").
>
> Far from any intention to subvert the integrity of the political process, Congressman Zeliff's choice to repay drawn amounts merely reflects his effort not to diminish his own estate which consists primarily of the Inn. The Inn's property was originally the Zeliffs' personal property and was transferred to the Inn upon its incorporation in 1977. Congressman and Mrs. Zeliff have spent the last sixteen years of their lives developing, operating and nurturing the Inn. Over their many years of ownership, the Zeliffs have treated the Inn's assets as their own personal assets. Congressman Zeliff did so again in 1989 and 1990 when he ran for Congress.

4. Legal and Factual Analysis

2 U.S.C. § 441b "prohibits corporations from using treasury funds to make expenditures 'in connection with' any federal election . . . ." FEC v. Massachusetts Citizens for Life, Inc., ("MCFL"), 479 U.S. 238, 241 (1986). This same prohibition extends to contributions made with treasury funds. As stated above, this prohibition expressly extends to the officers and directors of a corporation who may consent to a contribution made with corporate funds, and to candidates who may accept such a contribution.

A corporation, including a corporation which elects Subchapter S tax status, acquires, by the act of incorporation, a legal identity separate from that of its investors, and is subject to regulation as such. See generally, United States v. Richardson,

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469 F.2d 349, 350 (10th Cir. 1972) ("the legislative history of Subchapter S negates any inference that Congress intended" corporations to lose their corporate character).[4] Corporations retain separate legal identities from their investors no matter how they are taxed under the Internal Revenue Code.[5] Therefore, the fact that a candidate may have invested his or her personal property in a Subchapter S corporation does not mean that the corporation's treasury funds can be viewed as the "personal funds" of the candidate for purposes of the Federal Election Campaign Act, ("the Act"). Nor does the fact that the corporation's income is passed through to the shareholders for taxation purposes change the corporate nature of the new entity. (See MUR 3119).

In the present matter, Christmas Farm Inn, Inc., possesses all the characteristics of a corporate entity prohibited from making contributions or expenditures under Section 441b. It is readily distinguishable from a corporation exempted, pursuant to MCFL, from the prohibitions of this statutory provision in that it was formed

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4. "Electing to file as a Subchapter S corporation does not make [the corporation] anything less than a valid corporation . . . ." Reiherzer v. Shannon, 581 F.2d 1266, 1273 (7th Cir, 1978). "As a general rule, courts and legislatures adhere to the notion that a corporation is a legal entity separate from its shareholders." 1 F. O'Neal & R. Thompson, Close Corporations, § 1.10 (3rd ed. 1986). "Whatever the factual context, courts rarely permit a corporation to be disregarded for the benefit of its own shareholders. Persons who chose the corporate form of doing business are held to the consequences of that decision." Id., § 1.10(E).

5. "The congressional desire to provide an alternative form of doing business [as Subchapter S corporations] does not suggest an intention to treat electing corporations as partnerships or proprietorships for tax purposes." Johnson v. U.S., 386 F. Supp. 374, 377 (E.D. Kentucky, 1974).

to engage in business activities for profit, not to promote political ideas. 479 U.S. at 264.[6] Therefore, Christmas Farm Inn fits the description of the "type of 'traditional corporatio[n] organized for economic gain,' . . . that has been the focus of regulation of corporate political activity" sustained by the Supreme Court. Id. at 259, quoting FEC v. National Conservative Political Action Committee, 470 U.S. 480, 500 (1985).

Counsel argues that while Mr. Zeliff may not have legal right or title to the Corporation's assets, he "equitably owns one-half of the Inn and exercises undisputed, discretionary control over use of the Inn's assets. Therefore, the Inn's assets constitute Congressman Zeliff's personal funds under the express provisions of 11 C.F.R. § 110.10(b)(1)."

While it is accurate that Section 110.10(b)(1) defines a candidate's personal funds as including assets in which the candidate has an equitable interest, this provision must not be read in isolation, but rather in conjunction with all provisions of the Act. The Act's prohibition against corporate contributions is broad and is intended to prevent any corporate funds from flowing

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6. The Supreme Court in MCFL held that the Act's prohibition on corporate expenditures could not be constitutionally applied to nonprofit incorporated organizations that meet three essential criteria: (1) the corporation was formed for the express purpose of promoting political ideas, not to engage in business activities; (2) it has no shareholders or other persons affiliated with it who would have a claim on its assets or earnings; and (3) it was not established by a business corporation or labor union and does not accept contributions from such entities. The Court's distinction was between the use for political purposes of profits accumulated through the corporate form and the activities of corporations created for purposes of disseminating ideas, "not to amass capital." 479 U.S. at 259.

into campaigns for federal office.[7] Section 110.10 was intended by the Commission to clarify a candidate's personal relationship to the contribution and expenditure limitations imposed by 2 U.S.C. § 441a, particularly in light of the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1, 51-54 (1976) regarding the unconstitutionality of limitations on a candidate's own expenditures from personal funds. Section 110.10 was not intended to provide an exception to 2 U.S.C. § 441b for the use by candidates of corporate assets. In the present matter, the loans provided to the Zeliff campaign came from the Corporation's general treasury account and thus resulted in the prohibited infusion of corporate funds into the campaign, whether or not Mr. Zeliff had an equitable claim to the monies involved.

Nor does Counsel's emphasis upon the control which Mr. Zeliff exerted over the assets of the Corporation diminish the corporate nature of those assets. Because the funds at issue came in the form of loans which Mr. Zeliff was obligated to repay, the funds were controlled by the Corporation, not by Mr. Zeliff. Mr. Zeliff could have obtained these funds from the Corporation through various means other than loans, (e.g., directing a

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7. Prior to enactment of the Federal Election Campaign Act corporate contributions in federal elections were prohibited by 18 U.S.C. § 610. This provision was transferred to the Act in 1971, with the addition of a new paragraph defining "'contribution or expenditure' to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee or political party or organization. . . ." H.R. Rep. No. 92-752, 92d Cong., 1st Sess. 30, reprinted in FEC, Legislative History of the Federal Election Campaign Act of 1971, at 817, 846 (1981).

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disbursement, liquidating his interest in the Corporation and using the proceeds from that liquidation, using his interest as collateral for a bank loan, or loaning his shares in the Corporation to the Committee); however, the method he chose, namely his borrowing of the monies from the Corporation's treasury and then his lending of those funds to the Committee, resulted in the flow of corporate monies into his campaign.

5. Recommendation

The Office of the General Counsel recommends that the Commission find probable cause to believe that William H. Zeliff, Jr. as an officer of Christmas Farm Inn, Inc. and as a candidate violated 2 U.S.C. § 441b by consenting to and knowingly accepting $209,000 in loans from the Corporation which was used to make loans to the Friends of Bill Zeliff Committee.

B. Corporate Advances

1. Statutory and Regulatory Provisions

As stated above, 2 U.S.C. § 441b(a) prohibits the making and knowing acceptance of corporate contributions in connection with elections to federal office. 2 U.S.C. § 441b(b)(2) defines "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money . . . or anything of value . . . in connection with any election" to federal office.

11 C.F.R. § 116.3(b), which is part of the regulatory scheme addressing debts owed by political committees or candidates, provides that "[a] corporation in its capacity as a commercial vendor may extend credit to a candidate, political committee or

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another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business . . . ." (Emphasis added.) 11 C.F.R. § 116.1(c) defines "commercial vendor" as "any persons providing goods and services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services."

"Ordinary course of business" encompasses both the nature and conduct of the creditor's business and the timing involved in the extension of credit. See, e.g., MUR 1741. The payment by a corporation of amounts owed by a political committee to another vendor would not generally be within the ordinary course of business of the payor, exceptions being found in the provision of certain types of consultant or managerial services where purchases or sub-contracts are part of an agreement with a committee regarding the services to be rendered.

Pursuant to 11 C.F.R. § 114.9(a)(1), stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of that corporation's facilities "for individual volunteer activity in connection with a Federal election" and must reimburse the corporation only to the extent that the operating costs or overhead of the corporation are increased. 11 C.F.R. § 114.9(a)(1). "Occasional, isolated, or incidental use" is defined to mean activity by a stockholder during working hours which does not interfere with the normal activities of the corporation, activity by employees which does not prevent the completion of the normal amount of work usually accomplished by

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those employees, and "[a]ny such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours . . . ." 11 C.F.R. § 114.9(a)(1).

If stockholders or employees make more than occasional, isolated or incidental use of corporate facilities, they must reimburse the corporation "within a commercially reasonable time for the normal and usual charge . . . for the use of such facilities." 11 C.F.R. § 114.9(a)(2).

The provisions of 11 C.F.R. § 114.9(a)(1) and (2) are meant to provide a limited avenue for stockholders and employees to use corporate facilities in connection with their own volunteer campaign activity. These provisions require that the stockholder or employee providing volunteer services personally reimburse the corporation for his or her own use of its facilities. See General Counsel's Brief, MUR 2185. If the stockholder or employee does make the required reimbursement, that repayment is still subject to examination with regard to amount and timing.

11 C.F.R. § 114.9(c) permits any person other than a stockholder or employee of a corporation, including a political committee, to use corporate facilities to produce materials for a federal campaign as long as the corporation is reimbursed "within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market." Persons, including political committees, who are not stockholders or employees may also use such corporate facilities as telephones, typewriters or furniture in connection with a federal election, as

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long as the corporation is reimbursed for the use of these facilities "within a commercially reasonable time" for "the normal and usual rental charge . . . for the use of the facilities." 11 C.F.R. § 114.9(d). A candidate, candidate's agent, or other person traveling on behalf of a candidate who uses a means of transportation owned or leased by a corporation, such as vans and trucks, must reimburse the corporation for such use "within a commercially reasonable time . . . at the normal and usual rental charge." 11 C.F.R. § 114.9(e)(2). In this last instance the reimbursement must be made with campaign funds.

"Commercially reasonable time" is not defined in the regulations. In situations in which a corporation normally operates as a vendor of the goods and services involved, the Commission had compared billing and payment timing accorded a political committee/customer with that accorded other customers of the same corporation. In situations in which a corporation does not normally provide the goods and services at issue, as when its facilities are used by volunteers, it becomes necessary to compare its charging and collection processes with those of outside vendors who do normally provide such goods or services.

2. Factual Responses

In response to the complaint in the present matter, and later in response to interrogatories and follow-up questions, counsel have explained that between July 28, 1989 and December 17, 1990 the Corporation billed the Committee for a total of $35,094.40 in goods and services. A review of the Committee's reports shows payments by the Committee to Christmas Farm Inn of $2,610.64 on August 5,

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1989, and of $737.09, $4,333.30, $1,828.04 and $489.45 on December 20, 1989, bringing the total of reported expenditures to the Corporation in 1989 to $9,998.52.

On April 29, 1990, Mr. Zeliff personally reimbursed the Corporation in the amount of $6,752.84, a payment not reflected in the Committee's reports.[8] During the period beginning with the second quarter of 1990 and ending on December 31 of that year the Committee reported an accumulation of $18,343 in debts owed the Corporation,[9] against which the Committee paid the Corporation $5,000 on December 19, 1990 and $9,784.69 on January 28, 1991, and the candidate paid $3,558.35 on March 6, 1991.

In their August 31, 1992 response to follow-up questions, counsel stated that the Committee's $2,610.64 expenditure to the Corporation on August 5, 1989, was in full payment of a July 31, 1989 invoice "for services, supplies, food, and beverages supplied by the Inn in June and July, 1989." The attached invoice shows a total of $2,676.19 in expenses from which $65.55 was deducted for unexplained reasons. The $2,676.19 included a $1,532 salary cost related to Judy Galluzzo's secretarial work for the Committee between June 5 and July 28, 1989; that amount equaled one half of her salary for that period. The remaining itemized charges included $317 for a cookout, $25.66 for a cabana charge, $267.81 and $43.47 in "Office Market charges" (apparently for office supplies), $94 for

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8. Counsel have indicated that an amended report will be filed reflecting this payment. None had apparently been filed as of the date of this brief.

9. The Inn's charges were reported on the Committee's quarterly reports as debts incurred during the relevant period.

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stationery, $30 for coffee and soda for volunteers, $16.25 for newspapers, and $350 as a combined estimate for "copies, faxes, phone calls on Watts and CFI lines, postage, stationery, supplies."

The Committee reported a December 20, 1989 repayment of $737.09 as having been for "telephone reimbursement." According to counsel's responses and the attached invoices, this reimbursement covered five invoiced amounts for telephone usage as follows:

Date[10]	Amount
8/31/89	$100.00
9/29/89	143.77
10/27/89	126.05
11/24/89	164.25
12/29/89	203.02
	$737.09

According to counsel, the Committee's reported payment of $4,333.30 on December 20, 1989 was for the "prorated salaries of two Inn employees . . . who performed secretarial services for both the Inn and the Committee." This payment covered the following invoiced amounts paid to Judy Galluzzo and, for three weeks in December, to Lois Nelson:

Date	Amount
8/31/89	$ 957.50
9/29/89	191.50
10/27/89	1,378.80
11/24/89	957.50
12/29/89	848.00
	$4,333.30

The Committee's payment of $1,828.04 on December 20, 1989 was for the use of the Corporation's van. It covered the following invoiced amounts:

10. In each instance the date is that of the invoice.

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Date	Amount
8/31/89	$ 500.00
9/29/89	279.00
10/27/89	535.68
11/24/89	412.92
12/29/89	100.44
	$1,828.04

The final December 20, 1989 expenditure of $489.45 was in full payment for food and beverages provided by the Corporation for a dinner held on November 1, 1989. This amount was included on the November 24, 1989 invoice sent to the Committee.

Mr. Zeliff's payment to the Committee of $6,752.84 on April 29, 1990 apparently covered $961.56 in items included in the invoices submitted to the Committee by the Corporation between July and December, 1989, but not covered by the Committee's December 20 payments, plus invoices totaling $5,791.28 received between January and the end of April, 1990. According to the invoices presented to the Committee, the $961.56 covered the 1989 services and charges grouped below by purpose:

Date	Amount	Purpose
12/29/89	$ 98.50	Postage
9/29/89	$ 100.45	Office supplies
10/27/89	148.80	
11/24/89	126.08	
12/29/89	65.55	
	$ 440.88	
8/31/89	$ 14.65	Newspapers
9/29/89	11.72	
10/27/89	11.72	
11/24/89	14.65	
	$ 52.74	

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Date	Amount	Purpose
8/31/89	$ 125.09	Food (including liquor,
9/29/89	25.00	coffee & sodas)
10/27/89	77.85	(Manchester party, at cost)
	20.00	
11/24/89	51.50	
12/29/89	20.00	
	$ 319.44	
8/31/89	$ 50.00	Copying

The January - April, 1990 charges covered by the remaining $5,791.28 of Mr. Zeliff's April 29, 1990 payment covered the following:

Date	Amount	Purpose
1/26/90	$ 231.76	Telephone (Watts line)
2/23/90	442.80	Faxes
3/31/90	431.26	
4/30/90	127.38	
	$1,233.20	
1/26/90	$ 591.48	Transportation
2/23/90	407.34	(Van: Based on
3/31/90	641.70	mileage)
4/30/90	1,082.52	
	$2,723.04	
1/26/90	$ 101.09	Office Supplies
2/23/90	318.45	
3/31/90	53.34	
4/30/90	0	
	$ 472.88	
2/23/90	$ 397.00	Copying
1/26/90	$ 187.27	Food (includes coffee,
2/23/90	0	liquor, etc.)
3/31/90	86.14	
4/30/90	691.75	(including announcement
	$ 965.16	dinner - $680.72)

As indicated above, no reimbursements were made to the Corporation between May and mid-December, 1990. During that period debts totaling $18,343.04 accrued as follows:

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Date	Amount	Purpose
5/31/90	$ 46.25	Telephone
6/30/90	275.12	
7/31/90	295.75	
8/31/90	355.21	
9/28/90	606.08	
10/31/90	720.70	
11/10/90	754.24	
12/17/90	534.02	
	$3,587.37	
5/31/90	$1,456.55	Transportation (van and truck)
6/30/90	1,811.60	
7/31/90	2,289.00	
8/31/90	1,097.84	
9/28/90	1,805.05	
10/31/90	2,293.11	
11/10/90	730.22	
	$11,483.37	
5/31/90	$ 32.75	Postage
10/31/90	23.00	
11/10/90	21.75	
12/17/90	77.50	
	$ 155.00	
5/31/90	$ 422.38	Credit card charges
9/28/90	193.76	
	$ 616.14	
6/30/90 (including 6/2 dinner)	$ 534.54	Food, beverages, and related equipment
8/31/90	47.98	
11/10/90	95.00	
12/17/90 (12/17 party)	1,345.62	
	$2,023.14	
7/31/90	$ 310.82	Supplies for signs
8/31/90	62.65	
9/28/90	82.65	
10/31/90	21.90	
	$ 478.02	

As stated above, the Committee made a $5,000 payment to the Corporation on December 20, 1990, thereby reducing the total due to $13,343.04. This payment was reported as being for "expense reimbursement." According to the invoices and the Committee's

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reports, another payment, this time of $9,784.69, was made on January 30, 1991 for "postage, phone, milage [sic]." According to a notation on the December, 1990 invoice, the remaining $3,558.35 was paid by William Zeliff on February 13, 1991. The Committee reported this last payment as having been made on March 6, 1991, and as having been for "postage, phone, milage [sic]."

In response to questions posed by this Office, counsel on February 18, 1993 provided additional information as to which individuals were involved in the various uses of the Inn's facilities. According to counsel, the secretarial services at issue were performed by Judy Galluzzo for Mr. Zeliff and the Committee paid a pro rata share of her salary. Mr. Zeliff, Ms. Galluzzo and "one campaign volunteer" were those who used the Inn's telefax machine and Watts line. The Inn's van was used by Mr. Zeliff, with a campaign volunteer sometimes acting as driver. The November 1, 1989 dinner was held at the Inn which operates a restaurant "in the ordinary course of its business." Finally, "Ms. Galluzzo and some campaign volunteers performed all campaign-related activities in Congressman Zeliff's personal residence which is located on the Inn's premises."

3. <u>Legal Response</u>

Counsel have argued that Mr. Zeliff "equitably owned half of all of the Inn's supplies, equipment and vehicles used for campaign purposes and had discretionary authority over their use." Thus, the use of these assets assertedly fell within the definition of "personal funds" at 11 C.F.R. § 110.10(b)(1). Counsel further argue that Mr. Zeliff "chose to have the Committee

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reimburse the Inn for his own sound business reasons . . . ." and that all of the invoices were paid within a commercially reasonable time.

Regarding reimbursements, it is also asserted that because "commercially reasonable time" is not defined, "the Commission's treatment of three to six months as unreasonable . . . appears arbitrarily determined." Counsel argue that the Corporation has received credit extensions of three months from vendors, and that the Commission has "countenanced extensions of credit of twelve months for a campaign committee's payment for services where that period of time was consistent with the vendor's regular business dealings." (Emphasis in original.)

Counsel also rely upon three enforcement matters as precedents for the respondents' actions in the present matter. These matters are MUR 3070, MUR 1741, and MUR 3428/3435.[11]

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11. It is important to note that MUR 1741 and MUR 3428/3435 involved partnerships; thus, the provisions of 11 C.F.R. § 114.9 were not applied in those matters.

In MUR 3070, the Commission addressed a complaint which alleged that outstanding debts owed a consulting firm for as much as two years after they had been incurred constituted in-kind corporate contributions to the political committee which had received the goods and services involved. The Commission approved the recommendation of this Office that the Commission find no reason to believe that a violation occurred because the corporation had "established a business relationship with the [committee] for consulting services provided in connection with the 1988 campaign . . ." and the terms of the relationship were "substantially similar to extensions of credit to nonpolitical debtors." The corporation had sent past due notices to the committee and had made verbal inquiries regarding payment over a period of more than twelve months. Thus, the corporation's extension of credit to the respondent political committee was found to have been within its ordinary course of business.

MUR 1741 involved the rental of office space and the

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4. Legal and Factual Analysis

As stated above at pages 7-11, the investment of a shareholder's personal assets in a corporation does not shield

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(Footnote 11 continued from previous page)
provision of goods and services by a law firm to a political action committee. In that matter the investigation showed that the partnership involved had an established practice of renting portions of its space to subtenants and of providing such subtenants with services, e.g., a receptionist, telephone call charges, telephone equipment, postage, photocopying, furniture and use of a conference room. The investigation also revealed that the timing of billings sent to these other tenants for rent and most of the other services was generally comparable to that applied to the respondent committee, and thus this Office did not recommend findings of probable cause to believe that late billing for such costs constituted a violation of the Act. On the other hand, this Office did recommend, and the Commission found, probable cause to believe that the timing of billings specifically for telephone equipment charges totaling $19,285.97 was outside the ordinary course of the firm's business; these charges were billed after delays of up to 26-27 months and the respondent was the only subtenant or client provided such equipment.

In July, 1992, the Commission again addressed the issue of services provided by a law firm in MUR 3428/3435. In this matter the complainants alleged that an authorized committee had received in-kind contributions from the partnership in the forms of office space, equipment and support staff. The committee provided one invoice dated October 17, 1991, which covered charges totaling $4,715.64 for services provided between August 19 and October 15, 1991; the charges covered "secretarial services and overtime," "document preparation," "communication costs" and "transportation and refreshments". Thus, this invoice covered a two-month period. A second invoice dated November 15, 1991, covered charges totaling $2,016.40 for "secretarial services and overtime," "document preparation," and "communication costs". These two invoices were paid by the committee one and ten days respectively after the invoices were issued.

In this most recent matter the Commission rejected by a 4-2 vote the recommendations of this Office to find reason to believe that the law firm had provided services to the committee outside the ordinary course of business. The Statement of Reasons issued by the Commissioners who had opposed such action emphasized that "the law firm segregated and billed the Committee for 100 percent of the salaries and expenses it incurred . . . . The responses provided documentation that these bills were promptly paid . . . ."

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those assets from an application of 2 U.S.C. § 441b. Whether or not the shareholders retain equitable interests in them, the assets become those of the corporation. Therefore, for the same reasons as those given above with regard to the use of corporate treasury funds, any use in the present matter of corporate assets on behalf of the Committee must be examined in light of 2 U.S.C. § 441b and of the regulations which interpret this provision.

Further, absent the applicability of the provisions of 11 C.F.R. § 114.9 or 11 C.F.R. § 116.3, a candidate who is directly involved in the use of corporate assets on behalf of his or her campaign may be involved in the knowing acceptance of such use, in violation of 2 U.S.C. § 441b(a). If that same candidate is also an officer or director of the corporation whose assets are being used, he or she may also be in violation of 2 U.S.C. § 441b(a) as a result of consenting to the making of corporate contributions.

Based upon respondents' invoices and Committee reports, the Corporation in the present matter billed the Committee in 1989 and 1990 for $35,094.40 in goods and services. These charges, when aggregated by categories, included:

Salaries	-	$ 5,865.30
Telephone use	-	5,557.66
Use of corporate vehicles	-	16,034.45
Office supplies	-	1,319.04
Postage	-	253.50
Food, beverages & related equip.	-	4,169.85
Newspapers	-	68.99
Materials for signs	-	478.02

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Copying	-	447.00
Credit card charges	-	616.14
Undifferentiated payment	-	350.00
		$35,159.95
		- 65.55[12]
		$35,094.40

a. Use of Corporate Facilities by Stockholders/Employees

As discussed above, 11 C.F.R. § 114.9(a) permits the use of a corporation's own facilities by stockholders or employees who use those facilities for individual volunteer activity in connection with a federal election. The types of facilities covered by this regulation include, inter alia, telephones, telefax machines, and copying machines. (The use of corporate vehicles is addressed at 11 C.F.R. § 114.9(e)(2) and thus is discussed separately below.) If use of such facilities by a stockholder or employee is only "occasional, isolated or incidental," reimbursement need only be made to the extent that the corporation's overhead is increased. If such use is on more than an occasional, isolated or incidental basis, reimbursement must be made within a commercially reasonable time at the usual and normal rental charge. 11 C.F.R. § 114.9(a) also states that it is the stockholder or employee who must reimburse the corporation in such a situation, not a third party.

Application of these regulations in the present matter means that Mr. Zeliff, as shareholder, was required to reimburse the Inn himself for his use of the types of facilities covered by 11 C.F.R. § 114.9(a). Mr. Zeliff did personally reimburse the Inn for a

12. As is noted above, the reason for this deduction on one invoice is not known.

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total of $2,242.42 in telephone, telefax and copying charges. (See more detailed discussion below.) But, because the Committee rather than Mr. Zeliff reimbursed the Inn for a total of $4,112.46 in telephone, telefax and $350 in undifferentiated charges for, inter alia, phone calls, faxes and copying, the $4,112.46 automatically constituted an impermissible corporate contribution under 2 U.S.C. § 441b.

Further, based upon information contained in the monthly invoices sent to the Committee by the Inn, Mr. Zeliff's use of the Corporation's facilities was steady and ongoing, not occasional, isolated or incidental. Thus, even if one does not assume that the amount reimbursed by the Committee was a corporate contribution because it was repaid by the Committee rather than Mr. Zeliff, the requirement in 11 C.F.R. § 114.9(a)(2) that repayment must be made at a normal and usual rental charge within a commercially reasonable time is also applicable. In the present matter, application of a commercially reasonable standard of thirty days for measuring the timing of the reimbursements by both Mr. Zeliff and the Committee of the bills for telephone, telefax, and copying charges, plus the charges covered by the Committee's payment of $350, leads to the conclusion that the Corporation made prohibited contributions. In addition, one of the amounts billed the Committee and paid by Mr. Zeliff for copying costs was based upon a faulty assumption as to the standard to be applied and therefore was apparently understated.

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(1). Telephone, Telefax Machines

Mr. Zeliff and the Committee reimbursed the Inn for a total of $5,557.66 in telephone and telefax charges billed over more than a year. According to counsel's most recent response, the telefax machine and Watts line involved in these charges were used by the stockholder/candidate, the Inn's secretary, and one campaign volunteer. Of the $5,557.66 owed, Mr. Zeliff personally paid $1,233.20 on April 29, 1990, and $562.22 on February 13 or March 6, 1991,[13] leaving $3,762.24 to the Committee.

The Corporation's charges for the use of the Watts line were based upon a formula which assumed that the Inn itself used the line an average of 17 hours a month with the remainder of the $10.30 hourly charge being allocable to the Committee. Fax transmissions were billed on a cost per transmission basis. It, therefore, appears that Mr. Zeliff's personal reimbursements for telephone and telefax use represented usual and normal charges.

Commercially reasonable timing of the payment of telephone and telefax charges would permit a thirty-day lapse between the date the bill is received and payment. Mr. Zeliff's April 29, 1990 personal payment of $1,233.20 was applied against four charges billed the Committee by the Inn between January 26, 1990 and April 30, 1990. Application of a thirty-day payment window leaves

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13. Because Mr. Zeliff's reimbursement of $3,558.35 in February or March was reported as covering multiple categories of services, this Office has prorated the telephone charges by determining the ratio of all telephone charges to total charges billed the Committee (15.8%) and applying that percentage to Mr. Zeliff's payment. This procedure results in the allocation of $562.22 to telephones.

$674.56 as not having been reimbursed within a commercially reasonable time.

If one first applies Mr. Zeliff's personal, telephone-related payment of $562.22 in February or March, 1991 to the telephone charge of $534.02 contained in the December 17, 1990 invoice, and if one assumes that the payment was made in February as per the notation on the December invoice, this payment still falls outside the thirty-day time frame, again resulting in a corporate contribution of $562.22.

With regard to the remaining $3,762.46 in reimbursements for telephones and telefaxes made by the Committee, the timing of these repayments would place much of the $3,762.40 outside the thirty-day period and thus outside a commercially reasonable time. Of the $737.09 payment on December 20, 1989, $369.82 in charges was invoiced more than thirty days before the payment; of the $3,587.37 covered by payments in January, February or March, 1991, approximately $3,053 was invoiced more than thirty days before the first payment. Thus, a minimum of $3,422.82 for telephone and telefax usage would have constituted corporate contributions by the Inn even if reimbursements by the Committee were permitted.

(2). Copying

Mr. Zeliff's reimbursements on April 29, 1990, covered a $50 debt for copying incurred in August, 1989 and an additional $397 incurred in February, 1990. The $50 represented 20 copies a day at $.10 a copy for five weeks. The $397 charge represented "approx. 27,000 copies x .0147 for excess on CFI maintenance agreement for copier."

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Payments for the copying charges were made by the appropriate person, pursuant to 11 C.F.R. § 114.9(a); however, because Mr. Zeliff's overall use of the Inn's facilities was more than occasional, isolated or incidental, the appropriate repayment standards are those at § 114.9(a)(2). The $50 charge appears to have met the requirements of this regulation with regard to method of calculation; however, payment of the $50 took place eight months after the charge was billed, taking it outside the regulation's "commercially reasonable time" requirement. A thirty-day payment period is standard in the copying business.[14]

The $397 charge was apparently reached by the Committee's application of 11 C.F.R. § 114.9(a)(1) which permits charges for occasional, isolated, or incidental use to be based upon the amount by which a corporation's overhead is increased. However, as stated above, the appropriate regulation, given Mr. Zeliff's extended use of corporate facilities, is 11 C.F.R. § 114.9(a)(2). Thus, the proper charge for the 27,000 copies would have been the normal and usual rental charge for the use of the copying machine, not the amount by which the corporation's maintenance agreement was exceeded. Application to the 27,000 copies of the $.10 per copy approach used by the corporation in connection with the August, 1989, bill for $50 discussed above would result in a required reimbursement of $2,700 and actual under-reimbursement of $2,303 ($2,700 - $397). Given the thirty-day standard payment

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14. A conversation by staff with a small, Washington copying business confirmed the thirty-day standard period.

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period in the copying business, even the Committee's $397 repayment was out of time. Thus, a corporate contribution of the full $2,700 resulted from this later use of the Corporation's copier.

(3). Undifferentiated Reimbursement

The Committee's August 5, 1989, payment of $2,610.64 to the Inn covered an estimated charge of $350 for "copies, faxes, phone calls on Watts and CFI lines, postage, stationery, supplies" used during June and July of that year. No breakdown of the $350 charge by category has been provided, nor is information in hand as to the exact month in which these charges accrued. However, all of the items listed apparently were used by Mr. Zeliff as stockholder/ candidate and/or by his secretary and thus were eligible to come within the coverage of 11 C.F.R. § 114.9(a)(2). However, because it was the Committee, not the stockholder, who made the reimbursement, the requirements of this regulation were not met.

b. Transportation Using Corporate Vehicles

11 C.F.R. § 114.9(e)(2) permits the use of corporation-owned or leased means of transportation such as cars or vans by a candidate, a candidate's agent or another person traveling on behalf of the candidate, who must reimburse the corporation at the normal and usual rental charge within a commercially reasonable time. Reimbursement must be made with campaign funds.

In the present matter, the candidate, Mr. Zeliff, used a van owned or leased by the Inn to make campaign-related trips. Through April, 1990 the Inn charged the Committee a rate of $.279 per mile, a figure assertedly based upon AAA estimated costs for operating a vehicle; in May, 1990 this rate was raised to $.28. According to

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the invoices, beginning in August, 1990, and continuing through the November election, a second vehicle, a "red CFI truck" was also used for campaign purposes. The Committee was charged $.30 per mile for use of the truck.[15]

Mr. Zeliff and the Committee, as required by 11 C.F.R. § 114.4.9(e)(2), reimbursed the Corporation for a total of $16,034.45 in charges related to the use of the Inn's van. The following are the charges made by the Inn for van and truck usage and the dates of payment:

Date Incurred	Date Billed	Amount	Date Paid
8/89	8/31/89	$ 500.00	12/29/89
9/89	9/29/89	279.00	12/29/89
10/89	10/27/89	535.68	12/29/89
11/89	11/24/89	412.92	12/29.89
12/89	12/29/89	100.24	12/20/89
1/90	1/26/90	591.48	4/29/90
2/90	2/23/90	407.34	4/29/90
3/90	3/31/90	641.70	4/29/90
4/90	4/30/90	1,082.52	4/29/90
5/90	5/31/90	1,456.55	12/20/90; 1/30/91 & 2/13/91
6/90	6/30/90	1,811.60	12/20/90; 1/30/91 & 2/13/91
7/90	7/31/90	2,289.00	12/20/90; 1/30/91 & 2/13/91
8/90	8/31/90	1,097.84	12/20/90; 1/30/91 & 2/13/91
9/90	9/28/90	1,805.05	12/20/90; 1/30/91 & 2/13/91
10/90	10/31/90	2,293.11	12/20/90; 1/30/91 & 2/13/91
11/90	11/10/90	730.22	12/20/90; 1/30/91 & 2/13/91
	Total	$16,034.25	

15. These figures for costs per mile were apparently taken from a AAA publication entitled "Your Driving Costs." The cost per mile figures take into account gasoline and oil, maintenance, tires and ownership costs such as insurance and depreciation.

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Apparently the rates charged the Committee for use of the van and truck represented normal and usual charges. Thus, the remaining issue is whether the reimbursements were made within a commercially reasonable time.

Again, there is no evidence in hand that it was the usual practice of the Corporation to provide vehicles for use by customers. Within the rental car business it is apparently a relatively common practice to provide a thirty-day payment period.[16] Application of this approach to the Committee and candidate's reimbursements for vehicle use results in at least $11,751.97 in late repayments.[17]

c. Corporate Advances to Third-Party Vendors

The provisions of 11 C.F.R. § 114.9 permit the use by certain persons of a corporation's own facilities for campaign-related activities. They do not cover corporate advances on behalf of candidates or their committees in the form of corporate payments of bills submitted by third party vendors to such committees for which reimbursements are later made to the corporation. See MUR 3143. 11 C.F.R. § 116.3 permits corporations to extend credit to

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16. Alamo provides for this length of payment period. Some companies such as Avis require the use of a credit card and thus immediate payment.

17. Because the $5,000 payment made by the Committee on December 20, 1990 was reported generally as being for expense reimbursement, it is necessary to determine what fraction of that payment should be allocated to vehicle expenses. The overall payments for this purpose represented 45.7% of the total reimbursements paid the Inn. Using this percentage, $2,285 of the $5,000 should be allocated to vehicle costs. The $730.22 charge for December was therefore covered by this payment, taking this charge out of the total of corporate contributions.

political committees, but only if the credit is extended in the ordinary course of the corporation's own business.

According to the invoices submitted by the Inn, certain of the charges to the Committee apparently covered payments made by the Inn on behalf of the Committee to other vendors, including payments to Office Market, Conway Supply, Jackson Corner Store and B.E.V. for office supplies, to Federal Express for postage, to unnamed vendors for newspapers, to Conway Supply for materials for signs, and to unnamed vendors in the form of credit card charges. These payments totaled at least $3,040.14.[18] The charges did not involve the use of the Inn's own facilities; nor is there evidence that the Inn paid these types of charges for its customers in the ordinary course of its business. Thus, these charges do not fall within the requirements of either 11 C.F.R. § 114.9 or 11 C.F.R. § 116.3(b) and, consequently, must be treated as advances and, therefore, contributions to the Committee in violation of 2 U.S.C. § 441b. See, again, MUR 3143.

d. Secretarial Services

As is also stated above, two individuals, Judy Galluzzo and Lois Nelson, provided secretarial services for Mr. Zeliff in connection with his campaign starting in June of 1989 and extending through the last half of that year. The election-related shares of these individuals' salaries totaled $5,865.30.

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18. The undifferentiated payment of $350 in August, 1989, included reimbursements for "postage, stationery, supplies", as well as "copies, Watts line and Faxes." No portion of this payment is included in the total of $3,040.14.

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11 C.F.R. § 114.9 "applies only to the use of corporate facilities and does not include the use of the paid services of corporate employees. Therefore, this section cannot be read as supporting or authorizing . . . reimbursement . . . regarding the compensation paid to . . . employees for the political services rendered to Federal candidates." Advisory Opinion 1984-24. The question in the present matter then becomes whether the provision of such services was within the ordinary course of business of the Corporation, pursuant to 11 C.F.R. § 116.3. There is no indication that the Inn extended credit for, or even provided, secretarial services to its customers in the ordinary course of its business. Thus, the provisions of Section 116.3 would also not apply. The Inn's payments of the secretaries' salaries constituted advances and, accordingly, corporate contributions totaling $5,865.30, in violation of 2 U.S.C. § 441b.

Even if one were to include the provision of secretarial services as a use of corporate facilities, the fact that the costs of these services were reimbursed by the Committee, not by Mr. Zeliff as stockholder, would take them outside the provisions of 11 C.F.R. § 114.9(a)(2). Nor did the timing of certain payments meet the requirements of this regulation. While the Committee's payment of $1,532 on August 5, 1989, came within five days of receipt of the relevant invoice, the payment of $4,333.30 on December 20, 1989, covered five months of invoices, three of which were paid more than thirty days after the dates of the invoices. The charges for secretarial services covered by these three invoices totaled $2,527.80.

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e. Food and Beverages

Mr. Zeliff and the Committee together made expenditures to the Inn totaling $4,169.85 to cover the invoiced costs of food and beverages, including charges for a dinner held on November 1, 1989, at the Inn ($420), an announcement dinner held on April 3, 1990, at the Inn ($680.72), and a party held on December 17, 1990, at the Inn ($1,345.62). Also included on the invoices were, inter alia, other meals at the Inn's restaurant, coffee and sodas for volunteers, and a cabana charge.

Counsel has stressed that the Inn's business includes food services. Therefore, it appears that the dinners and other food and beverage-related items included on the invoices from the Corporation involved extensions of credit in the ordinary course of the Inn's business as permitted by 11 C.F.R. § 116.3.

The timing of certain of the payments, however, appears to have been longer than that accorded other customers. As noted above, in his affidavit attached to counsel's November 13, 1991 response to interrogatories, the Inn's bookkeeper, Kenneth Kaslow, stated that "[t]he Inn has in the past received credit extensions of three months from its vendors." No such statement was included with regard to the Inn's practice of extending credit to its own customers.

The dates on which the debts here at issue were incurred and billed, and the dates of payment are as follows:

Date Incurred	Date Billed	Amount	Date Paid
5/25/89	7/31/89	$317.00	8/5/89
7/12/89	7/31/89	25.66	8/5/89
6/5-7/31/89	7/31/89	30.00	8/5/89
11/1/89	11/24/89	489.45	12/20/89

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Date Incurred	Date Billed	Amount	Date Paid
8/1-8/31/89	8/31/89	100.09	4/29/90
8/1-8/31/89	8/31/89	25.00	4/29/90
9/1-9/30/89	9/29/89	25.00	4/29/90
9/30-10/27/89	10/27/89	20.00	4/29/90
10/11/89	10/27/89	77.85	4/29/90
10/28-11/24/89	11/24/89	51.50	4/29/90
11/25/89-12/29/89	12/29/89	20.00	4/29/90
12/30/89-1/26/90	1/26/90	67.00	4/29/90
12/26/89	1/26/90	42.27	4/29/90
1/25/90	1/26/90	78.00	4/29/90
3/18/90	3/31/90	25.65	4/29/90
3/18/90	3/31/90	3.19	4/29/90
3/19/90	3/31/90	33.44	4/29/90
3/20/90	3/31/90	23.86	4/29/90
4/3/90	4/30/90	680.72	4/29/90
4/25/90	4/30/90	11.03	4/29/90
6/2/90	6/30/90	507.54	12/20, 1990; 1/30 & 2/13, 1991
6/90	6/30/90	27.00	12/20, 1990; 1/30 & 2/13, 1991
8/90	8/31/90	47.98	12/20, 1990; 1/30 & 2/13, 1991
11/6/90	11/10/90	95.00	12/20, 1990; 1/30 & 2/13, 1991
12/17/90	12/17/90	1,345.62	12/20, 1990; 1/30 & 2/13, 1991
	Total	$4,169.85	

As stated above, counsel has cited MUR 3070 as precedent for permitting outstanding amounts to be owed a vendor for more than a year after the debts were incurred. In that matter, however, the committee, prior to incurring the $12,198 debt at issue, had paid the vendor almost $45,000 as consulting fees and for expenses incurred on the campaign's behalf over a period of four months in 1987 and 1988. On that basis and on the basis of statements received from the vendor concerning its general practices regarding the collection of debts, it was determined that the vendor had established a business arrangement with the candidate committee for consulting services in connection with the 1988 election. The vendor had apparently proceeded in the ordinary

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course of its business, including extending credit in a manner substantially similar to that extended other, nonpolitical debtors.

In the present matter it has not been shown that it was the usual practice of the Inn to extend any credit to its customers. Therefore, it appears reasonable to apply at most a thirty-day time limit to the period between the receipt of an invoice and payment, beyond which a corporate contribution would result.[19]

Application of a thirty-day standard to the charges listed above results in at least $3,422.44 in corporate advances for food and beverages not repaid within a commercially reasonable time. The late payments resulted in corporate contributions to the Committee in violation of 2 U.S.C. § 441b.

f. Summary and Recommendation

The above analysis of particular categories of advances and reimbursements results in the following total amount of corporate contributions:

Third party vendors	-	$3,040.14
Salaries	-	5,865.30
Telephone, telefax	-	4,999.02
Copying	-	2,700.00
Undifferentiated payment	-	350.00
Vehicles	-	11,751.97
Food and beverages	-	3,422.44
		$32,128.87

Given Mr. Zeliff's involvement as an officer of the Corporation and as a candidate in the use of the Corporation's facilities on behalf of the Committee and in the advances made by

19. Application of a thirty-day period extends the benefit of the doubt to respondents and also acknowledges that several charges were for parties rather than individual meals.

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the Corporation also on behalf of the Committee, the Office of the General Counsel recommends that the Commission find probable cause to believe that William H. Zeliff, Jr. consented to and knowingly accepted corporate advances and the use of corporate facilities without the requirements of 11 C.F.R. § 114.9 having been met, in violation of 2 U.S.C. § 441b.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b by consenting to and knowingly accepting contributions from Christmas Farm Inn.

7/17/93
Date

Lawrence M. Noble
General Counsel

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July 21, 1993

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

BY HAND

Re: MUR 3191

Dear Mr. Noble:

We received your July 15, 1993 letter informing us of the General Counsel's decision to recommend probable cause findings in MUR 3191 on July 19.

I am scheduled to be out of town from July 26 to August 3 based on prior commitments and therefore cannot prepare a response to the detailed Briefs enclosed with your letter in the 15 days allotted. To permit adequate time to review the Briefs, consult with our clients, and prepare a response, I request an extension of 20 days to and including August 18, 1993.

Thank you for your cooperation in this matter.

Sincerely,

Lee E. Goodman

Lee E. Goodman
Counsel for the Friends of Bill Zeliff Committee, The Hon. Bill Zeliff and Christmas Farm Inn, Inc.

cc: Jan Witold Baran

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August 18, 1993

Ms. Marjorie W. Emmons
Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3191 (Friends of Bill Zeliff Committee and Robert D. Goodman, as Treasurer, Christmas Farm Inn, Inc., and The Honorable William H. Zeliff, Jr.)

Dear Madam Secretary:

Enclosed please find ten copies of the Respondents' Brief in the above captioned matter pursuant to 11 C.F.R. § 111.16(c).

This office requests that the Commission conclude this matter expeditiously pursuant to the powers granted it by Congress in 2 U.S.C. § 437d. Some of the activity at issue in this matter is now over four years old. This case warrants a rapid conclusion.

In our experience, decisions on probable cause have taken anywhere from six months to several years after the filing of respondent's briefs. In most cases, as here, respondents file these briefs within thirty days of receipt of the General Counsel's Brief despite delays of months or even years in hearing from the Commission. For example, MUR 2185, which is cited by both the General Counsel's Briefs and Respondents' Brief, reflects that one year elapsed between the filing of respondents' brief and the Commission's consideration of the case and its dismissal.

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It is our hope and request that the Commission take action with respect to this matter within the next sixty days.

Thank you for your attention to this matter.

Sincerely,

Jan Witold Baran

Encl.

cc: Chairman Scott Thomas
Vice Chairman Trevor Potter
Commissioner Joan Aikens
Commissioner Lee Ann Elliott
Commissioner John Warren McGarry
Commissioner Danny Lee McDonald
Lawrence M. Noble, Esq. (3 copies)
Honorable William H. Zeliff, Jr.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bill Zeliff Committee,	)	
Robert D. Goodman, as Treasurer,	)	MUR 3191
Christmas Farm Inn, Inc., and	)	
The Hon. William H. Zeliff, Jr.	)	

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RESPONDENTS' BRIEF

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Counsel for Friends of Bill Zeliff Committee, Robert D. Goodman, as Treasurer, Christmas Farm Inn, Inc., and The Hon. William H. Zeliff, Jr.

Dated: August 18, 1993

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bill Zeliff Committee,	)	
Robert D. Goodman, as Treasurer,	)	MUR 3191
Christmas Farm Inn, Inc., and	)	
The Hon. William H. Zeliff, Jr.	)	

RESPONDENTS' BRIEF

This Respondents' Brief, along with the attached Exhibits is submitted on behalf of the Friends of Bill Zeliff Committee ("Committee") and Robert D. Goodman, as Treasurer, Congressman William H. Zeliff, Jr., and Christmas Farm Inn, Inc. ("Inn") (collectively "Respondents"), in response to the General Counsel's Briefs of July 14, 1993 ("Briefs") recommending that the Federal Election Commission ("Commission") find probable cause to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended ("Act"), and Commission regulations in Matter Under Review ("MUR") 3191.

Respondents urge the Commission not to accept the General Counsel's recommendation, and to find, in lieu thereof, no probable cause to believe.

INTRODUCTION

The subject of this Matter is Congressman Bill Zeliff's use of the company which he and his wife established and wholly own, the Inn, during his 1990 campaign in New Hampshire. At issue is whether Congressman Zeliff properly

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relied on the express terms of 11 C.F.R. § 110.10 (1990) in treating one-half of the assets of the Inn as his "personal funds" for the purposes of making loans or contributions to his campaign committee. As demonstrated below, Congressman Zeliff's ownership of the Inn meets the express terms of § 110.10, and the General Counsel's Briefs do not dispute this. Instead, the General Counsel's Briefs promote an interpretation of the regulations which effectively amends them by ignoring rights of candidates over equitably-owned property that they indisputably control.

The following facts are undisputed:[1]

- Congressman Zeliff, as a 50% stockholder in the Inn, equitably owns one-half of all the Inn's assets (including its accounts receivable);
- Congressman Zeliff's 1990 stockholder equity in the Inn exceeded
- Congressman Zeliff, as President of the Inn, exercised undisputed, exclusive control over all of the Inn's assets and, at his discretion, he could sell assets, withdraw monies, declare dividends,

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[1] Respondents have presented these facts to the General Counsel's staff over a two-year "investigation." See March 19, 1991 Letter Response from Jan Witold Baran to Lawrence M. Noble (with attachments); November 13, 1991 letter from Jan Witold Baran to Lawrence M. Noble (with attachments). The General Counsel has never questioned or disputed any of these factual demonstrations. Should it do so at this late date, Respondents request an opportunity to respond.

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make payments, make loans, and, indeed, forgive loans;

- Congressman Zeliff and his wife, Sydna Zeliff, personally owned all of the Inn's assets as a proprietorship until 1977 and incorporated the business at that time for liability purposes;
- Since 1977, Congressman Zeliff has frequently drawn money on an as-needed basis from the Inn's bank account for a variety of personal uses in the same manner as he did during his campaign;
- At all relevant times, Congressman Zeliff and Sydna Zeliff were the only two officers and directors of the Inn; and
- Congressman Zeliff borrowed $209,000 from the Inn which he then lent to his campaign committee.

The General Counsel's Briefs do not dispute the truth of any of these facts. These facts establish that Congressman Zeliff had (i) legal right of access to, (ii) control over, and (iii) an equitable interest in one-half of all Inn assets.[2]

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[2] "[I]t has been said that stockholders are the equitable owners of the property and assets of the corporation, and that they have a proprietary interest in the corporation, and a qualified beneficial interest which is an indirect or collateral interest in the corporate property." 11 Fletcher Cyc. Corp. § 5100 at 100 (Perm. Ed. 1986) (collecting authority).

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Second, this Matter involves the campaign's payments of $35,094.40 for goods such as office supplies, copying, food, faxes, transportation, and secretarial services. There is no dispute that each of these items was paid in full (including duplication expenses as will be explained), rather, the dispute here is whether by even incurring a debt to the Christmas Farm Inn the campaign accepted a corporate contribution. It did not. Indeed, if this campaign has accepted corporate contributions it is likely that every campaign has accepted corporate contributions.

Finally, the Commission merged its findings regarding 48-hour notices from MUR 3226 into this Matter. It would now be appropriate to take no further action with regard to these findings.

I. CONGRESSMAN ZELIFF LOANED HIS PERSONAL FUNDS TO HIS CAMPAIGN COMMITTEE

Congressman Zeliff May Spend Unlimited Personal Funds On His Candidacy

In Buckley v. Valeo, 424 U.S. 1, 51-53 & n. 57 (1976), the Supreme Court ruled that any limitation on a candidate's expenditure of "personal funds" is unconstitutional. Pursuant to Buckley v. Valeo, in 1976 the Commission preserved each federal candidate's First Amendment right to "make unlimited expenditures from personal funds." 11 C.F.R. § 110.10 (1990). See 41 Fed. Reg. 35948 (1976).

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11 C.F.R. § 110.10(b) (1990) defines "personal funds" as follows:

> For purposes of this section, '<u>personal funds</u>' means (1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) Legal and rightful title, or (ii) An equitable interest.

The original version of § 110.10(b) issued in 1976 contained the phrase "right of beneficial enjoyment" in place of the phrase "equitable interest." <u>See</u> 41 Fed. Reg. 35948 (1976). In 1983, the Commission revised § 110.10(b) to the present language and promulgated the following Explanation and Justification:

> By changing the term "right of beneficial enjoyment" to "equitable interest" the Commission is using a term which more specifically applies to <u>an ownership or pecuniary interest that is not one of legal title</u>. By reordering the criteria defining "personal funds," it is made clear that the criteria of "legal and rightful title" and "equitable interest" must each be linked with "legal right of access to or control over."

48 Fed. Reg. 19020 (1983)(emphasis added). The Commission's Explanation clearly provides that a candidate's <u>equitable interest</u> in property suffices to qualify the property as "personal funds" and that <u>legal title</u> to the property is not necessary in order to treat assets as "personal funds." No other criteria have ever been established by the Commission to define "personal funds."

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Indeed, in Buckley v. Valeo, the Supreme Court indicated that the Constitution would not permit any further limitations other than whether the candidate had "access to or control over such funds at the time he became a candidate." 424 U.S. at 52 n.57.

Assuming that § 110.10 means what it expressly states -- that "personal funds" are "any assets" which the candidate has control over and an equitable interest in -- then Congressman Zeliff's equitable ownership and control over the Inn's assets renders them "personal funds" under § 110.10 by definition.

The General Counsel's Briefs do not dispute that Congressman Zeliff's ownership of the Inn meets the express definition of personal funds. Indeed, it is not legitimately possible to deny it. Rather, the Briefs object (at 11) to the method by which Congressman Zeliff utilized his personal funds -- i.e., he borrowed money from the Inn he owns. In other words, he borrowed money from himself.

Ironically, the General Counsel's Briefs state (at 11) that Congressman Zeliff's use of the same money from the Inn would have been legal had he simply elected another transactional form. According to the Office of General Counsel:

- Congressman Zeliff could have simply treated the $209,000 as a "disbursement" from the Inn;

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- Congressman Zeliff could have "liquidated" his ownership interest in the Inn;
- Congressman Zeliff could have used his stock in the Inn as "collateral for a bank loan."
- Congressman Zeliff could have loaned his shares in the Inn to the Committee.[3]

Each of these recommended alternatives would have had the identical effect, i.e., an infusion of Congressman Zeliff's personal funds into the Committee. Nonetheless, the General Counsel's Briefs assert (at 11) that "the method he chose, namely his borrowing of the monies from the Corporation's treasury," is dispositive because of the restriction in 2 U.S.C. § 441b(b)(2).[4] The net result here

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[3] The following transactional forms would also comply with the General Counsel's analysis:

- Congressman Zeliff could have simply sold his shares back to the Inn;
- Congressman Zeliff could have loaned the proceeds of sale of the stock to the Committee, later been reimbursed, and then repurchased the stock;
- Congressman Zeliff could have sold his shares to Sydna Zeliff who could have leveraged assets of the Inn for the purchase money;
- Congressman Zeliff could have simply declared a dividend;
- Congressman Zeliff could have given his shares in the Inn to the Committee.

[4] As seen below, this is not the first time the General Counsel's Office has tried to circumvent the clear application of 11 C.F.R. § 110.10 (1990) through the invocation of another section of the Act. However, the Commission has recognized that Section 110.10 stands alone and that compliance with that provision is the only relevant analysis to determining whether a candidate has complied with the Act. See MUR 3097 (Louis DuPont Smith).

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is that form has been raised over substance by the General Counsel's analysis. Respondents are to be punished here because of the accounting method, not substance, of their financial affairs.

This conclusion is contrary to the Commission's definition of personal funds and is unsupported by any authority. Nothing in § 110.10 suggests that a "loan" from the Inn would be considered a corporate contribution pursuant to 2 U.S.C. § 441b(b)(2) while some other "direct or indirect payment" from the Inn, such as those recommended by the General Counsel's Briefs (at 11) would not.

The Inn's Incorporation Does Not Render Inn Assets Non-Personal Funds

The General Counsel's Briefs argue (at 10 & 11) that Congressman Zeliff's equitable ownership and control over Inn assets are irrelevant to a personal funds determination due to the fact of incorporation. Section 110.10 contains no such limitation. The rationale for such an implied limitation is undermined by the virtually identical financial options suggested by the General Counsel's Briefs as permissible -- which would each effect an identical financial result through a different accounting method.

The only rationale provided (at 11) by the General Counsel's Briefs for this disparate treatment of identical uses of one's equitably owned assets is that the loan

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"resulted in the flow of corporate monies into his campaign" while the other transactions would result in the flow of Congressman Zeliff's monies into his campaign. But that distinction is a self-fulfilling prophecy by the Office of General Counsel which relies on legal title not equitable title. Here, Congressman Zeliff equitably owns one-half and indisputably controls all "corporate monies."

The Briefs' analysis ignores Congressman Zeliff's equitable interest and, consequently, ignores the equitable interest prong of the personal funds regulation. That has occurred at least once before. In MUR 3097 (Louis DuPont Smith) the Commission determined by a 5-0 vote, contrary to the General Counsel's recommendations, that funds a candidate drew from a trust were "personal funds" because the candidate "retained an equitable interest in the monies contained in that trust."[5] It was not relevant that the trustee had legal title to the funds or that the candidate had no discretionary control or unfettered access to the funds (he could obtain the funds only by court order). What was relevant was that the funds met the definition of personal funds because the candidate had an equitable interest in them. In fact, like Congressman Zeliff, the candidate in MUR 3097 had owned the assets outright before transfer to the trust, and retained an equitable interest in them thereafter.

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[5] See MUR 3097 (Louis DuPont Smith), January 15, 1991 Statement Of Reasons at 2.

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Thus, although the General Counsel argued in MUR 3097 that treating those funds as "personal funds" would violate the limitations imposed by 2 U.S.C. § 441a(f), the Commission recognized the candidate's equitable interest as dispositive and overruled the General Counsel.[6]

In conclusion, Congressman Zeliff's use of assets which he equitably owned and over which he had access and sole discretionary control meets the express requirements of personal funds as defined in 11 C.F.R. § 110.10(b)(1) (1990). His use also meets the constitutional protections demanded by Buckley v. Valeo.[7]

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[6] The General Counsel's interpretation here is also inconsistent with its analysis in MUR 2188 (McMillen). There the General Counsel treated a candidate's travel expenses as "personal funds" notwithstanding the fact that a corporation had paid them because the candidate's right to travel expenses "was analogous to the concept of legal and rightful title." See MUR 2188 (McMillen), May 22, 1987 General Counsel's Report at 17. The General Counsel did not treat the fact that a corporation controlled payment of the expenses as an extra limitation on the definition of "personal funds."

[7] The Commission's recognition of Congressman Zeliff's compliance with § 110.10 does not portend a slippery slope in the enforcement of 2 U.S.C. § 441b, for this is not to say that all Subchapter S corporations are exempt from 2 U.S.C. § 441b. Not all Sub S corporations commence with the transfer of the candidate's personal property. Not all Sub S corporations have only two officers and directors who are the candidate and the candidate's spouse. And, most important, not all Sub S corporations are indisputably controlled by the candidate. In the highly limited circumstances presented here, Congressman Zeliff's use of his own assets should be treated as personal funds protected by the First Amendment and permitted by 11 C.F.R. § 110.10(b)(1) (1990).

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Under Any Circumstances, Respondents Relied In Good Faith Upon 11 C.F.R. § 110.10 And Under 2 U.S.C. § 438 (e) Are Thus Not Subject To Any Sanction

Congress expressly forbade the Commission from imposing any sanction under the Act where, as here, parties rely in good faith upon the Commission's regulations in conducting their activities:

> Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provisions of this section and who acts in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26.

2 U.S.C. § 438(e); see also Office of Personnel Management v. Richmond, 496 U.S. 414, 428 (1990).

Respondents cannot be penalized for having relied upon an established and valid regulation that the General Counsel's Briefs now construe as inconsistent in some respects with another statute.[8]

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[8] This is a case of first impression at the Commission. The General Counsel's Briefs cite no precedent for interpreting the personal funds definition of 11 C.F.R. § 110.10 (1990) in this manner. In the past, the General Counsel attempted to rely on MUR 2522 (Vandenberge). Respondents have previously demonstrated that the General Counsel's Brief in MUR 2522 did not address the Commission's personal funds definition in making recommendations, the respondent there did not cite or claim reliance on the definition, and the Commission apparently did not consider it in making findings. Therefore, MUR 2522 has no precedential value in this Matter.

(continued...)

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Respondents' reliance here on the express definition of "personal funds" at 11 C.F.R. § 110.10 (1990) to arrange their campaign financing is a very significant point for the Commission to consider in passing on this Matter. Had Respondents known that their accounting method was going to be treated as dispositive by the General Counsel instead of the express language of 11 C.F.R. § 110.10 (1990), they would have simply elected one of the alternative financial arrangements, used the same money from the same bank account, and faced no alleged violation of the Act.

Even the General Counsel has fallen into his own trap. The General Counsel's interpretation (at 11) that § 110.10 permits "disbursement(s)" from Congressman Zeliff's corporation is similar to Respondents' interpretation that § 110.10 permits "loans" from Congressman Zeliff's corporation. Both "loans" and "disbursements" arguably are prohibited by 2 U.S.C. § 441b(b)(2). Respondents agree with the General Counsel that "disbursements" are permitted by § 110.10 notwithstanding the prohibition of § 441b(b)(2), but see no distinction between "disbursements" and "loans" in either 11 C.F.R. § 110.10 (1990) or 2 U.S.C. § 441b(b)(2).

Respondents relied upon § 110.10. The General Counsel does not and cannot suggest that they acted in bad faith.

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[8] (...continued)
Moreover, if the General Counsel believes the regulation should be changed, a rulemaking would be appropriate, not an ad hoc change in the regulation.

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Therefore, the Commission is barred by 2 U.S.C. § 438(e) from taking any further action against Respondents with respect to the disputed loans.

II. RESPONDENTS COMPLIED WITH 11 C.F.R. § 114.9 BY FULLY REIMBURSING THE INN FOR THE USE OF ITS FACILITIES AT NORMAL AND USUAL CHARGES AND IN A COMMERCIALLY REASONABLE TIME.

The General Counsel also recommends that the Commission find probable cause to believe that Respondents violated 2 U.S.C. § 441b by failing to reimburse the Inn for the use of its facilities in a commercially reasonable time. Once again, Congressman Zeliff equitably owned and controlled the facilities of the Inn and thus had no obligation to reimburse the Inn for the use of his own assets. Nevertheless, Congressman Zeliff chose to reimburse the Inn. Yet, because he made this voluntary choice to reimburse the Inn which was not required by law, the Office of General Counsel has inexplicably expended great effort to find violations of reimbursement regulations. As demonstrated below, however, the Inn was reimbursed <u>in full</u> for all uses of its facilities, in a commercially reasonable time, and in compliance with 11 C.F.R. § 114.9 (1990).

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All Supplies And Equipment Of The Inn Are Congressman Zeliff's Personal Funds And He Was Not Required To Reimburse The Inn In The First Place

As half-owner and operator of the Inn, Congressman Zeliff equitably owned half of all of the Inn's supplies, equipment and vehicles used for campaign purposes and had discretionary authority over their use. The Commission recognized this fact in issuing its Factual and Legal Analysis, stating that "[g]iven his ownership of the property, it is certain that the candidate was one of those involved in the use of the Inn's facilities." (p. 22, emphasis added). As equitably owned assets over which Congressman Zeliff exercised control and to which he had access, these are personal funds in accordance with 11 C.F.R. § 110.10(b)(1)(1990) which refers to "any assets," and the use of them is protected by the First Amendment. The Committee, therefore, was not even required to reimburse the Inn for the use of Congressman Zeliff's assets.

In Any Event, A Committee May Use Corporate Facilities

In any event, reimbursements to the Inn for the use of its facilities would be governed by 11 C.F.R. § 114.9 (1990), not § 116.3 (as suggested in the General Counsel's Briefs). The Inn's facilities were used by Congressman Zeliff, employees of the Inn, and a campaign volunteer on a reimbursement basis. Such usage is expressly contemplated

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and provided for in the Commission's regulations at § 114.9.[2] Specifically, a campaign committee and its staff and volunteers may use corporate facilities so long as they

> reimburse the corporation...within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of the facilities.

11 C.F.R. § 114.9(d) (1990).

Further, a stockholder or employee of a corporation may use corporate facilities to assist a federal campaign so long as the corporation is reimbursed for the facilities

> within a commercially reasonable time for the normal and usual rental charge, as defined in 11 C.F.R. § 100.7(a)(1)(iii)(B), for the use of such facilities.

11 C.F.R. § 114.9(a)(2) (1990).

In addition, the Commission's regulations also permit "<u>any person</u>" to use corporate facilities to "<u>produce materials</u>" so long as the corporation is reimbursed

> within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market.

11 C.F.R. § 114.9(c) (1990).

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[2] 11 C.F.R. § 116.3 (1991) applies only to "extensions of credit by commercial vendors." The Inn did not sell use of its facilities as a commercial vendor of such services. Thus, 11 C.F.R. § 116.3 (1991) is inapplicable, even though referenced in the General Counsel's Briefs. Furthermore, § 116.3 was promulgated after the events in this case. <u>See</u> <u>infra</u> at 32.

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The key to all of the corporate use provisions is that a corporation be reimbursed the "normal and usual" charge within a "commercially reasonable time." In this regard, "usual and normal rental charge" is defined as

> the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. . . .

11 C.F.R. § 100.7(a)(1)(iii)(B).

However, as admitted by the General Counsel's Briefs (at 14), "'Commercially reasonable time' is not defined in the regulations." In past matters the Commission has considered a variety of contextual factors to determine what is commercially reasonable on a case-by-case basis. See, e.g., MUR 3070 (Korman). That Matter dictates dismissal of this Matter.

Furthermore, according to the Commission's March 1992 Campaign Guide For Corporations And Labor Organizations (at 48), for purposes of reimbursements made pursuant to 11 C.F.R. § 114.9(a) (1990),

> When an individual uses the facilities to benefit a candidate or political committee, that use is either an in-kind contribution by the individual or an expenditure by the committee, depending on who reimburses the organization. (emphasis in original).

See Exhibit 1. Thus, the Commission permits either the stockholder, the employee, or the committee to reimburse the corporation. The Commission has not interpreted the

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regulations as limiting the source of reimbursements as the General Counsel's Briefs suggest (at 24).

The Inn Was Fully Reimbursed The "Normal And Usual" Charge For All Facilities And Production Of Materials In Compliance With 11 C.F.R. § 114.9(a), (c) & (d)

The General Counsel admits (at 26, 28 and 31) that the Inn was reimbursed in full at the "normal and usual charge" for each use of its facilities. The only charge General Counsel challenges (at 28) is the charge for 27,000 copies reflected on the Inn's February 23, 1990 invoice.

The Inn charged the Committee $397 for 27,000 copies, or 1.47 cents per duplicate. However, had the Committee gone to a commercial vendor in Manchester, New Hampshire, they would have been charged only $334.85 for 27,000 reproductions, or only 1.2 cents per duplicate, and would have saved money. See Exhibit 2, Affidavit of Declan C. Leonard at ¶ 3. Thus, Respondents complied with 11 C.F.R. § 114.9(c) (1990) and 100.7(a)(1)(iii)(B) (1990) by reimbursing the Inn the going price in the relevant market.[10]

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[10] Respondents object to the use of unsworn, undocumented "evidence" by the Office of General Counsel that purports to "prove" a violation of the Act by relying on price quotes from an unnamed Washington, D.C. printing business. Not only is this unfair, it is irrelevant. FEC regulations require comparison with the "market from which [goods and services] ordinarily would have been purchased." 11 C.F.R. § 100.7(a)(1)(iii)(B)(1990). In this case, that would be New Hampshire, not the District of Columbia.

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The Inn Was Fully Reimbursed Within A "Commercially Reasonable Time" In Compliance With 11 C.F.R. § 114.9(a), (c) & (d)

The following chart summarizes Respondents' reimbursements to the Inn and calculates the timing of each invoice payment on a "first-in, first out" accounting basis:

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DATE	CFI INVOICE	COMMITTEE PAYMENT	BALANCE DUE	TIMING OF PAYMENT
7/31/89	$ 2,610.64		<$2,610.64>	5 days
8/5/89		$2,610.64	<0>	
8/31/89	1,747.24		<1,747.24>	4 mos.
9/29/89	751.44		<2,498.68>	3 mos.
10/27/89	2,298.90		<4,797.58>	2 mos.
11/24/89	2,216.35		<7,013.93>	1 mo.
12/20/89		7,387.88	< -373.95>	
12/29/89	1,335.51		< 961.56>	prepaid/4 mos.
1/26/90	1,111.60		<2,073.16>	3 mos.
2/23/90	1,565.59		<3,638.75>	2 mos.
3/31/90	1,212.44		<4,851.19>	1 mo.
4/29/90		6,752.84 (Zeliff)	<-1,901.65>	
4/30/90	1,901.65		<0>	prepaid
5/31/90	1,957.93		<1,957.93>	6.5 mos.
6/30/90	2,621.26		<4,579.19>	5.5 mos.
7/31/90	2,895.57		<7,474.76>	4.5 mos./5.5 mos.
8/31/90	1,563.68		<9,038.44>	4.5 mos.
9/28/90	2,687.54		<11,725.98>	3.5 mos.
10/31/90	3,058.71		<14,784.69>	2.5 mos.
11/10/90	1,601.21		<16,385.90>	4 mos.
12/17/90	1,957.14		<18,343.04>	3 mos.
12/19/90		5,000.00	<13,343.04>	
1/28/91		9,784.69	<3,558.35>	
3/6/91		3,558.35 (Zeliff)	<0>	
TOTAL	$35,094.40	$35,094.40	<0>	

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This chart demonstrates that the Inn issued monthly invoices to the Committee and received regular reimbursements -- some paid in advance and most paid no later than three to four months after issuance. Each monthly invoice reflected any amounts outstanding from previous invoices and some even insisted: "Please pay ASAP." See Exhibit 3, Inn Invoices Dated July 31, 1989 - December 17, 1990.

Respondents' schedule of reimbursements is consistent with the Commission's precedent established in MUR 3070 which determined twelve months to be a "commercially reasonable time" to pay an incorporated vendor. This Matter presents many of the same factors the Commission considered in MUR 3070.[11]

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[11] In MUR 3070 (Korman), the Commission considered the following facts in determining twelve months to be "commercially reasonable time" for payment:

(i) the vendor had previously received a payment four months after services were rendered;
(ii) the campaign and the vendor had an established business relationship which provided some assurances of future payments;
(iii) the vendor extended credit in the same manner he extended other customers credit;
(iv) the vendor attempted to collect the debt by sending "past-due" notices;
(v) the vendor received assurances of payment;
(vi) the vendor did not normally charge interest on debts; and
(vii) the vendor did not intend to forgive the debt.

See MUR 3070 (Korman), November 19, 1990 First General Counsel's Report at p. 6.

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For example, in MUR 3070, the Commission considered significant the fact that the corporate vendor had received one payment for four months of services before extending credit for over twelve months. Here, the Inn received two successive payments over the four month period August-December 1989, and a third payment four months later in April 1990. After that, no invoice went unreimbursed for more than six months, and most were paid in two to four months. In short, the Inn received regular periodic payments and a relationship developed that assured the Inn that any outstanding invoices would be reimbursed promptly as, in fact, they were.[12]

The Commission also considered significant the fact that the corporation sent past due notices in MUR 3070, an indicator of ordinary course dealings. Similarly, each Inn invoice listed outstanding invoices and requested payment "ASAP." Thus, while the General Counsel exerts great effort (at 22 and 35-36) to distinguish MUR 3070, the contexts are very alike.[13]

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[12] Moreover, the Inn's President and owner (Congressman Zeliff) could rely upon the candidate's (also Congressman Zeliff) commitment to pay all invoices in a reasonable and timely fashion. Congressman Zeliff and the Committee did in fact pay all invoices in a timely fashion, and completely reimbursed all charges by March 6, 1991, just four months after the election.

[13] Although the corporation in MUR 3070 (Korman) could submit evidence of his credit practices with other customers to establish its ordinary course of business, that was (continued...)

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Moreover, Respondents' diligence in reimbursing the Inn contrasts sharply with dozens upon dozens of campaign committees that carried vendor debts well past the 1990 election -- some of which have not been paid to this day -- none of which appear to have ever been the subject of an enforcement proceeding by the Commission. See February 1991 FEC Press Release Listing Outstanding Debts After 1990 Election.[14]

The New Thirty-Day Inflexible Time Period Proposed By General Counsel Is Untenable

General Counsel repeatedly asserts (at 25, 26) that a commercially reasonable time is "thirty days." The General

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[13] (...continued)
because the corporation was a commercial vendor of its services. Here, by contrast, the Inn was not providing the use of its facilities as a commercial vendor, for it is not a commercial vendor of corporate facilities. Rather, it is a country inn whose business is to provide quarters and food to temporary guests. Therefore, it has no precedent for being reimbursed for its facilities and cannot establish an ordinary course credit practice. 11 C.F.R. § 114.9 (1990) nevertheless permits corporations like the Inn to make their facilities available for campaign use. See also MUR 2185 (Goldome). And under all the circumstances, the Inn was reimbursed in a timely fashion. Indeed, Respondents have submitted evidence showing that reimbursements to the Inn were consistent with the Inn's payments to its own vendors. General Counsel does not say why that ordinary course practice is insufficient for purposes of § 114.9.

[14] Although some outstanding debts reflected in the February 1991 FEC Press Release were personal loans owed to the candidates, considerable sums were for outstanding vendor debts that were not paid for, in some cases, over 20 months. See, e.g., Exhibit 4, Summaries of Outstanding Vendor Debts From FEC Reports on File for Daniel K. Akaka, Paul David Wellstone, and Byron Stephen Georgiou.

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Counsel cites no authority for such a fixed time deadline. Nor does the General Counsel provide any argument explaining why such a fixed time deadline should be imposed.[15] General Counsel simply states (at 36):

> it appears reasonable to apply at most a thirty-day time limit to the period between the receipt of an invoice and payment, beyond which a corporate contribution would result. (emphasis added).

General Counsel does not state why "it appears reasonable" or cite any precedent requiring corporate reimbursements in less than thirty days. Respondents have already demonstrated that the Commission provided no such inflexible time deadline in its regulations and that the Commission has approved reimbursements of over twelve months. MUR 3070 (Korman).

Moreover, application of the thirty-day rule advocated by General Counsel here would fly in the face of the Act's whole regulatory scheme in the following respects:

- 11 C.F.R. § 104.11(b) (1990) would be superfluous. It requires debts of $500 or less to be reported only if outstanding more than 60 days. Under General Counsel's analysis, each such debt is commercially unreasonable and would automatically constitute a violation.

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[15] If General Counsel presents some argument now, Respondents request to be informed of it and be given an opportunity to respond to it.

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- 11 C.F.R. § 104.11(a) (1990) would also be superfluous. It requires continuous reporting of outstanding debts until extinguished. There would be no need for continuous reporting if all debts were required to be paid within thirty days.
- Under the current bi-annual (off-year) and quarterly (on-year) reporting, the Commission would never be able even to detect many payments made in two to six months (violative of the General Counsel's thirty-day rule) because the current Schedule B's and D's cover three- to six-month periods and do not require reporting of the precise date debts were incurred.
- The Commission's regulations currently permit campaigns to carry-over their debts to the next campaign Committee. Any campaign that did so would automatically admit to a thirty-day violation.
- Indeed, the entire debt retirement scheme of 11 C.F.R. §§ 116.1 - 116.10 (1991) would be superfluous because each debt subject to treatment would be over thirty days old.
- Under the General Counsel's thirty-day rule, dozens of 1990 candidates who carried debts past December

1990 and 1992 candidates who have outstanding debts would be in violation of the law today.[16]

In short, no debt would ever be "outstanding" if all debts had to be paid within thirty days. Because it would be patently unreasonable to prohibit all "outstanding debts," the Commission has provided a regulatory scheme for retiring "outstanding debts" and has always approached the "commercially reasonable time" issue on a contextual case-by-case basis. See, e.g., MUR 3070 (Korman).

Here, Respondents made regular, periodic payments of monthly invoices. Some invoices were actually paid prior to being issued, some were paid within thirty days, and no invoice was outstanding for more than six months. The Inn had every assurance of repayment given the Committee's regular pattern of payments in mid-1989, especially in light of Congressman Zeliff's ownership of the Inn and commitment to its business success. In this context, like MUR 3070, the reimbursements were made in a commercially reasonable time.

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[16] For example, Senator Wellstone would have long ago violated the Commission's regulations, as would Senator Akaka, and Byron Georgiou, each of whom carried substantial vendor debts for periods of from two to over twenty months past the 1990 election. See Exhibit 4, Summaries of Outstanding Vendor Debts from FEC Reports on File for Daniel K. Akaka, Paul David Wellstone, and Byron S. Georgiou; see also Exhibit 5, "Freshmen Making Big Dents In Debts," Roll Call, August 12, 1993, pp. 1 & 11 (detailing debts of dozens of freshman congressmen outstanding since Fall 1992 -- over eight months ago).

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The General Counsel's Briefs Distort The Facts And Applicable Regulations In An Effort To Concoct Violations

Respondents have demonstrated above and the General Counsel does not dispute that (i) the Inn diligently kept detailed records of all facilities used for campaign purposes, (ii) the Inn invoiced the Committee monthly for the normal and usual charge for each use, and (iii) the Committee and Congressman Zeliff made regular payments and reimbursed the Inn in full. No outstanding balance was left just four months after the 1990 election.

These facts alone should manifest compliance with the letter and spirit of the Commission's regulations. But the General Counsel's Briefs virtually ignore these significant and fundamental facts, choosing instead to nitpick through the details of eighteen invoices looking to invent technical violations in a game of bureaucratic "gotcha." That type of enforcement surely was not contemplated by the Commission when it issued 11 C.F.R. § 114.9 (1990). If it were, then scores of campaign committees would be unknowingly in violation at this very moment for carrying any debts at all and no committee that makes use of corporate facilities could ever comply as a practical matter.

More worrisome, however, is the way in which the General Counsel's Briefs have so distorted the facts and regulations in an effort to concoct, rather than simply discover,

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violations of the law. Accordingly, Respondents must clarify these distortions to defend themselves.

First, the General Counsel argues (at 14, 24, 25 and 29) that § 114.9(a) permits only a stockholder or employee to reimburse a corporation and precludes a campaign committee from making the reimbursement. Based on that premise, the General Counsel concludes (at 25) that any invoice reimbursed by the Committee instead of the stockholder "automatically constituted an impermissible corporate contribution." On its face this argument is absurd. Moreover, it contradicts the Commission's rejection of the General Counsel's June 23, 1989 brief in MUR 2185 (Goldome) and the Commission's March 1992 Campaign Guide For Corporations And Labor Organizations (at 48) which expressly provides the reporting requirements for either party's reimbursements. See Exhibit 1.

Indeed, the issue of who reimburses was raised in MUR 2185 (Goldome FSB, et al.). The General Counsel's report there recommended probable case, but the Commission unanimously rejected the General Counsel's recommendations. Now, the Office of General Counsel cites (at 13) its own brief in MUR 2185 (Goldome) as authority for a restriction on who pays the bill. Significantly, the Commission rejected the General Counsel's probable cause recommendation, and instead, decided to take no further action. Absent express Commission approval of an OGC recommendation, and in light of the Commission's rejection of the OGC recommendation in MUR

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2185, such self-citation is inappropriate. The Office of General Counsel should rely on Commission authority, not its own rejected legal positions.

Second, the General Counsel asserts (at 14) that § 114.9(c) "permits any person other than a stockholder or employee" to use corporate facilities to produce materials. General Counsel cites no authority for this assertion -- probably because the assertion contradicts the express language of the regulation which states that "any person" may use corporate facilities to reproduce campaign materials. Because there is no authority for limiting "any person" to exclude stockholders and employees, the assertion at page 14 is patently false.[17] In any event, the distinction between who uses the corporate facilities to produce materials is irrelevant -- if one's use is not permitted by § 114.9(c), it would be under either § 114.9(a) or § 114.9(d).

Third, no campaign could ever endeavor to comply with § 114.9 or § 116.3 if subjected to the kind of bizarre and arbitrary accounting machinations employed by the General Counsel's Briefs here. The General Counsel lists (at 35) five invoices issued in August, September, October, November and December as paid in April 1990. Not so. Each of those invoices was fully covered by the Committee's payment of $7,387.88 on December 20, 1989. The General Counsel also

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[17] Again, the General Counsel's Brief in MUR 2185 does not constitute Commission authority on the point.

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erroneously attributes (at 30 and 35) certain payments to various invoices on a pro rata basis without any explanation for why such pro rata attributions are appropriate. The General Counsel Briefs target (at 28) a $50 charge that was paid, allegedly, "eight months" after invoice. But the August 1989 invoice at issue was fully paid within four months by a December 20, 1989 payment of $7,387.88. See Chart, supra. At page 26 (footnote 18), the General Counsel prorates a payment by an aggregate percentage in order to allocate a part of that payment to various charges. And at page 31 (footnote 17), the General Counsel Briefs engage in an indecipherable "fraction" process in an attempt to apportion one payment to various different invoices. Those accounting contrivances have no relation to reality.

Respondents refer the Commission to its chart of invoices and payments, supra, which properly applies payments to invoices on a "first-in, first-out" accounting basis. Not only is the chart understandable, but it explains what took place in the real world, not in the made up world of the General Counsel's Briefs. Respondents previously presented this chart to staff for the period May 1990 to March 1991, but the Office of General Counsel inexplicably chose to ignore it. See November 13, 1991 Letter from Jan Witold Baran to Lawrence M. Noble at 7 n.9.

Fourth, the General Counsel's Briefs assert (at 31-32) that the Inn advanced costs for certain supplies. This

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conclusion is based on speculation (at 32) that certain "charges did not involve the use of the Inn's own facilities; nor is there evidence that the Inn paid these types of charges for its customers in the ordinary course of its business."

In the course of a two-year "investigation," the General Counsel's office never asked Respondents whether the Inn regularly purchased its own supplies from the referenced stores or whether the Inn regularly provided Federal Express services and newspapers to its guests. Now, the General Counsel tells the Commission that certain charges "apparently covered" (at 32) advancements while conceding there is no evidence of what the Inn ordinarily purchased. Had the Office of General Counsel asked whether the Inn regularly purchased supplies from the referenced stores, Respondents with effort could have provided such information to the General Counsel. But the Office of General Counsel never inquired, and now unfairly makes recommendations to the Commission based on what Respondents "apparently" did without any evidence.

Furthermore, General Counsel ignores the fact that one of the alleged "third-party vendors" is Jackson Corner Store, which is part of the Inn, not a third-party at all.

Respondents previously informed the General Counsel's staff of this fact, but it too has been ignored.[18]

Fifth, General Counsel argues (at 33) that the Committee was not permitted to reimburse the Inn for secretarial time. Yet 11 C.F.R. § 114.9(a) (1990) and AO 1984-24, Fed. Elec. Fin. Guide (CCH) ¶ 5771 (1984) (cited by General Counsel at 33) expressly permit employees to use corporate facilities for volunteer campaign work.[19] Thus, § 114.9(a) permitted the Committee to accept Ms. Galluzzo's and Ms. Nelson's services <u>without any reimbursement</u> so long as they were volunteers, and the fact that the Committee over-complied with the Act by electing to reimburse the Inn for employee time is irrelevant so long as the employees themselves volunteered. There is <u>no evidence</u> that the Inn's secretaries were not volunteers. Notwithstanding this lack of evidence, the Office of General Counsel has chosen to make recommendations to the Commission based on mere assumptions -- or a pattern of conjecture.

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[18] <u>See</u> March 19, 1991 Letter Response from Jan Witold Baran to Lawrence M. Noble at Attachment 2, Affidavit of Kenneth Kaslow ¶ 7.

[19] In AO 1984-24, Fed. Elec. Fin. Guide (CCH) ¶ 5771 (1984), the Commission stated: "[Section 114.9] applies only to the use of corporate facilities by stockholders and employees engaged in individual <u>volunteer</u> activity. . . ." So long as the individual is willing to volunteer her services, she may do so at corporate facilities. <u>See also</u> Dissenting Opinion Of Commissioner Lee Ann Elliott In AO 1984-24, Fed. Elec. Fin. Guide (CCH) ¶ 5771 (1984) which advocates an even less restrictive limitation on the use of corporate facilities by employees.

In any event, in MUR 2185 (Goldome FSB, et al.), the Commission voted 6-0 to reject a probable cause recommendation where the respondent had charged a campaign committee for employee time incurred in printing campaign letters.[20] The General Counsel's brief recommending probable cause noted that labor charges had been billed, and the Commission took no further action.[21] And in MUR 1690 (Prudential-Bache Securities, Inc.) the Commission sanctioned the respondents for not reimbursing a corporation for secretarial time -- suggesting that the proper course of conduct would have been to reimburse for secretarial time.[22] Is there any case in which the Commission penalized a campaign for timely and full reimbursement to a corporation for employee services? We have found none.

Sixth, the General Counsel's Briefs argue (at 33) that, although there is no evidence of what the Inn provided its guests in the ordinary course of business, Respondents may have violated the provisions of 11 C.F.R. § 116.3 (1991) as well as § 114.9. But 11 C.F.R. § 116.3 did not become effective until October 3, 1990, and thus could not have

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[20] See MUR 2185 (Goldome FSB), March 30, 1987 Affidavit of Edwin A. Ratka at ¶ 3 and Exhibits 1 & 2.

[21] See MUR 2185 (Goldome FSB), June 23, 1988 General Counsel's Brief at 2.

[22] See March 25, 1987 Conciliation Agreement Between Commission and Prudential-Bache Securities, Inc. at ¶¶ 11-12.

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governed Respondents' activities until after that date. See 55 Fed. Reg. 40376 (1990).

Seventh, General Counsel states (at 15, n.8) that the Committee has failed to file amendments reflecting Congressman Zeliff's April 29, 1990 personal reimbursement to the Inn. To the contrary, the Clerk of the U.S. House of Representatives' records reflect that the Committee's amendments were received on September 11, 1992. The Clerk has referenced Reel No. 466, Frame No. 4560 as the location for these amendments.

The time has come for the Commission to put a halt to an investigation which is now seeking to invent violations where none have occurred.

III. THE COMMISSION SHOULD TAKE NO FURTHER ACTION WITH RESPECT TO 48-HOUR NOTICE ISSUES

Any 48-hour reporting errors were inadvertent and the result of a first-time, volunteer campaign staff who did not understand that the candidate's loans to the Committee from personal funds were subject to the requirements of 2 U.S.C. § 434(a)(6)(1990). During the course of the campaign, approximately six different non-professional volunteers were responsible for processing and recording receipts, and the

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Committee exercised its good faith efforts to comply with all reporting requirements.[23]

Any errors were inadvertent. There is no suggestion that the Committee and its staff had any intention to conceal Congressman Zeliff's loans from the public. Indeed, the Committee had reported all loans on its Quarterly Reports. Accordingly, the Commission should take no further action regarding the two alleged 48-hour violations.

CONCLUSION

Two-and-a-half years of this "investigation" has proved the following facts:

(i) Congressman Zeliff had access to and undisputed control over all Inn assets, and

(ii) Congressman Zeliff equitably owned one half of all Inn assets.

The Office of General Counsel has never disputed these two core facts, or that these facts fit the express definition of "personal funds" as defined in 11 C.F.R. § 110.10 (1990). Given no dispute, the "investigation" should have stopped there, especially in light of the express stop sign Congress provided at 2 U.S.C. § 438(e).

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[23] See Respondents' March 19, 1991 Letter Response from Jan Witold Baran to Lawrence M. Noble, at Attachment 8, Affidavit of John C. Naramore ¶¶ 3-6.

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The result of this "investigation" is not a factual revelation or evidence suggesting misconduct. Rather, the result is simply two erroneous legal conclusions: (i) that 2 U.S.C. § 441b somehow negates the express definition of "personal funds"; and (ii) that there is a fixed thirty-day deadline for all corporate reimbursements under 11 C.F.R. § 114.9 (1990). Those two erroneous legal conclusions are the Office of General Counsel's whole case.

As demonstrated above, these conclusions are incorrect. Therefore, the Commission should find no probable cause to believe that Friends of Bill Zeliff Committee, Robert D. Goodman, as Treasurer, Christmas Farm Inn, and William H. Zeliff, Jr., violated the Act in this Matter. This Matter should be closed.

Respectfully submitted,

Jan Witold Baran
Carol A. Laham
Lee E. Goodman

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006
(202) 429-7000

Counsel for Friends of Bill Zeliff Committee, Robert D. Goodman, as Treasurer, Christmas Farm Inn, Inc., and The Hon. William H. Zeliff, Jr.

Dated: August 18, 1993

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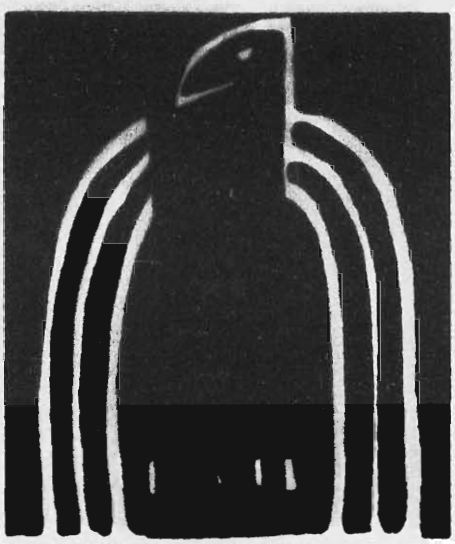
CAMPAIGN GUIDE



FOR CORPORATIONS AND LABOR ORGANIZATIONS

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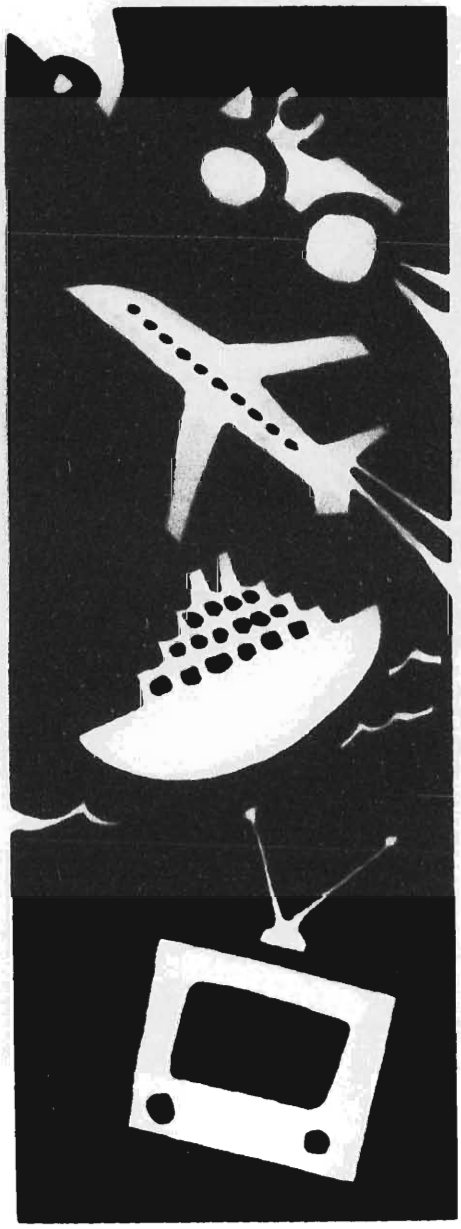
Samples and Promotional Items

Local businesses (including banks) may give convention attendees promotional items such as maps, pens, tote bags, discount coupons or sample products that bear a business's name. Promotional items may also be sold at nominal charge. The items may only be offered for promotional purposes, in the supplier's ordinary course of business. 9008.7(c)(2).



CHAPTER 12
Use Of Facilites

A *corporation* or *labor organization* may allow *candidates*, *political committees* and individuals to use its facilities in connection with a federal *election*. Described below are rules that apply to the use of facilities; note particularly when the user must reimburse the organization.

This section does not apply to the use of an organization's facilities by its SSF for administrative and solicitation purposes.

For an example of how the Commission has applied these rules in a particular enforcement action, see the summary of MUR 1690 in the September 1988 *Record*. For a copy, contact the FEC at the address or phone number on page 2.

1. Use by Employees, Members and Stockholders

Individual Volunteer Work

General Rule

Employees, *stockholders* and noncorporate *members* of a *corporation* or *labor organization* may make "incidental use" of corporate and union facilities for individual volunteer activities in connection with federal elections. For example, an employee may use his or her office phone to make calls that pertain to political volunteer work. When use of facilities is "incidental," the individual is only required to reimburse the organization for any increased overhead or operating expenses relating to the activity.

Definition of Incidental Use

"Incidental use" of facilities means that the use does not interfere with the organization's normal activity. One hour per week or four hours per month are considered "incidental." 114.9(a) and (b).

Reimbursement

When "incidental use" is exceeded, the individual must reimburse the corporation or labor organization for the cost of using the facility. The usual or normal rental fee must be paid within a commercially reasonable time. 114.9(a) and (b). See also 1985-26.

When an individual uses the facilities to benefit a *candidate* or *political committee*, that use is either an *in-kind contribution* by the individual or an *expenditure* by the committee, depending on who reimburses the organization. 100.7(a)(1)(iii)(A) and 100.8(a).

2. Use by Others

If a person other than an employee, *stockholder* or *member* uses the facilities of a corporation or union, the user must reimburse the organization within a commercially reasonable time and at the *usual and normal charge* for rental of the facilities. Facilities used for these purposes might include office space, telephones, computers, typewriters, copy machines and furniture. 114.9(d).

3. Production of Materials

Individuals — including employees, stockholders and members — may use a corporation's or union's facilities and equipment to produce materials for use in federal election activities, as long as the organization providing the facilities is reimbursed at the *usual and normal charge* for that usage. The payment must be made within a commercially reasonable time (usually, within 30 days) after the facilities have been provided. 114.9(c).

4. Meeting Rooms

If a *corporation* or *labor organization* customarily makes its meeting rooms available to civic, community or other groups, it may also offer those facilities to *candidates* and *political committees*. The rooms must be made available on a nonpartisan basis and on the same terms given to other groups. 114.12(b).

5. Transportation

Airplanes

A candidate (or someone traveling on his or her behalf) may use an airplane owned or leased by a corporation or labor

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bill Zeliff Committee,	)	
Robert D. Goodman, as Treasurer,	)	MUR 3191
Christmas Farm Inn, Inc., and	)	
The Hon. William H. Zeliff, Jr.	)	

AFFIDAVIT OF DECLAN C. LEONARD

Declan C. Leonard, first being duly sworn, deposes and says:

1. I am employed as a legal assistant at the law office of Wiley, Rein & Fielding located in Washington, D.C.

2. On July 21, 1993, in connection with Federal Election Commission MUR 3191, I made telephone calls to obtain estimates for reproduction costs for 27,000 duplicates.

3. Colonial Copy Center, a professional copy service vendor located at 143 Middle Street in Manchester, New Hampshire, through its owner, Mr. Curtis, provided the following estimate: "... 27,000, one-sided flyers printed black ink on 8 1/2 x 11, 20 lb., white bond, total price $334.85." This averages out to be approximately $.012 per duplicate.

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The above information is true and correct to the best of my knowledge and belief. And further affiant sayeth not.

Declan Leonard
Declan C. Leonard

District of Columbia)
Washington, D.C.)

Sworn and subscribed to
before me this 5th day of
August, 1993.

Leontine L. Jones
Notary Public

My Commission expires: 12/14/96

Leontine L. Jones
Notary Public, District of Columbia
My Commission Expires Dec. 14, 1996

95043662443

TO: Zeliff for Congress

FROM: CHRISTMAS FARM INN
BOX 06
JACKSON, N.H. 03846

Date 12/17/90

POSTAGE	Federal Express Packages	21.75	24.25	77.50
		9.00	22.50	

PHONE	Ind Electric	49.65	
	[illegible]	29.00	
	Star Cablevision	343.67	
	NE Telephone	111.70	
			534.02
12/17/90	Party ACFI	Food 590.00	
		L.Q. 504.00	
		Tax 87.52	
		Grat 164.10	
			1345.62

Dec 1990 A.11	1957.14
OUTSTANDING	16385.90
Paid 12/20/90	- 5000.00
TOTAL DUE CFI	$ 13,343.04
paid 1/30/91 #1029	- 9784.69
	3558.35
2 checks out let	pd. 3558.35
on receivables	Ø

2/13/91
Fr. A.11 Zeliff

Rec'd
#1032 4000.00
#1041 1000.00
5000.00

144.65 [redacted]
on loan
[illegible]

3558.35 on receivables

TO Zeitlhofer Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSONVILLE, 97948

11/10/90

PHONE	Inv & Cont	116 99		
	Motorola	29 00		
	Star Cellular	236 99		
	AT&T Longlines	371 26		754.24
AUTO	Van 11/7	39938		
	10/31	-38499		
		1439 x .28	402.92	
	Astrut 11/9	33738		730.22
	10/30	- 32647		
		1091 x .30	327.30	
FOOD & LIQUOR	Bus trip / barn 11/6/90	L&G cost	52.00	95.00
		Food & Gas	43.00	
POSTAGE	Fed Express 11/6/90			21 75
		Due for Nov. 10, 1990		$ 1601.21
		outstanding		+ 14,784.69
		TOTAL NOW DUE:		$ 16,385.90
		Rec'd 8/25 12/20/90		- 5,000.00
				11,385.90

9504368245

TO. Zeliff for Congress

FROM: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

Date Oct. 31, 1990

PHONE
27.00
53.48
29.00
237.93
377.29 — 726.70

GAS: Red Rock
remove last card
Oct. 12 mileage
32647 mileage 10/30
31177
1470 x .30 = 441.00

Van
Oct 28 first odometer 38499 mileage 10/30
32063
6436 x .28 = 1802.08 — 2293.11

Jackson Corner Gazette - signs - T. Knapp 50.03

Conway Supply - stakes for signs 21.90

Fed Express mailing to headquarters 23.00

Total Due - October 1990 3058.71

outstanding balance + 11725.98

Due to CFI $14,784.69

9504368246

To: Zelitt for Congress

From: CHRISTMAS FARM INC
BOX CC
JACKSON, N.H. 03846

Period ending: 9/28/90

Auto Expenses: Red truck · Sept 1 - 18 (return of truck)

30884
- 28682 (8/20)

2202
x .30 — 660.60

Van odometer

est. make

29063 (8/20)

est mile 3000 x .28 — 840.00

Jackson corner cass slips. Thomas Knapp "signs" — 304.45 — 1805.05

MISC. American Express Bill 9/10 — 193.76
checks - stakes for signs — 82.6[illegible]

PHONE: calls, texas, cellular, texas
7.91
29.00
264.17
308.00 — 608.08

September Bill — 2687.5[illegible]

Unpaid: August 1990 + 1563.68
July 1990 + 2895.5[illegible]
June 1990 + 2621.26
May 1990 + 1957.9[illegible]

TOTAL: DUE TO CFI A.S.A.P. — $11,725.9[illegible]

TO. Zelliff for Congress

FROM CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

AUGUST 31, 1990

* Auto Expenses:

van odometer 8/29/90 29063

Previously billed 1/1 - 7/31 - 28605

458 x .28 = 128.24

Red CFI TRUCK Aug 1 - Sept 1

odometer 8/29 28682

by odometer - 25450

3232 x .30 = 969.60 — 1097.84

* Telephone

calls, faxes, cellular, taxes
31.95
29.00
133.16
161.10 — 355.21

* Company supply - truck signs 62.65

CFI paid out of C/Receipt - campaign lunch 47.98 — 110.63

AUGUST BILL 1563.68

unpaid July Bill 2895.57

unpaid June Bill 2621.26

unpaid May Bill 1957.[illegible]

TOTAL DUE: $ 9038.[illegible]

9504368248

TO: Zoll for Congress

From: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

7/31/90

* Auto Expenses - per Karen 7/31/90

Manchester area trips	15 @ 200	=	3000	
Exeter-Kingston area	5 @ 210	=	1050	
Merrimack area	2 @ 220		440	
Portsmouth-Hampton area	9 @ 175	=	1575	
Concord area	6 @ 175	=	1050	
Wolfeboro area	7 @ 100	=	700	
Boston area	1 @ 60	=	60	
S Carroll Cty, Milton, Dover	5 @ 60	=	300	
	8175	@ .28	=	$2289.00

* Telephone - 7/6/90

	13295
	2975
calls, taxes, tax, cellular charges	1444
	7501
	2400
	1500

$295 75

* Conway Supply invoices - [illegible]

for sign making $310 82

	2895 57
May 0 outstanding +	1957.93
June outstanding +	2621.00
Total Due :	$7474.50

JE
7/31/90

9504368249

To: Zeliff for Congress

From: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

6/30/98

* Auto expenses - per Karen 6/27/98

Manchester area round trips	14 @ 200	2800	
Wolfeboro/Laconia round trips	7 @ 100	700	
Concord area round trips	6 @ 175	1050	
Portsmouth area round trips	8 @ 175	1400	
2 side trips to Boston @60	"	120	
N. Conway area mileage	"	100	
Nashua area round trips from Manchester	3 @ 100	300	
		6470 miles @ .28	$ 1811.60

* Telephone from 6/6 Bill

calls, faxes, tax, cellular charges	129.11 94.55 23.46 28.00	$ 275.12

* Cooler borrowed from Jackson Corner - lost $ 27.00

* meals:

6/2 Dinner	food 307.25		
	liq. 103.25		$ 507.54
	tax 32.04		
	grat 65.00	507.54	

June charges	$ 2621.26
May Outstanding	+ 1957.93
Due:	$ 4579.19

Please pay ASAP

TO: Zeliff for Congress

From: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

5/30/90

* American Express Charges paid by CFI
for campaign 283.77 + 138.61 $422.38

* Postage - Federal Express mailing 32.75

* Auto Expenses: per Karen 5/29/90

Bournival Inc	repair charges	280.55	
Manchester area	11 round trips @ 200 =	2200	
Wolfeboro area	3 round trips @ 100 =	300	
Portsmouth/Dover area	8 round trips @ 175 =	1400	
Concord area	2 round trips @ 150 =	300	
		4200	
		× .28	
		1176.00	

c/o our mileage: 14,948
hour billed: 13,960 campaign

$1456.55

* Telephone - from 5/6/90 on
calls, towers, tax 46.25

Due: $1957.93
Please pay ASAP

9504362467

To: Zeiff for Congress

from: CHRISTMAS FARM INN
BOX CC
JACKSON, N.H. 03846

Charges: 4/6/90 - 4/30/90

PHONE

WATTS LINE from 4/6/8.11

20.7
-17.0 avg
3.7
x 10.77
41.84 + 85.54 calls, taxes, tax — $127.38

FOOD

4/25 McCain meeting - breakfast - yesterdays 11.03
4/3 Announcement dinner CFI 680.72 — 691.75

Transportation: Jon Curtis 4/26/90 (van mileage 4/26/90 - 10,060)

Manchester area trips (9) @ 200 =			1800
Dover/Hampton area	7 @	160 =	1120
Laconia area	4 @	100 =	400
Boston area	1 @	300	300
Nashua area	1 @	260	260
			3880
			x .279
			1082.52

1082.52

April 90 Bill $1901.65
outstanding + 4851.19

Due: $6752.84

Rec'd check
3944 4/29/90

TO: Zoiff for Congress
From CFI
Re: Charges 2/24/90 - 3/31/90

PHONE. Watts L. 47.5 hrs 3/6 to 90
- 17. avg
30.5
x 10.77 rate
344.91 + 86.35 (calls from toll) 431.26

LIQUOR. from CFI Sunday Sk. with Z 3/18/90
at cost 25.65

Office Supplies: 1 copy paper 53.34 53.34

Chips + plates from Jackson Corner Store 3/18/90 3.19

FOOD lunch @ yesterday's 3/19 33.99
3/20 23.71 57.70

Transportation: Manchester area trips (6) @ 200 = 1200
Rochester area trips (5) @ 160 = 800
Lawrence/Haverhill trips (3) @ 100 = 300
(per agr. w Sen M.O. on 3/27/90) 2300
x .279 641.70

March PAC due 1212.--
previous balance + 3638.--
TOTAL DUE $ 4851.70

To [illegible]
From CFI

Re Charges 1/27/90 - 2/23/90

Phone

WATTS Line 938 hrs - 17 avg = 268 hrs × 0.77 = 206.64 + 133.07 + 21.09 = $442.80

f.b. 6 8.11

Office Supplies

approx 27,000 copies × .0147 to excess on CFI maintenance agreement for copier — $397.00

960 paper/toner — 100.45

Jackson Center Store (misc.) — 48.45

Office Market — 169.55

$ 715.45

Personnel:

Lois Nelson - no office time devoted to campaign this month

Ø

Transportation:

1 Trip Lorain/Wellington @ 100 = 100
2 Trips Mansfield @ 200 = 400
6 Trips Rochester @ 160 = 960
from appt book 1460
× .279 mi

$ 407.34

Total Feb. 1990 Bill $ 1565.59

outstanding + 2073.16

DUE: $ 3638.75

to Zeldi for Congress

from Christmas Farm

for charges 12/30/89 - 1/26/90

Phone: 33 1/2 hrs
- 17 avg.
16 1/2 hrs
x 11.98

taxes, calls

rate 5%

197.67 + 22.05 + 11.04 = 231.76

Office Supplies: office market charges 86.30

Conway Supply 1/15 14.79 — 101.09

Food: Coffee, Iced, supplies 67.00

Yesterdays 12/26/89 42.27

Liquor cash 1/25 Sutters 78.00 — 187.27

Personnel: Lois Nelson - no office time accrued to campaign this month per W.R.Z. — Ø

Transportation: 4 trips [illegible] avg 0.180 = 900

7 trips [illegible] avg 0.200 = 1400

2 trips [illegible] avg 0.160 = 320 miles

(from appt book) 2120

x .279 — 591.48

January 1990 Bill 1111.60

outstanding balance 961.56

TOTAL DUE TO CFI $ 2073.16

to Zeliff for Congress
from CFI, INC.

December charges 11/25/89 - 12/29/89

on 12/19 CR

PHONE:		calls	calls + long	tax	
	315 hrs				
	-17				
	145				
	+10 77				
	156 17	+ 37 18	+	9.67 =	$ 203 02
POSTAGE	Federal Express bill of 12/8/89				$ 98 50
MISC	Coffee - 1 per day				$ 20 00
PERSONNEL:	Judy G.	1 week @ 175	=	175	
	Lois Nelson 49 12/29	3 weeks @ 200		600	
				775.00	
		.8 FUTA		6.20	
		.7 WC 2%		5.42	$ 848.00
		workers comp		3.17	
		employer FICA		58.20	
Office supplies:	Office Market + B.E.W.				$ 65.55
Transportation:	Portsmouth	1 trip	160		
	Manchester	1 trip @	200		
			360 + 279		$ 100.44
				Total December	$ 1335.51

9 5 0 3 6 6 2 4 5

TO Zeliff for Congress
from: CEI, INC.

November charges · 10/28 – 11/24/89

PHONE:

Watts Line — 36.8 hours
− .17 avg
9.8 usage
× 11.77
+ 5% tax
110.83

Calls & hours from 116 All — 50.88
+ 5% tax
53.42

$ 164.25

Dinner

Food @ cost 28 × $15 = 420.
Liquor @ cost 69.45

$ 489.45

Personnel

Judy Gallozzo — 5 weeks @ 175 = $875.00
.8% FUTA 7.00
.7% UTA 6.13
Workers comp 3.68
Employer FICA 65.71

$ 957.50

Misc.

3 cans soda @ 10.50. 31.50
Coffee · 4 days × 5 = 20.00

$ 51.50

Newspapers: 1 per day 6 × .30 1 × 1.13 × 5 weeks.

$ 14.65

Office Supplies: office market 29.58
newspapers 96.50
BEU · channel

$ 126.08

GAS: 5 trips Manchester @ 200 = 1000 miles
3 trips Portsmouth @ 160 = 480
1480 miles
@ .279

$ 412.92

Total November $ 2216.35
Outstanding + 4797.58

Total Due to CEI: $ 7013.93

To Zeliff for Co[illegible]
from: CFI, Inc.

N/R
10/24/89

October charges . 9/30/89 - 10/27/89

PHONE: WATTS LINE: 25 & hours 10/1/611
- 17 hours long

8.2
x 10.30 rate
8446
+ 41 59

hours + phone calls + tax — $ 126.05

LIQUOR: Manchester party 10/11/89 - at cost — $ 77.85

OFFICE SUPPLIES: Bess. - 1 case copy paper 88 50
office Market markers 25 14
16 08
5 99
1 75
11 34

$ 148.80

GAS: 8 hrs - Manchester @ 200 1600
2 hrs. travel @ 160 = 320
1920 miles x .279

$ 535 68

MISC: Coffee, sodas, snacks - volunteers - est @ 5.00 cost x 4 day — $ 20.00
Newspaper 1 per day = 6 x .30 = 1.13 = 4 weeks — $ 11.72

Personnel: Judy Gallu 220: 10/2 - 10/27 - 28 working days total
Manchester campaign 10/3, 4, 5, 6, 9, 10, 11, 12 - 8 days: full
20 days: 1/2
$ 350 week - 5 days: $ 70 day — $ 1378 8[illegible]

10 days
+ 8
18 days
x 70
$ 1260.00

.6% FUT 10 08
.7% UNEM 8 82
workers comp 5 27
employer FICA 94 63

OCTOBER BILL: 22[illegible]
OUTSTANDING AUG +
OUTSTANDING SEPT. +

TOTAL DUE: $ 4[illegible]

To: Zeiff for Congress
from: CFI, Inc

9/1/89

SEPTEMBER CHARGES: - thru 9/29/89

PHONE:

note c.o.: 9/6/89 29.8 hours
- 17 average
12.8 hours
x 10.30 → $131.84

Car transmissions

8/8	.92	8/23	20.7
8/8	.52	8/23	.23
8/17	1.20	8/25	3.22
8/22	.23	8/26	.46
8/22	.23	tax 8%	.27

$ 9.35

misc call from Beaudrow on 43M/4313 2.50 stamps 2.58 — 143.77

Coffee + sodas - volunteer day int $8.00 - 5 day — 25.00

Newspapers 1 per day 6 x 30 1.1.3 - 4 weeks — 11.72

Office supplies - 1 case copy paper - 1 case toner — 100.45

PERSONNEL:

Judy Gallizzo 9/25-29
1 week PD 175.00
.8% FUT 1.40
.7% NHC 1.23
workers comp .73
Employer FICA 13.14 — 191.50

GAS + MILEAGE

Manchester 1 trip rental 200 miles
Portsmouth rental 5 trips @160 800
1000 miles
Good for 20K miles/year AAA rate x .279
279.00 — 279.00

on 9/27 dla

A/R

$ 75 [illegible]

TO: Zel-4 for Congress
From: christmas Fa[illegible]n
For: Expenses 8/1/89 - 8/31/89

Personnel:

Judy Gallubo 7/29 - 8/31 · 5 weeks @ 175 · 875.00
1/2 of salary
8% FUT 7.00
7% NHC 2 6.13
workers comp 3.66
Employer FICA 65.71 $ 957.50 ✓

FOOD:

attached copies of cabana, d/l + working meals 100.09 ✓

Coffee + sodas - volunteers day est 85.00 - 5 days 25.00 ✓

Newspapers. 1 per day 6 x .30 1 x 1.13 : 5 weeks 14.65 ✓

MISC. estimated.

Copies 20 copies a day average. estimated 5 weeks @ .10¢ each : 50.00

Phone: WATTS line usage 8/1/89-9/1 26.1 hrs
- 17
Average watts usage .cal
7/6/89 - 6/6/89 : 17 hours/month 9.1 campaign
x 10.30 metropolitan
93.73
+ 2.82 3% tax
96.55 100.00

8/18/89
GAS: MA: Rates to operate which

Bell - 15k/year . 34.9¢
. 20k/year 31.1¢
Jackson-Atlanta approx 160 round trips
Jackson-Montgomery approx 200 miles round trips 500.00

Lcal 15k/year 31.5¢
20k/year 27.9¢
1 trip to each city each week
approx 400 miles per week
@ 27.9¢ a.b
x 5 weeks

Take lowest rate 27.9¢ mile

A/R $ 174-24

(P1)

14 25/70 24/30

To. Zeiff for Congress

from Christmas Farm Inn

for. expenses thru 6/5/89 - 7/31/89

Personnel: Judy Gallucci 6/5 - 7/28/89 8 weeks @ 175 = 1400.00

1/2 of her salary

8% FUT	11.20
.7% NHCZ	9.80
workers comp	5.86
Employer FICA	105.69

1532.00

Cabana charge - 7/12/89 25.66

Cookout - 5/25/89 60% liquor 250 215. food 317.00

Office market charges. 6/16, 6/20, 6/22, 6/23, 6/26 467.81

7/6, 7/17, 7/20 43.47

~~Yard sale advertising~~ ~~25.00~~

Plain stationary - 3 cases 94.00 ~~283.24~~

Coffee + sodas - volunteer days - est. $5.00 day @ 6 days 30.00

Newspapers for clippings - 2 per day (.30 weekday .09 1.13 Sunday) 16.25 ~~32.50~~

Est. Copies, faxes, phone calls on WATS lines, postage, stationary, supplies $ 350.00

subtotal $ 2676.19

DUE:

Jonnie May

1/2 other time

since July 1 66 hrs @ 3.00 198.00

.8% fut 1.58

.7% fica 1.39

workers comp .86

employer FICA 14.87

65.55

A/R

pd #1024 8/5 26/064

* AKAKA FOR SENATE *

DEBT: Foodland Supermarket - Printing
Post Office Box 22099
Honolulu, HI 96822

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
10/18/90-11/26/90	**86,697.66**	11/12/90	30,000	56,697.66	
11/27/90-1/16/91	0.00	---	0.00	56,697.66	
1/17/91-6/30/91	18,728.06	5/29/91	45,399.74	29,701.44	
7/1/91-12/31/91	0.00	**7/24/91**	11,518.00	18,183.44	**8 months**

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Senator Akaka the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* AKAKA FOR SENATE *

DEBT: Mellman & Lazarus - Political Pollsters
1054 31st Street N.W.
Washington, D.C. 20007

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
9/3/90-10/17/90	**68,373.53**	---	$0.00	73,373.53	
10/18/90-11/26/90	33,150.00	10/25/90	46,523.53	60,000.00	
11/27/90-1/16/91	0.00	---	0.00	60,000.00	
1/17/91-6/30/91	18,728.06	---	0.00	78,728.06	
7/1/91-12/31/91	0.00	---	0.00	78,728.06	
1/1/92-6/30/92	731.02	6/30/92	20,000.00	59,459.08	
7/1/92-12/31/93	1,122.62	**9/29/93,** 12/17/92	20,000.00	40,581.70	**22.5 months**

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Senator Akaka the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* AKAKA FOR SENATE *

DEBT: Squire & Eskew Communication - Media Consultants
1054 31st Street, N.W.
Washington, D.C. 20007

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
10/18/90-11/26/90	75,706.78	10/25/90	50,159.00	25,547.78	
11/27/90-1/16/91	0.00	---	0.00	25,547.78	
1/17/91-6/30/91	0.00	---	0.00	25,547.78	
7/1/91-12/31/91	9,808.70	---	0.00	35,356.48	
1/1/92-6/30/92	0.00	---	0.00	35,356.48	
7/1/92-12/30/92	0.00	--	0.00	35,356.48	
1/1/93-6/30/93	0.00	---	0.00	35,356.48	31+ months

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Senator Akaka the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* WELLSTONE FOR SENATE *

DEBT: Advantage Travel -- Air Travel Services
4600 W. 77th St.
Edina, MN 55435

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
11/27/90-12/31/90	**5,959.09**	---	0.00	5,959.00	
1/1/91-6/30/91	469.00	5/9/91	5,500.00	928.00	
7/1/91-12/31/91	0.00	9/16/91	100.00	828.00	
1/1/92-6/30/92	0.00	**4/19/92**	828.00	0.00	**16.5 months**

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Senator Wellstone the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* WELLSTONE FOR SENATE *

DEBT: Tschida Printing--Printing Services
1350 Energy Lane
St. Paul, MN 55103

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
10/18/90-**11/26/90**	**350.37**	---	---	350.12	---
11/27/90-12/31/90	538.38	---	0.00	888.50	1.25 mos.
1/1/91-6/30/91	0.00	**3/4/91**	888.50	0.00	**4.5 mos.**

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Senator Wellstone the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* WELLSTONE FOR SENATE *

DEBT: North Woods Advertising--Ad Production
1708 Kenwood Parkway
Minneapolis, MN 55405

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
10/18/90-11/26/90	32,017.57		9,485.25	28,605.27	---
11/27/90-12/31/90	5,144.46	12/7/90	7,152.22	26,597.56	1.5 mos.
1/1/91-6/30/91	0.00	3/12/91	5,000.00	21,597.56	7.5 mos.
7/1/91-12/31/91	2,205.05	12/19/91	2,950.00	20,852.61	13.5 mos.
1/1/92-6/30/92	1,279.59	5/6/92	22,132.20	0.00	18.75 mos.

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Senator Wellstone the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* GEORGIOU FOR CONGRESS *

DEBT: Podesta Associates -- Television Production Expenses
424 C Street, N.E.
Washington, D.C. 20002

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
5/17/90-6/30/90	$15,454.33	---	$0.00	$15,454.33	
7/1/90-9/30/90	0.00	9/7/90	7,000.00	8,454.33	3 months
10/1/90-12/31/90	0.00	---	0.00	8,454.33	
1/1/91-6/30/91	0.00	3/11/91	8,454.33	0.00	9 months (paid)

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Congressman Georgiou the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* GEORGIOU FOR CONGRESS *

DEBT: The Research Group -- Consulting Fees
730 North Franklin
Chicago, Illinois 60610

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
1/1/92-6/30/92	$3,750.00	---	$0.00	$3,750.00	
7/1/92-9/30/92	0.00	---	0.00	3,750.00	
10/1/92-12/31/92	0.00	---	0.00	3,750.00	
1/1/93-6/30/93	0.00	---	0.00	3,750.00	12+ months

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Congressman Georgiou the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* GEORGIOU FOR CONGRESS *

DEBT: Galanty & Company -- Consulting Fees
1640 Fifth Avenue
Santa Monica, CA 90401

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
1/1/92-6/30/92	$7,500.00	---	$0.00	$7,500.00	
7/1/92-9/30/92	0.00	---	0.00	7,500.00	
10/1/92-12/31/92	0.00	---	0.00	7,500.00	
1/1/93-6/30/93	0.00	---	0.00	7,500.00	12+ months

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Congressman Georgiou the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

* GEORGIOU FOR CONGRESS *

DEBT: Page, Polin, Busch & Boatwright - FEC Compliance Services
350 W. Ash Street
Suite 900
San Diego, CA 92101

Time Period	Amount Incurred	Date of Payments Made	Total Payments Made	Outstanding Balance	Months Outstanding*
5/17/90-6/30/90	$2,063.83	---	$0.00	$2,063.83	
7/1/90-9/30/90	326.10	---	0.00	2,389.93	
10/1/90-12/31/90	0.00	---	0.00	2,389.93	
1/1/91-6/30/91	0.00	---	0.00	2,389.93	
7/1/91-12/31/91	652.77	---	0.00	3,042.70	
1/1/92-6/30/92	0.00	---	0.00	3,042.70	
7/1/92-12/31/92	0.00	---	0.00	3,042.70	
1/1/93-6/30/93	0.00	---	0.00	3,042.70	24+ months

* Because Schedule D's do not reflect the exact date on which the debt was incurred, the actual count of months outstanding cannot be precisely determined. These summary charts give Congressman Georgiou the benefit of any doubt by figuring the initial date of the debt to be the last day of the reporting period in which the debt was incurred. The actual number of months outstanding is likely to be larger.

Freshmen Making Big Dents In Debts

By Peter H. Spiegel

The House freshman class, which came into office with more than $7.5 million in campaign debt, paid off more than a third of that amount in the first six months of the year, according to recent filings at the Federal Election Commission.

Together, the Class of 1992 now owes a total of $5,238,000. Of the 95 frosh who came into office with debt, 17 paid off all of their bills in the first half of the year, so that a total of 32 of the 110 first-termers now have no debt.

In addition, the number of freshmen owing more than $100,000 dropped from 20 in November to 16; also, 11 new Members owe less than $10,000 each.

The freshman who has retired the most debt is Rep. Jane Harman (D-Calif), who after the November elections was $952,300 in the red and now owes just $150,000.

But most of the $802,300 Harman's campaign committee has retired thus far — about $673,000 — was in loans made by Harman herself that have simply been forgiven. And all of the remaining $150,000 the campaign owes is to Harman, who has substantial personal wealth.

Harman spokesman Bill Black said that the campaign is in the process of deciding whether to continue raising funds to pay off the remaining debt or to forgive it and concentrate on building a war chest for 1994 (she already has $42,781 in cash on hand).

Black noted that Harman first paid off $114,700 in debts to outside sources before retiring money owed to herself, adding that she left the $150,000 debt on the books in order not "to discourage [contributors] by not having it."

While most freshmen paid off substantial chunks of their debt in the first six months of the year, some are more in debt now than they were at the end of November. For example, Rep. Terry Everett (R-Ala), who

Rep. Terry Everett owes the most: $884,300. His debt actually went up this year with a new $584,000 loan.

reported $150,000 in debt in his post-election filing, now owes $884,300, including a $584,100 loan from Central Bank of the South, making him the top debtor among freshmen.

No one in Everett's office could comment yesterday on the $734,300 increase in the campaign's debt ceiling.

Most of the top freshman debtors — including Reps. Herb Klein (D-NJ), who is second on the list, owing $529,000; Peter Deutsch (D-Fla), third with $320,200; Buck McKeon (R-Calif), fourth with $193,900; and Martin Hoke (R-Ohio), fifth with $174,000 — are in the same situation as Harman. They owe most, if not all, of their debt to themselves.

Klein said that although all of the money his campaign owes is to himself, retiring the debt is a "priority" going into the 1994 cycle.

"I'd like to see it paid off, or at least some of it paid off," said Klein, who is in a Republican-leaning district and is one of the more vulnerable freshmen.

Klein, an attorney with personal wealth, has had some difficulty retiring the debt, paying off just $51,000 since November, but noted, "It's tough to get people to give so soon after an election."

Besides Everett, the freshman owing the most to outside sources is Rep. Nydia Velazquez (D-NY), who came into office $292,400 in debt and still owes $171,200, none to herself.

Velazquez is in a solidly Democratic district and is in little danger of losing her seat, debt or no debt. But her AA, Karen Ackerman, said the Congresswoman is committed to paying off the rest of the debt by Jan. 1.

"Our priority, without question, is to pay off the 1992 debt," Ackerman said, even before starting to raise money for her re-election bid. Velazquez reported only $6,400 in cash on hand.

Many of the more vulnerable House freshmen have had success paying off their debt, although most are still several thousand dollars in the red.

Rep. Marjorie Margolies-Mezvinsky (D-Pa), who holds a predominantly Republican seat in suburban Philadelphia and has come under fire for her flip-flop on the President's budget, went from $68,000 in debt at the end of November to $45,600 last month, all of it owed to outside sources.

Rep. Sam Coppersmith (D-Ariz), who has already drawn more than a half-dozen potential challengers in his strongly Republican Phoenix seat, whittled his debt down from $39,000 to $30,000, which is all in personal loans.

And Rep. Peter Blute (R-Mass), who defeated scandal-tarred Rep. Joe Early (D) in a district that gave 45 percent to Bill Clinton and 51 percent to Michael Dukakis, retired all of the $58,900 he owed after the election.

Here are the freshmen who still have campaign debt, listed from the highest to the lowest amount: Everett, $884,300; Klein, $529,000; Deutsch, $320,200; McKeon, $193,900; Hoke, $174,000; Velazquez, $171,200; Bob Filner (D-Calif), $160,000; Harman, $150,000; Jay Kim (R-Calif), $128,000; Dan Miller (R-Fla), $123,700; John Mica (R-Fla), $120,000; James Clyburn (D-SC), $107,500; Lynn Schenk (D-Calif), $106,100; Marty Meehan (D-Mass), $105,100; Jay Dickey (R-Ark), $100,300; and Ron Klink (D-Pa), $100,000.

Also: Reps. Bill Baker (R-Calif), $99,900; Nathan Deal (D-Ga), $87,000; Steve Horn (R-Calif), $89,000; Paul

After a strong six months of fundraising, the number of freshmen owing more than $100,000 dropped from 20 to 16.

ROLL CALL

August 12, 1993
pp. 1, 11

The freshman owing the smallest amount is Rep. Jack Kingston, whose campaign reported a piddling $229 in debt.

McHale (D-Pa), $85,200; Nick Smith (R-Mich), $85,500; Frank Tejeda (D-Texas), $78,600; Roscoe Bartlett (R-Md), $61,500; Xavier Becerra (D-Calif), $61,200; Sanford Bishop (D-Ga), $60,700; Tom Barrett (D-Wis), $56,000; Ed Royce (R-Calif), $54,700; Ken Calvert (R-Calif), $52,700; Dan Hamburg (D-Calif), $45,700; Margolies-Mezvinsky, $45,600; Bart Stupak (D-Mich), $43,900; and Don Manzullo (R-Ill), $43,400.

And: Reps. Bobby Scott (D-Va), $42,900; Karan English (D-Ariz), $38,900; Eric Fingerhut (D-Ohio), $37,100; Lynn Woolsey (D-Calif), $36,900; Tom Barlow (D-Ky), $33,900; Peter Torkildsen (R-Mass), $33,700; Mac Collins (R-Ga), $33,200; Cynthia McKinney (D-Ga), $30,500; Pat Danner (D-Mo), $30,500; Coppersmith, $30,000; Earl Hilliard (D-Ala), $27,700; Tim Holden (D-Pa), $27,100; Mel Watt (D-NC), $27,000; Mike Crapo (R-Idaho), $26,200; Jay Inslee (D-Wash), $23,000; Bobby Rush (D-Ill), $21,400; Gene Green (D-Texas), $18,200; Bob Franks (R-NJ), $18,000; and Eva Clayton (D-NC), $17,600.

In addition: Reps. John Linder (R-Ga), $13,200; Spencer Bachus (R-Ala), $13,200; Jerrold Nadler (D-NY), $12,800; Ted Strickland (D-Ohio), $11,800; Maria Cantwell (D-Wash), $11,600; Carolyn Maloney (D-NY), $11,500; Henry Bonilla (R-Texas), $10,900; Mel Reynolds (D-Ill), $10,700; Robert Goodlatte (R-Va), $10,000; and Rick Lazio (R-NY), $10,000.

And finally: Reps. Leslie Byrne (D-Va), $9,100; Richard Pombo (R-Calif), $9,000; Corrine Brown (D-Fla), $8,800; Ernest Istook (R-Okla), $6,200; Rod Grams (R-Minn), $3,900; Eddie Bernice Johnson (D-Texas), $2,200; Don Johnson (D-Ga), $1,700; Luis Gutierrez (D-Ill), $1,600; Karen Thurman (D-Fla), $1,200; David Minge (D-Minn), $600; and Jack Kingston (R-Ga), $200.

The 17 who retired all of their debt in the first six months of this year are Reps. Peter Blute (R-Mass), Steve Buyer (R-Ind), Lincoln Diaz-Balart (R-Fla), Jennifer Dunn (R-Wash), Tillie Fowler (R-Fla), Jim Greenwood (R-Pa), Bob Inglis (R-SC), Joe Knollenberg (R-Mich), Mike Kreidler (D-Wash), David Levy (R-NY), David Mann (D-Ohio), Robert Menendez (D-NJ), Earl Pomeroy (D-ND), Deborah Pryce (R-Ohio), Jack Quinn (R-NY), James Talent (R-Mo), and Al Wynn (D-Md).

Five freshmen with outstanding debt in November had not filed as Roll Call went to press: Reps. Sherrod Brown (D-Ohio), Anna Eshoo (D-Calif), Cleo Fields (D-La), Peter Hoekstra (R-Mich), and Walter Tucker (D-Calif).

Deborah Feldman contributed to this report.

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Friends of Bill Zeliff Committee	)	MUR 3191
Robert D. Goodman, as treasurer	)	
Christmas Farm Inn, Inc.	)	
William H. Zeliff, Jr.	)	

GENERAL COUNSEL'S REPORT

On July 9, 1993 the Office of the General Counsel notified the Commission that it was prepared to close the investigation in MUR 3191. On July 15, 1993 General Counsel's Briefs were forwarded to counsel for the respondents and circulated to the Commission. Respondents' Responsive Brief was received on August 18, 1993.

Subsequent to receipt of the Respondents' Brief, this Office was asked by the Reports Analysis Division ("RAD") on September 7, 1993 to review a proposed Request For Additional Information ("RFAI") to be sent to the Friends of Bill Zeliff Committee ("the Committee"). One of the issues raised in this RFAI concerned the Committee's reporting in its 1993 Mid-Year Report of a $10,000 loan from the candidate, William H. Zeliff, Jr. The only additional information provided on Schedule C of this report was the date of the loan, January 15, 1993. (See Attachment 1). RAD proposed to question the Committee about the source of this loan, i.e., whether it came from a lending institution or from the candidate's personal funds.

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Earlier, on March 16, 1993, RAD had sent a virtually identical RFAI to the Committee with regard to another $10,000 loan from the candidate reported as having been received on December 16, 1992. (See, again, Attachment 1.) On March 31, 1993, the Committee's assistant treasurer responded to that RFAI as follows:

> In response to the letter from the Federal Election Commission . . . dated March 16, 1993, regarding the loan from the candidate to the Friends of Bill Zeliff committee . . ., please be advised that the loan was, indeed, from personal funds as defined by the Commission Regulations. The funds were not borrowed from a lending institution or any other source. (Attachment 2, emphasis in original).

No additional information was provided as to the exact nature of the funds used. The reference to "any other source" in the letter is ambiguous as to whether it is meant to include the candidate's corporation, Christmas Farm Inn.

Because one of the principal issues in MUR 3191 concerns the definition of "personal funds" as applied to monies which originated as loans to the candidate from the Inn, representations by the Committee, without elaboration, that the December 15, 1992 loan was made with personal funds do not satisfy the need for detailed information as to the actual source(s) of those monies. The same would apparently hold true with regard to the January 15, 1993 loan. Therefore, this Office has asked that RAD not send the most recently proposed RFAI. Instead, this Office has reopened the investigation in this matter and will pose questions to

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counsel with regard to the specific sources of the funds used for both of the loans made by Mr. Zeliff to the Committee in 1992 and 1993.

9/24/93
Date

Lawrence M. Noble
General Counsel

Attachments

1. Schedule C, 1993 Mid-Year Report
2. Response to RFAI dated March 31, 1993

Staff Assigned: Anne Weissenborn

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SEPTEMBER 30. 1993

Jan Witold Baran, Esquire
Lee E. Goodman, Esquire
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

RE: MUR 3191
Friends of Bill Zeliff Committee
Robert D. Goodman, as treasurer
Christmas Farm Inn, Inc.
William H. Zeliff, Jr.

9504366247 7

Dear Mr. Baran and Mr. Goodman:

On July 15, 1993, this Office forwarded to you three briefs which contain recommendations that the Commission find probable cause to believe that your clients have violated the Federal Election Campaign Act ("the Act"). Your response to these briefs was received by the Commission on August 18, 1993.

As you are aware, one of the principal issues in MUR 3191 is whether funds obtained by Mr. Zeliff from Christmas Farm Inn, Inc., and then loaned to the Friends of Bill Zeliff Committee ("the Committee"), constituted "personal funds" pursuant to the Act and to the Commission's regulations.

On July 31, 1993, the Committee filed its 1993 Mid-Year Report. On page 7 of Schedule C, this report contained entries for two $10,000 loans received by the Committee from William H. Zeliff, Jr. on December 16, 1992 and January 15, 1993. The December 16, 1992 loan had earlier been reported on Schedule C, page 8, of the Committee's 1992 Year-End Report. No information is provided in either report beyond the amounts and dates of the loans.

On March 16, 1993, the Reports Analysis Division sent a Request for Additional Information to the Committee concerning the sources of the funds used by Mr. Zeliff to make the December 16, 1992 loan. On March 31, 1993, the assistant treasurer of the Committee, James T. Spinnler, responded by stating that this loan had come from "personal funds" (emphasis in the original) and that the funds "were not borrowed from a lending institution or any other source."

Given the lack of detailed information in the Committee's reports and in Mr. Spinnler's response regarding the $10,000 loans from Mr. Zeliff cited above, and given remaining ambiguities concerning the meaning of the phrase "any other source," it is requested that you provide answers to the following inquiries:

1. Please state the specific source(s) of the funds used by William H. Zeliff, Jr. to make $10,000 loans to the Committee on December 16, 1992 and January 15, 1993. State in particular whether or not the sources included funds obtained from Christmas Farm Inn, Inc. ("the Corporation"). If the Corporation was either the sole or partial source, state the exact amounts obtained from the Corporation and explain how the Corporation has recorded the transactions involved; i.e., whether the Corporation's records show the related outlays to Mr. Zeliff as loans, disbursements of profits, liquidations of Mr. Zeliff's interest in the company, or some other transaction category.

2. If the second of these $10,000 loans was made with funds obtained from a lending institution, please provide details concerning these loan transactions, including the dates upon which payments are due, the interest rates, any security provided, and the names of any guarantors or endorsers.

You are asked to supply the information requested above within fifteen days of your recent of this letter. Once the responses are in hand, this Office will proceed to the next appropriate step in the enforcement process, either a report to the Commission or a supplemental brief, depending upon the information received from your clients.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

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OFFICE OF GENERAL COUNSEL
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WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
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JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248348 WYRN UR

October 8, 1993

Lawrence M. Noble, Esq.
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3191 (Friends of Bill Zeliff Committee and Robert D. Goodman, as Treasurer, Christmas Farm Inn, Inc., and The Honorable William H. Zeliff, Jr.)

Attn: Anne A. Weissenborn

Dear Mr. Noble:

This letter responds to Anne Weissenborn's letter dated September 30, and received October 1, 1993, requesting information with regard to loans made by Congressman Zeliff on December 16, 1992 and January 15, 1993 respectively to the Friends of Bill Zeliff Committee.

Both loans were made from Congressman and Mrs. Zeliff's joint personal checking account. Christmas Farm Inn was not the source of either loan.

We object to the Commission's dilatory behavior. Ms. Weissenborn's letter was sent more than six weeks after Respondents' Brief was filed. We note that the recent loans are unrelated to any facts or transactions raised by the complaint or the Commission's three-year old investigation stemming from the 1990 election. We also note that the Commission staff had in its possession, on March 31, 1993, the information which led to Ms. Weissenborn's letter. This was three and one-half months prior to the issuance of the General Counsel's Brief which failed to mention these irrelevant facts.

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When we filed Respondents' Brief on August 18, we urged the Commission to take action on this matter within 60 days, which would be October 17, 1993 (copy enclosed).

We renew our yet unacknowledged request for the Commission to act expeditiously as required by the statute.

Sincerely,

Jan Witold Baran

Encl.

cc: Chairman Scott Thomas
Vice Chairman Trevor Potter
Commissioner Joan Aikens
Commission Lee Ann Elliott
Commissioner John Warren McGarry
Commissioner Danny Lee McDonald
The Hon. William H. Zeliff, Jr.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 21, 1993

Jan Witold Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

RE: MUR 3191
Friends of Bill Zeliff Committee
Robert D. Goodman, as treasurer
William H. Zeliff, Jr.

Dear Mr. Baran:

I am writing in response to your letter of October 8, 1993 in which you provided additional information requested by this Office concerning the source of funds used by your client, William H. Zeliff, to make recent loans to his authorized committee, and in which you reiterated your earlier request that the Commission take action in this matter by October 17, 1993, or sixty days following submission of the Respondents' Brief in this matter.

We appreciate your providing the requested information so promptly. Although we are unable to promise a specific date by which time the Commission will reach the next stage in this matter, please be assured that we are making every effort to progress as quickly as possible.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

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WILEY, REIN & FIELDING

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January 25, 1994

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FEDERAL ELECTION COMMISSION

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

ATTN: Anne A. Weissenborn, Esq.

Re: MUR 3191 (Friends of Bill Zeliff Committee and Robert D. Goodman, as Treasurer, Christmas Farm Inn, Inc., and the Honorable William H. Zeliff, Jr.)

Dear Mr. Noble:

This is to note for the record our objections to your continued proceedings in the above-captioned matter due to the United States Court of Appeals' decision in FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993). As you have noted in recent FEC filings, the Commission lacked authority to determine for itself the constitutional issues decided in NRA, so raising these matters with the Commission prior to that ruling would have been futile. Also, some of the "remedial" actions, such as purported "ratification," just occurred. However, now that the decision has been handed down and the Commission's initial response to it has been outlined, we wish to be clear that we object to any Commission action inconsistent with the NRA rationale.

Accordingly, please be advised that we object to all past and future activity in this matter attributable to the actions of the unconstitutional agency. Our objections include, but are not limited to, enforcement of rules not adopted by a constitutional agency, purported "ratification" of rules and actions, without findings or compliance with procedural steps mandated by the Administrative Procedures Act or the Federal Election Campaign Act, as well as "ratification" of actions tainted by deliberations influenced by the presence of non-executive branch personnel. Additionally, we believe that the Commission improperly reconstituted itself in response to the NRA decision and therefore its current proceedings are likewise constitutionally suspect. We expressly do not waive any objections to the present form of the Commission and suggest that continued proceedings in this matter under these circumstances are not substantially justified.

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We are confirming these objections to provide formal notice that the Commission's present make-up and/or its actions based on precedents of the judicially declared unconstitutional Commission may be invalid. While I know that you already are familiar with the issues raised in this letter -- indeed, your staff has focused on little else these past few months -- I am prepared to discuss these matters with you in more detail at your convenience. Also, I would welcome any procedural guidance you may offer on how these issues might most efficiently be pursued.

Sincerely,

Jan Witold Baran

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	MUR 3191
Christmas Farm Inn, Inc.,	)	
Friends of Bill Zeliff Committee	)	
and Robert D. Goodman as treasurer,	)	
and William H. Zeliff, Jr.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

In response to the filing of a complaint, the Commission on August 13, 1991, found reason to believe that Christmas Farm Inn, Inc. (the Corporation), had violated 2 U.S.C. § 441b by making loans to William H. Zeliff, Jr., (the Candidate), and by permitting him and the Friends of Bill Zeliff Committee (the Committee), the use of other assets of the Corporation to support Mr. Zeliff's 1990 campaign for the United States House of Representatives. In response to the same complaint, the Commission also found reason to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b as a result of his involvement as a candidate and as the corporate officer of the Christmas Farm Inn, Inc., in the making and the receipt of loans made in 1990 to the Friends of Bill Zeliff Committee with monies obtained from Christmas Farm Inn, Inc.

Earlier, on February 27, 1991, the Commission found reason to believe in MUR 3226 that the Committee and its treasurer had violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to the loans from the Candidate. In addition, in response to the complaint, supra, on August 13, 1991, the

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Commission found reason to believe that the Friends of Bill Zeliff Committee and its treasurer had violated 2 U.S.C. § 441b by knowingly accepting loans made with funds obtained from the Christmas Farm Inn, Inc., and by using other assets of the Corporation to support the 1990 campaign of Mr. Zeliff for the United States House of Representatives. On August 23, 1991, the Commission voted to merge MUR 3226 into MUR 3191.

The Christmas Farm Inn, Inc. is a New Hampshire corporation composed of three local businesses: Christmas Farm Inn, a country inn; Yesterday's Restaurant, which is located at the Inn; and the Jackson Corner Store, located in the vicinity of the Inn. Mr. Zeliff and his wife incorporated their businesses in 1977, and in so doing, transferred their personal interest in the Christmas Farm Inn, the restaurant, the store and in all the furnishings and equipment to the newly created corporation known as Christmas Farm Inn, Inc. According to information provided by Kenneth Kaslow, bookkeeper for the Corporation, from January 1989 through the 1990 election timeframe, Mr. Zeliff and his wife, Sydna T. Zeliff, were the only shareholders, directors and officers of the Corporation. The Corporation elected Chapter S tax status pursuant to the Internal Revenue Code. 26 U.S.C. §§ 1361-1379.

Amended reports filed with the Commission by the Committee indicate Mr. Zeliff made loans totaling $216,000.00 to the Committee during the 1989-1990 election cycle. According to the information provided in response to the complaint, $209,000.00 of the $216,000.00 consisted of funds from the Inn's corporate account. Certain of the loans reported by the Committee can be

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matched by date with the loans recorded on the Corporation's written record. See General Counsel's Probable Cause Brief In the Matter of Christmas Farm Inn, Inc., at 5, n. 3.[1], (hereinafter General Counsel's Brief). These amounts are not disputed by respondents.

Counsel for the respondents replied to the Commission's analysis contained in the three General Counsel's Briefs (In the Matter of Friends of Bill Zeliff Committee, Robert D. Goodman, as treasurer; In the Matter of Christmas Farm Inn, Inc.; and In the Matter of William H. Zeliff, Jr.) by submitting a single brief on behalf of all respondents. Additionally, pertinent parties responded to the interrogatories and request for production of documents propounded by the Commission. Two affidavits were received from Mr. Kaslow, the Corporation's bookkeeper: one affidavit was in response to the complaint and the second was submitted by counsel. Supplementary responses to follow-up questions and additional documents have also been received from respondents.[2]

Respondents did not pursue Pre-Probable Cause Conciliation.

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1. All references to the General Counsel's Brief in this Report will be to the General Counsel's Brief In the Matter of Christmas Farm Inn, Inc.

2. The Reports Analysis Division notified this Office during the early part of September 1993 concerning the Committee's reporting in its 1993 Mid-Year Report of two $10,000.00 loans from Mr. Zeliff. The report indicates the Committee received the loans on December 16, 1992 and January 15, 1993. By letter dated October 8, 1993, Jan W. Baran, Counsel for respondents, advised, "(b)oth loans were made from Congressman and Mrs. Zeliff's joint personal checking account. Christmas Farm Inn was not the source of either loan."

II. RECOMMENDED ACTION IN LIGHT OF FEC V. NRA

On January 27, 1994, the General Counsel's Office received a letter from counsel on behalf of all respondents noting objections to past and continuing proceedings by the Commission in this matter due to the court's decision in FEC v. NRA, 6 F.3rd 821 (D.C. Cir. 1993), cert. granted 114 S.Ct. 2703 (1994). (Attachment 1). Counsel's letter essentially attempts to preserve all possible arguments available to these respondents regarding the Commission's continued action in this matter in light of the NRA decision. The substance of most of counsel's objections are currently being litigated in a number of other cases. See e.g., FEC v. Colorado Republican Federal Committee, 93-1433, 93-1434 (10th Cir.); FEC v. NRSC, No. 93-1612 (D.C. Cir.).

Consistent with the Commission's November 9, 1993 decisions concerning compliance with the NRA opinion, and based on the complaint filed in this matter and responses thereto, this Office recommends that the Commission ratify its earlier determination in MURs 3191 and 3226 to:

1. Find reason to believe that the Friends of Bill Zeliff Committee and its treasurer[3] violated 2 U.S.C. § 441b.

2. Find reason to believe that the Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b.

3. Find reason to believe that William H. Zeliff, Jr. violated 2 U.S.C. § 441b.

4. Find reason to believe that the Friends of Bill Zeliff Committee and its treasurer violated 2 U.S.C. § 434(a)(6).

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3. At the time of the Certification, John C. Naramore was the Committee treasurer. Robert D. Goodman is the present treasurer.

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5. Approve the Factual and Legal Analysis as recommended in the General Counsel's Report dated August 2, 1991.

6. Approve the Factual and Legal Analysis attached to the General Counsel's Report dated September 10, 1991.

7. Approve the Factual and Legal Analysis attached to the General Counsel's Report dated February 22, 1991.

The certifications dated February 27, 1991, August 14, 1991, August 23, 1991, and September 27, 1991, are included in Attachment 2 for the Commission's information.

III. ANALYSIS

This Report incorporates by reference the General Counsel's Briefs and all arguments and authorities contained therein. In addition to previous submissions by the General Counsel's Office, the following matters are submitted in response to the arguments presented by respondents in their consolidated response to the General Counsel's Brief.

A. Violation of 2 U.S.C.§ 441b(a).

1. Statement of the Law

A complete statement of the law is contained in the General Counsel's Brief at page 2.

2. Respondents' Arguments

As noted supra, respondents do not dispute that the loans made to the Committee in the amount of $209,000.00 were funds taken from the Corporation's account as general corporate funds. Rather, respondents contend that since Christmas Farm Inn, Inc. is a closely held corporation which qualifies for beneficial federal tax treatment as a Chapter S corporation, the corporate funds used

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to make the loans to the Committee are the Candidate's personal funds.[4] Since the funds extended by Mr. Zeliff to the Committee were part of his personal assets, respondents argue, neither Mr. Zeliff nor his Corporation violated the Act by lending the money to Mr. Zeliff's campaign committee and the Committee did not violate the Act by accepting the money.

In support of their contention, respondents reason since Mr. Zeliff owns fifty percent (50%) of the Corporation's stock, he "equitably owns" one-half of all the corporation's assets which at the time the loans were made exceeded See Respondents' Brief at 2-3. Moreover, as the president of the corporation, respondents argue, Mr. Zeliff exercised control over all the Corporation's assets. Id. Given Mr. Zeliff's "equitable" ownership of the Corporation's assets as a shareholder and his control over those assets in his capacity as president of the Corporation, respondents conclude that the corporate funds extended to the Committee in the form of loans by the Corporation were Mr. Zeliff's personal funds. Respondents contend that this transaction is consistent with the provisions of 11 C.F.R.

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4. Respondents have abandoned their argument that because of its Chapter S status, the Christmas Farm Inn, Inc. should be treated as less than a corporation for all purposes. This argument was unsound in light of the federal law on the treatment of closely held corporations which receive the benefits of Chapter S status for other than tax purposes. That law is settled. "Whatever the factual context, courts rarely permit a corporation to be disregarded for the benefit of its own shareholders. Persons who choose the corporate form of doing business are held to the consequences of that decision." F. O'Neal and R. Thompson, Close Corporations, § 1.10 (3rd ed. 1986); e.g., Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 1516, n. 62 (D.C. Cir. 1984) and cases cited in General Counsel's Brief at 7-9.

§ 110.10 (a) and (b) and that regulation's definition of what constitutes personal funds.[5]

Additionally, respondents observe, Mr. Zeliff could have provided the funds directly to the Committee through a variety of methods, all of which would have been permissible under the Federal Election Campaign Act of 1971. Accordingly, they claim that focusing on the procedures employed to accomplish the funding of the campaign elevates form over substance and penalizes "the accounting method" used by Mr. Zeliff. Respondents' Brief at 8-9 (emphasis in original).

3. Discussion

Respondents arguments disregard several basic principles of corporate law. In so doing, the arguments tend to cloud the real issues raised by this matter. Simply stated, the issue herein

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5. Respondents' Brief lists seven alleged "undisputed" facts at pages 2-3. The list, however, includes legal conclusions referenced as facts by respondents which are not conceded. Moreover, the General Counsel does not agree that Mr. Zeliff's ownership of the Inn meets the express definition of personal funds. See Respondents' Brief at 6. For purposes of this Report only, the following facts referred to by respondents are undisputed: The Zeliffs owned the Inn and the two other businesses as a proprietorship until 1977 and incorporated for the purpose of avoiding liability; each of the Zeliffs owned 50% of the shares in the Corporation and acted as its officer and directors; and Mr. Zeliff borrowed $209,000.00 from the Corporation to lend to the Committee. All other legal conclusions made by respondents and labeled as facts will be referred to as argument and so identified, infra. Additionally, the control over the Inn's assets which respondents allege Mr. Zeliff had as the president of the Corporation has not been documented by respondents. This is crucial in view of the fact that the president of a corporation has no inherent powers except those granted to him by statute, by the corporation's by-laws, or the directors. See generally 1 Macey, Corporation Guide, § 1706 (P-H 1990); N.H. Rev. Stat. Ann. § 293-A:8.41.

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presented is whether Christmas Farm Inn, Inc. is a corporation under the laws of the State of New Hampshire; and if so, did it violate 2 U.S.C. § 441b(a) by making a corporate contribution to the Committee. The liability of all respondents under the Act depends on whether or not these two questions are answered in the affirmative. Based on the facts presented and the case law in this area, the answer to both these questions is yes.

Respondents do not dispute that Christmas Farm Inn, Inc. is a corporation incorporated under the laws of New Hampshire. N.H. Rev. Stat. Ann. § 293-A:1.01-293-A:17.04 (1992).[6] Their arguments, however, ignore the basic tenet of corporate law that closely held corporations, such as the Christmas Farm Inn, Inc., possess all the major attributes of public for profit corporations. Even though a closely held corporation may exhibit a centralized management structure akin to that of partnerships and private ventures, it, nevertheless, is a legal entity having a legal existence separate and apart from its shareholders. 1 F. O'Neal & R. Thompson, Close Corporations, § 1.09 (Clark, Boardman, Callaghan, 1992); 1 Keating and O'Gradney, Fletcher Cyclopedia of the Law of Private Corporations, § 25 (Callaghan 1990). This is essential to the corporation's existence.

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6. The New Hampshire corporation statutes effective when the Christmas Farm Inn, Inc. was incorporated have been superseded by the 1992 Business Corporation Act. That Act, however, specifically states that it applies to all domestic corporations in existence on January 1, 1993 and which where incorporated under any general statute of the state providing for incorporation of corporations for profit. N.H. Rev. Stat. Ann. § 293-A:17.01.

Having a separate legal identity from that of its shareholders enables the corporation to hold property, enter into contracts, negotiate loans, execute conveyances and conduct all corporate business as a separate legal unit. Id. It is from the concept of a separate identity that such corporate benefits as limited shareholder liability and Chapter S special tax treatment are derived. Id. Indeed, this basic principle should not be ignored because doing so may result in the loss of corporate status.[7]

Respondents argue that Mr. Zeliff may spend an unlimited amount of personal funds on his candidacy. This general principle is not disputed. Yet, the funds extended to the Committee in the form of loans by Mr. Zeliff's were not his personal funds. Rather, these funds were assets of the Corporation at the time the loans were made to the Committee. This is so because as the corporation is a separate entity from its shareholders, so are the corporate assets separate from those of its shareholders. "(T)he

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7. Respondents argue that Mr. Zeliff, as shareholder, equitably owns 50% of the corporate assets or property; and as its president, he has full control over and power to dispose of corporate assets. Moreover, they argue, since the Inn's incorporation in 1977, Mr. Zeliff has "frequently drawn money on an as-needed basis from the Inn's bank account for a variety of personal uses in the same manner as he did during his campaign." Respondents' Brief at 3. Although there are no clear cut rules on when the corporate entity will be disregarded, some factors which contribute to piercing the corporate veil include situations where the shareholders act as the corporation's alter ego; when the business of the corporation is allowed to become mixed up with the owner's personal affairs; when the president-principal shareholder uses the corporation merely to carry on personal business; or when shareholders ignore the existence of the corporation by mixing personal and corporate funds. See generally 1 Macey, Corporation Guide § 1119 (P-H 1991).

capital or assets of the corporation are its property, and the shares evidenced by the stock certificates are the properties of the holders, which do not carry the capital property or profits until they have been declared and vested as dividends, after which they are stockholder's property." 1 Fletcher Cyclopedia Corporations, § 31 at 555 (Perm Ed) (citations omitted). Thus, the equitable interest which respondents argue Mr. Zeliff, as a shareholder, had in the corporate assets of Christmas Farm Inn, Inc. is an indirect, qualified, collateral, transferable and insurable interest only. See generally 11 Fletcher Cyc Corp, § 5100 at 100. This equitable interest is not the kind of interest which would provide a shareholder with legal access to or control over corporate property for his use and benefit required by 11 C.F.R. § 110.10(b)(1).

Stockholders have no vested interest in the corporate property or assets until such time as distribution occurs in the form of dividends or upon liquidation. Id. It is at this point that the corporate assets are converted into the personal asset of the shareholder. Once this conversion of the corporate funds occurs, the shareholder has a legal right of access to the funds and may exercise dominion and control over the property for his personal use and benefit. This conversion of corporate funds to private funds, however, never occurred here. Had Mr. Zeliff directed a disbursement or payment of dividend to himself as a shareholder, liquidated his interest and used the proceeds from that liquidation for the loans, or even given the shares to the Committee as a gift, the loans he made to the Committee would not

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have been from corporate assets but rather, from personal funds over which he had dominion and control. These conversion methods (and others listed in the General Counsel's Brief at 10-11 and in Respondents' Brief at 6-7), although consistent with FECA requirements, would have resulted in a taxable event to Mr. Zeliff. By using corporate funds from the Corporation's treasury to lend to the Committee, Mr. Zeliff avoided personal tax consequences, such as capital gains or income interest, because the funds loaned to the Committee remained the Corporation's property.

The legal principal that a shareholder does not have right of access to or control over corporate assets is significant in evaluating respondents' interpretation of 11 C.F.R. § 110.10(b). The regulation permits candidates for federal office to make unlimited expenditures from personal funds. It also provides a two-prong definition of personal funds. Personal funds are assets to which the candidate has a legal right of access to or control over and with respect to which the candidate had either legal and rightful title or an equitable interest. 11 C.F.R. § 110.10(b). An equitable interest in an asset includes ownership or a pecuniary interest that is not one of legal title. 48 Fed. Reg. 19020 (1983). The Commission, in clarifying the definition of personal funds provided in 11 C.F.R. § 110.10(b), stated:

> . . . (I)t is made clear that the criteria of "legal and rightful title" and "equitable interest" must each be linked with "legal right of access to or control." The latter criterion is the standard set out in the legislative history of the 1974 Amendments to 18 U.S.C. § 608 pertaining to the limitations of expenditures of personal funds by a candidate,

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also cited in Buckley v. Valeo, 424 U.S. 1, 51, 52, n. 57. Id.

Assuming, arguendo, that Mr. Zeliff, in his capacity as a shareholder had an equitable interest in the Corporation's assets, as a shareholder, he had no legal right of access to or control of corporate assets for the purpose of applying the assets to his personal use. The right of access to or control over the corporate assets could not be attained by him as a shareholder until such time as distribution, liquidation or other conversion of the corporate assets occurred to convert the corporate asset into his personal property. Any access to or control of corporate assets he may have had was not in his capacity as shareholder, but rather, in his capacity as an officer and director of the Corporation. In that capacity, any access to or control over the corporate assets could only be exercised for the use and benefit of the Corporation. Consequently, the "link" between the equitable interest and access to or control contemplated by the Commission, supra, is absent here.

Respondents' reliance on the Commission's actions in MUR 3097 to further support their argument that the corporate funds were Mr. Zeliff's personal assets is misplaced. In that MUR, the candidate's personal estate had been placed in a judicially created trust under the guardianship of a trustee after the candidate was declared incompetent. The respondent received a monthly income and could receive additional funds from the trust principal after written approval from the court. The

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facts presented in that MUR are different from those presented in this MUR. For example, the trust at issue in MUR 3097 was involuntarily created to protect the candidate's personal property, whereas here, Mr. Zeliff voluntarily incorporated the Christmas Farm Inn as a profit generating enterprise. In addition, MUR 3097 does not deal with corporate funds, corporate loans or the prohibition against corporate contributions found in 2 U.S.C. § 441b(a) as does this MUR. Moreover, in MUR 3097 the court converted a portion of the trust assets into distributions for the candidate's personal use. As previously discussed, no such conversion of corporate assets into personal funds occurred here.

Respondents contend that the issues raised by this MUR are ones of first impression before the Commission. Respondents' Brief at p. 11-12. That is not the case. MUR 3119, which is discussed in the General Counsel's Brief at page 8, but which respondents fail to address in their brief, involved the same legal issues as this MUR. In MUR 3119, the candidate borrowed funds totaling $266,000.00 from a closely held corporation which had selected Chapter S tax treatment, and of which she was the principal stockholder. (She owned 85% of the shares). The candidate, in turn, loaned the money to her principal campaign committee. The loans were fully reported to the Commission.

By a vote of 6-0, the Commission found probable cause to believe that the corporation, and the committee violated, inter alia, various provisions of 2 U.S.C. § 441b. The respondent in

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that MUR, just like the respondents in this MUR, argued that the funds loaned to the committee were the candidate's personal funds pursuant to 11 C.F.R. § 110.10(b). The Commission's findings against the corporation and the committee in MUR 3119 indicate that the 11 C.F.R. § 110.10 must be read in conjunction with provisions of the Act which prohibit corporate contributions in connection with federal elections. In so doing, the Commission found that the loans made to the committee by the candidate in MUR 3119 were from corporate funds which did not become the personal funds of the candidate pursuant to 11 C.F.R. § 110.10 by virtue of the corporation's Chapter S status or because of the candidate's status as the corporation's major stockholder.

Finally, respondents' argument[8] that they relied in good faith on a reasonable interpretation of a regulation ignores the fact that Title 2 U.S.C. § 441b(a) does not distinguish between closely held corporations and publicly held corporations in its blanket prohibition against corporate contributions. In addition, the definition of personal funds provided in 11 C.F.R. § 110.10 must be read in conjunction and consistent with the statutory prohibitions against corporate contributions contained

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8. Respondents argue that they relied in good faith "upon an established and valid regulation that the General Counsel's Briefs now construe as inconsistent in some respects with another statute." Respondents' Brief at 11. Although the Brief fails to so state, for purposes of this argument, it is assumed that respondents reference 2 U.S.C. § 441b and 11 C.F.R. § 110.10. Because of their good faith reliance on 11 C.F.R. § 110.10, respondents contend, they should not be subject to any sanctions pursuant to 2 U.S.C. § 438(e).

in 2 U.S.C. § 441b.

Moreover, the Commission has consistently and repeatedly opined that an officer or stockholder may make contributions in his or her individual capacity; but never has it sanctioned contributions from the corporate treasury funds of a commercial entity. See e.g., AO-80006; MUR 2552 (Vandenberge); MUR 3119. Additionally, federal and state courts, despite affording certain benefits to closely held corporations,[9] still recognize that once a corporation is formed, its corporate identity can not be disregarded at the whim of the shareholders. See e.g., Betson v. Commissioner, 802 F. 2d 365 (9th Cir. 1986)(when a taxpayer chooses to conduct business through a corporation, he may not subsequently deny the existence of the corporation even though its suits him for tax purposes).

4. Conclusion

Accordingly, based on the arguments above, there is probable cause to believe that: Christmas Farm Inn violated 2 U.S.C. § 441b by making loans to the Candidate; Mr. Zeliff violated 2 U.S.C. § 441b by consenting to the loans and knowingly accepting contributions from the Christmas Farm Inn, Inc.; and the Committee and its treasurer violated 2 U.S.C. § 441b by knowingly accepting the loans made with funds obtained from the Corporation.

B. Use of Corporate Assets

9. Some of these benefits include centralized management, a flexible corporate structure, limitations of the sale of stock, and Chapter S tax status.

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1. Statement of the Law

A complete statement of the applicable law is contained in the General Counsel's Brief at pages 11-14. Several points raised by Respondents in their Brief, however, require some clarification.

According to the information submitted by respondents, the Christmas Farm Inn provides food services in the ordinary course of business and it did so to the Committee during the timeframe in question. Therefore, for the limited purposes of analyzing the food and beverage-related items only, the Inn is a corporate vendor and the expenditures must be examined under both, 11 C.F.R. § 114.10 for those transactions prior to October 3, 1990 and 11 C.F.R. § 116.3 for those transactions occurring after the effective date of the regulation.[10] All other Inn activity is subject to the provisions set out in 11 C.F.R. § 114.9.

Under the provisions of 11 C.F.R. § 114.9(a)(1) and (2), any required reimbursement made by the stockholder or employee volunteer is subject to examination with regard to the amount and timing of the payment. See the General Counsel's Brief at pages 12-13 for a more detailed statement of these

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10. Although the General Counsel's Brief at pages 12, 33-36, refers to 11 C.F.R. § 116.3 in reviewing 1989 vendor activity involving the Inn, the conclusions and recommendations derived from the analysis would be the same under 11 C.F.R. § 114.10 (1990). This is so because 11 C.F.R. § 116.3, which superseded 11 C.F.R. § 114.10 in October 1990, incorporates the same provisions of the superseded regulation by setting forth the standards for the extension of credit by corporations in the ordinary course of their business as commercial vendors. See 55 Fed. Reg. 26378.

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provisions. In resolving the issues regarding reimbursements for the goods and services provided by the Inn to the Committee, the Commission need only focus on the timeliness of the reimbursements made by respondents and not on who made the reimbursements. The timeliness of payments made is relevant whether the payments are made pursuant to 11 C.F.R. § 114.9(a) or pursuant to 11 C.F.R. § 114.9(c), as both sections of the regulation require reimbursement within a commercially reasonable time.[11]

2. Respondents' Arguments

Respondents argue that neither Mr. Zeliff nor the Committee were required to reimburse the Corporation in the first place because Mr. Zeliff "equitably" owned at least one half of the Inn's assets. Therefore, they conclude " . . . these are (the candidate's) personal funds in accordance with 11 C.F.R. § 110.10(b)(1). Respondents' Brief at 14. As such, neither the Committee nor the Candidate were obligated to reimburse the Corporation for their use.

In the alternative, they argue, in choosing to reimburse the Corporation for the use of its assets, Mr. Zeliff and the

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11. "Commercially reasonable time" is not defined in the regulations. In situations in which a corporation normally operates as a vendor of the goods and services involved, the Commission has compared billing and payment timing accorded a political committee/customer with that accorded other customers of the same corporation. In situations in which a corporation does not normally provide the goods and services at issue, as when its facilities are used by volunteers, it becomes necessary to compare its charging and collection process with those of outside vendors who normally provide such goods or services.

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Zeliff and the Committee did so fully and consistent with the normal and usual charge for all facilities and within a commercially reasonable time. See Respondents' Brief at 15-22. In addition, respondents assert that "reimbursements to the Inn for the use of its facilities would be governed by 11 C.F.R. § 114.9 (1990), not 11 C.F.R. § 116.3. . . ." Respondents' Brief at 14. They also focus on what they allege to be a misstatement in the General Counsel's Brief at pages 13-14 pertaining to whether 11 C.F.R. § 114.9(c) includes use of corporate facilities to produce materials by persons other than stockholders or corporate employees.

Addressing the issue of timeliness of the payments, respondents complain that the alleged "thirty day" rule proposed by the General Counsel for determining commercially reasonable time for the payment of the debts in question is inflexible, arbitrary, untenable and inconsistent with other FEC regulatory schemes. Respondents' Brief at 22-33. Accordingly, they assert, the imposition of this "inflexible" standard results in the reimbursements to the Inn being untimely and, therefore, resulting in impermissible corporate contributions in violation of 2 U.S.C. § 441b. Respondents' Brief at 33-34.

3. Discussion

The basic issue raised by the Corporation's provisions of goods and services to the campaign is whether it was reimbursed within a commercially reasonable time for the use of corporate assets during the Candidate's campaign for federal office. The timeliness of reimbursements is relevant to whether the

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Corporation provides the goods and services in the ordinary course of its business as a commercial vendor under the provisions of 11 C.F.R. § 116.3 or whether the goods and services are not provided in the ordinary course of business under the provisions of 11 C.F.R. § 114.9. Moreover, the timeliness of payments made to the Corporation is also relevant whether the goods and services rendered by the Corporation are analyzed pursuant to 11 C.F.R. § 114.9(a) or 11 C.F.R. § 114.9(c).

In response to respondents' assertion that all supplies and equipment of the Inn are the Candidate's personal funds, the supplies and equipment of the the Christmas Farm Inn, Inc. remained corporate property unless converted to Mr. Zeliff's personal disposable property and did not constitute personal funds under the provisions of 11 C.F.R. § 110.10. See pages 9-17 of this Report. Absent compliance with the provisions of 11 C.F.R. § 114.9, 11 C.F.R. § 114.10 and 11 C.F.R. § 11.3, a candidate such as Mr. Zeliff, who is directly involved in the use of corporate assets on behalf of his campaign, may be involved in the knowing acceptance of such assets in violation of 2 U.S.C. § 441b(a). If that candidate is also an officer or director of the corporation whose assets are being used, as is the case with Mr. Zeliff, he may also be in violation of 2 U.S.C. § 441b(a) by consenting to the use of the corporate assets.

Respondents argue that the Commission should be satisfied with the fact that ultimately all of the invoices were paid.

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Moreover, they also assert that this Office has applied their payments to outstanding invoices in a manner which results in the respondents appearing to violate the Act when they have not. In making this argument respondents do not challenge that the Inn billed the Committee in 1989 and 1990 for $35,094.40.[12] Yet, the same documents used to compute the amount billed and submitted by respondents in response to discovery requests, together with the information provided by respondents in response to inquiries from this Office, provided the basis for the conclusion in the General Counsel's Brief that the payments were not timely made. Despite respondents arguments to the contrary, all the information submitted by them was used in the General Counsel's computations. The three partial prepayments made by the Candidate and the Committee were fully considered by this Office in its computations of payments made within a

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12. The breakdown of these billing charges by category is as follows:

Salaries	$ 5,865.30
Telephone use	5,557.66
Use of corporate vehicles	16,034.45
Office supplies	1,319.04
Postage	253.50
Food, beverages & related equip.	4,169.85
Newspapers	68.99
Materials for signs	478.02
Copying	447.00
Credit Card Charges	616.14
Undifferentiated payment	350.00
	35,159.95
	65.55
	$ 35,094.40

The amount of $65.55 was deducted from the total but no explanation was provided. A further breakdown of the billing for each category and payment schedules is contained in the General Counsel's Brief at 14-36

commercially reasonable time.[13]

Based on all the information received from respondents, the General Counsel's Brief listed the goods, equipment, and services according to the various categories of reimbursements involved and in light of the information available referencing the attribution of payments contained in the invoices provided by respondents. See General Counsel's Brief at 23-36. This type of breakdown was necessary in light of the fact that the normal and usual rental charge and the commercially reasonable time for payment differed with each equipment used and service rendered. Respondents fail to make these distinctions in their Brief, thus explaining their different computations.

Moreover, respondents challenge the accounting methods employed in the General Counsel's Brief as "bizarre and arbitrary." Respondents' Brief at 28-29. Yet, the lack of information from respondents resulted at times in undifferentiated reimbursements which were reconciled by this Office either based on other information available[14] or in the proration of payments in a manner consistent with other available evidence.[15] Despite their vehement objection to this

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13. For example, Mr. Zeliff's April 29, 1990 personal payment of $1,233.00 was applied against four telephone and telefax charges billed the Committee by the Inn between January 26, 1990 and April 30, 1990. Applying the commercially reasonable time for the payment of telephone and telefax charges of thirty days from the date the bill is received, resulted only in the amount of $674.56 not having been reimbursed within a commercially reasonable time.

14. See page 28, section 3 of the General Counsel's Brief.

15. See e.g., n. 17 of the General Counsel's Brief.

Office's accounting methods, respondents provide neither additional information to rebut this Office's calculations nor alternative accounting procedures.

With the exception of one billing incident, this Office did not challenge the prices used by the Corporation in billing the Committee or Mr. Zeliff for the various goods and services rendered. This office concluded that the Inn had undercharged the Committee for the cost of making 27,000 copies. On page 17 of their Brief, respondents object to this Office's challenge to that charge as reflected in the Inn's February 23, 1990, invoice. The invoice sets the cost of making copies at the amount by which the Corporation's maintenance agreement was exceeded by Mr. Zeliff's use of the equipment. Although Mr. Zeliff made payment of $397.00 for the copying charges pursuant to 11 C.F.R. § 114.9(a)(1), his use was not incidental and, therefore, the appropriate section to determine Mr. Zeliff's liability is 11 C.F.R. § 114.9(a)(2).

Unlike 11 C.F.R. § 114.9(a)(1), 11 C.F.R. § 114.9(a)(2) provides that when a shareholder's use of corporate equipment is more than occasional, isolated or incidental, reimbursement for its use is determined by the usual and normal charge which is defined as the price of those goods in the market from which they would have been purchased at the time of the contribution. See 11 C.F.R. § 100.7(a)(1)(iii)(B). Respondents incorrectly allege that the price used by this Office in ascertaining the cost of reproduction was determined by consulting a printing

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business in Washington D.C. See Respondents' Brief at 17, n. 10.

During the investigation, however, respondents provided no evidence of the usual and normal charge for reproduction other than the price charged by the Inn of $.10 per copy. As such, the cost for the additional 27,000 copies was established in the General Counsel's Brief by using the $.10 per copy rate used by the Inn in billing the Committee for making copies on another occasion at the rate of $.10 per copy. See General Counsel's Brief at 27-28. This computation resulted in a required reimbursement of $2,700.00 and an actual under-reimbursement of $2,300.00 ($2,700.00 minus $397.00, which was the amount billed by the Inn for the 27,000 copies). Id.

In their Brief, respondents for the first time provide evidence from a commercial vendor in Manchester, New Hampshire, to show that had Mr. Zeliff gone to a commercial vendor, he would have been charged $334.85 for 27,000 reproductions. Respondents' Brief at 17, and Attachment 2. Based on this recent information provided by respondents, this Office recommends that the Commission adjust its calculation of the cost for reproduction from $2,700.00, as originally calculated in the General Counsel's Brief, to $334.85. However, given the thirty-day standard payment period in the copying business, the payment was not made within a commercially reasonable time, thus resulting in a corporate contribution in the amount of $334.85

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and $50.00 (also an untimely payment) for a total of $384.85.[16]

As noted, supra, the Commission need not reach the issue of who may reimburse under the provisions of 11 C.F.R. § 114.9 (a) and (b) in resolving this matter. However, respondents raise some issues in this area which need clarification.[17] To justify the Committee's reimbursements to the Corporation under this section during the 1989-1991 timeframe, respondents rely on the FEC's 1992 Campaign Guide For Corporations And Labor

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16. While 11 C.F.R. § 100.7(a)(1)(3)(B) requires that the usual and normal charge be based on the local marketplace, no such limitation has been placed on determining a commercially reasonable time for reimbursement. Thus, this Office contacted a small Washington D.C. copying business to ascertain the commercially reasonable time for payment upon billing in the copying business and not to determine the normal and usual price for copying. See General Counsel's Brief at 27, n. 14. This contact confirmed a thirty-day payment period upon billing as standard throughout the copying business. This standard was exceeded by the Committee with both copying bills. We note although respondents contacted a commercial vendor in the Manchester area to established a normal and usual price for reproduction in the area different from that set by the Corporation in its billings to the Committee, they provided no evidence to rebut the thirty-day standard proposed by this Office. See Respondents' Brief, Attachment 2.

17. Respondents object to this Office's position that 11 C.F.R. § 114.9(a) permits only a volunteer shareholder or employee to reimburse a corporation for the use of its equipment and precludes a campaign committee from making the reimbursement. This is so because reimbursement by the Committee under the provisions of 11 C.F.R. § 114.9(a) results in an impermissible corporate contribution. Despite the fact that the 11 C.F.R. § 114.9(a) specifically refers to use and compensation by stockholders and shareholders, respondents argue the regulatory scheme does not contemplate such reimbursement limitation. Respondents' assertion, however, is questionable in light of the fact that each section of 11 C.F.R. § 114.9 provides for specific categories of use, with 11 C.F.R. § 114.9(d) proscribing the use or rental of corporate facilities by persons other than those mention in paragraphs (a) and (b) of the 11 C.F.R. § 114.9(a) and (b). I.e., shareholders and corporate employees.

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Organizations, which, they argue, expressly provides for either political committees or shareholders to make reimbursements. Respondents' Brief at 27. The section of the Guide cited by respondents, however, refers only to the question of when reimbursements will be considered contributions or expenditures under the definitional provisions of 11 C.F.R. § 100.7(a)(1)(iii)(A) and 11 C.F.R. § 100.8(a), and not to the question of who should make reimbursement. The section of Chapter 12 pertaining to the use of corporate facilities by employees, members, and stockholders does not state that committees are authorized to reimburse for the use of corporate facilities under the provisions of 11 C.F.R. § 114.9(a). On the contrary, the subparagraph in the Guide which explains the regulation's general rule, states, ". . . When use of the facilities is 'incidental,' the individual is only required to reimburse the organization for any increased overhead . . ." See 1992 Campaign Guide For Corporations And Labor Organizations at 48 (emphasis added). Likewise does the subparagraph in the Guide which discuses reimbursement states that when the individual exceeds incidental use of the facility, " . . . the individual must reimburse the corporation or labor organization for the cost of using the facility. Id. (emphasis added).[18]

Respondents also assert that "the General Counsel's

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18. It is interesting to note that the Guide in effect at the time of the reimbursements in question, however, was not the 1992 Guide but rather, the 1986 version which does not contain the definitional section alluded to by respondents in the 1992 Guide.

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Office never asked respondents whether the Inn regularly purchased its own supplies from the referenced stores or whether the Inn provided Federal Express services and newspapers to its guests." Respondents' Brief at 30. Failure on the part of the General Counsel's Office to ask into these matters, respondents claim, allowed this Office to conclude that the Inn advanced costs for certain supplies. Id. at 29-30. Respondents, however, have never presented evidence to the contrary in order to rebut the General Counsel's position on corporate advancements.[19] At the same time, respondents assert that all reimbursements to the Inn for the use of its facilities would be governed by 11 C.F.R. § 114.9, and not 11 C.F.R. § 116.3. See Respondents' Brief at 14-15 and n. 15. Reimbursements, however, for goods and services not rendered within the Corporation's ordinary course of business as a commercial vendor were examined in the General Counsel's Brief pursuant to the reimbursement scheme provided in 11 C.F.R. § 114.9. Consistent with the available evidence, the correct regulatory framework for reviewing those services provided by the Inn as a commercial vendor in the ordinary course of business is 11 C.F.R. § 116.3 (for activity prior to October 1990, 11 C.F.R. § 114.10 applies). All other Inn activity is

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19. The sum of $3,040.14 in corporate advances resulting from payments to third party vendors listed in the General Counsel's Brief (p. 31-32) and in violation of 2 U.S.C. § 441b is reduced by the $433.12 billed by the Jackson Corner Store. This correction is made because the Jackson Corner is part of the the Christmas Farm Inn, Inc. Accordingly, the sum of the corporate advances resulting from payments made to third party vendors is reduced to $2,607.02.

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subject to the provisions set out in 11 C.F.R. § 114.9.

The Inn also billed the Committee and was reimbursed in the sum of $5,865.00 for the secretarial services rendered to Mr. Zeliff by two corporate employees. Respondents argue that these secretarial services are reimburseable under the provisions of 11 C.F.R. § 114.9(a). Respondents' Brief at 30-31. Even if not reimburseable, respondents argue, there is no evidence that the Inn's secretaries were not volunteers. Id. (emphasis in original). Accordingly, they conclude, "11 C.F.R. § 114.9(a) permitted the Committee to accept Ms. Galluzzo's and Ms. Nelson's (the secretaries) services without any reimbursement so long as they were volunteers. . . ." Id.

Respondents' argument is predicated on a misreading of the regulation. The provisions of 11 C.F.R. 114.9(a) apply to the use of corporate facilities by corporate employees and shareholders and do not include the use of the paid services of the corporate employees. See Advisory Opinion 1984-24 (emphasis provided); see also Advisory Opinion 1984-37. The statutory scheme set out in 11 C.F.R. § 114.9(a) provides for the limited use of corporate facilities and for reimbursement in connection with the volunteer campaign activity of shareholders and employees.[20] Additionally, there is evidence that these employees were not volunteers--they were paid by the

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20. Respondents assert that this Office took a different position from that taken here in MUR 2185. The General Counsel's Report in MUR 2185 at page 5, however, concluded that work by clerical employees at the direction of Mr. Kenzie was not "individual volunteer activity" within the meaning of section 114.9(a)(1)."

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Committee for the secretarial services they provided to the Candidate. Moreover, as there is no evidence presented to date that the Inn provided secretarial services within the ordinary course of business, the provisions of 11 C.F.R. § 114.10 or 11 C.F.R. § 116 do not apply. Accordingly, the charges for secretarial services for $5,865.30 constitute corporate contributions in the form of advancements in violation of 2 U.S.C. § 441b.

On the issue of timeliness, respondents also object to the General Counsel's application of a thirty-day period as being a commercially reasonable time for certain corporate reimbursements under 11 C.F.R. § 114.9. They argue that this Office's use of the same time period to measure the timeliness of reimbursements in the various categories of goods and services provided by the Corporation is unreasonable.

The reason for listing in the General Counsel's Brief the various goods, services, and equipment for which the Committee and the Candidate reimbursed the Corporation in separate categories was twofold: each item listed has a different price, and the commercially reasonable time for payment for each item differs with each industry or business involved. In situations in which a corporation normally operates as a vendor of the specific goods and services involved, the Commission has compared billing and timing of payments accorded a political committee/customer with that accorded other customers of the same corporation. In situations in which a corporation does not normally provide the

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goods and services at issue, as when its facilities are used by volunteers, outside vendors who normally provide such goods or services are looked to for comparison. See e.g., MUR 1839, General Counsel's Report at 2. (". . . (T)he normal and usual market for postage is the United States Post Office and it requires contemporaneous payment for postage whether stamps are purchased or a postage meter is filled for a patron.").

It is only coincidentally that the commercially reasonable time for the various goods and services involved here was thirty days. The commercially reasonable time for payment of reproduction bills was determined to be thirty days from billing as confirmed by a local copying business. General Counsel's Brief at 27-28, n. 14. The commercially reasonable timing of the payment of telephone and telefax charges was determine to be thirty days as indicated in the standard billing statement for local telephone companies. Within the rental car business community, it is common practice for companies to require the use of a credit card and thus immediate payment, while some companies provide for a thirty-day payment period. General Counsel's Brief at 30, n. 16. In analyzing the reimbursements for the use of the Corporation's van and truck, this Office allowed for thirty days as oppose to applying the immediate payment standard. Id. 31-32. As to charges for food and beverages, which also included charges for various dinners, this Office accepted the representation made by respondents that the Inn's business includes food services. General Counsel's Brief at 34-35. Accordingly, these food

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service invoices from the Inn involved extensions of credit rather than reimbursements. As respondents provided no evidence that the Inn extended credit to its customers for food services in the ordinary course of business, a thirty-day period was applied to the benefit to respondents. General Counsel's Brief at 34-35.

Clearly, this Office had a reasonable basis for determining what is commercially reasonable time for the reimbursement of the various goods and services billed by the Corporation. Despite their objections to this Office's computations, to this day, respondents have failed to provide an alternative method of valuating commercially reasonable time. Rather, respondents persist in relying on the Commission's decision in MUR 3070 in proposing a 12 month for reimbursements for incorporated vendors. Respondents' Brief at 20.

In MUR 3070, the Commission addressed a complaint which alleged that outstanding debts owed a consulting firm for as much as two years after they had been incurred constituted in-kind corporate contributions to the political committee which has received the goods and services involved. The Commission found no reason to believe that a violation occurred because the corporation had "established a business relationship with the (committee) for consulting services provided in connection with the 1988 campaign . . . " and the terms of the relationship were "substantially similar to extensions of credit to nonpolitical debtors." The extension

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of credit was found to have been within the corporation's ordinary course of business.

The critical distinction between the Inn and the creditor in MUR 3070 is that the firm involved in MUR 3070 was a corporate vendor/creditor in the business of providing the consulting services at issue, whereas, with the exception of the food services, the Inn was not in the business of providing those services and equipment it provided to the campaign committee. Moreover, because it was a corporate vendor/creditor, the firm in MUR 3070 had an established business relationship with the committee and the terms of the relationship were substantially similar to extensions of credit to nonpolitical debtors. Such is not the case with the Inn.

Respondents recognize this and even concede that the consulting firm in MUR 3070, unlike the Inn, was a "commercial creditor" who was able to show its credit practices with other customers in order to establish its ordinary course of business. Respondents' Brief, n. 13. They further acknowledge that

> by contrast (to the firm in MUR 3070), the Inn was not providing the use of its facilities as a commercial vendor, for it is not a commercial vendor of corporate facilities. Rather, it is a country inn whose business is to provide quarters and food to temporary guests. Therefore, it has no precedent for being reimbursed for its facilities and cannot establish an ordinary course credit practices. Id.

4. Conclusion

Based on the analysis of particular categories of advances and reimbursements contained in the General Counsel's

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Brief at 14-36, the following corporate contributions were made to the Committee by the Corporation with the knowledge and consent of the Candidate:

Third party vendors	$ 2,607.02
Salaries	5,865.30
Telephone, Telefax	4,999.24
Copying	384.85
Undifferentiated payment	350.00
Vehicles	11,751.97
Food and Beverage	3,422.44
	$29,380.82

Corporations such as the Christmas Farm Inn, Inc. are permitted to make their facilities available for campaign use, but such use must be in conformity with the regulatory requirements of 11 C.F.R. § 114.9. According to the above discussion of the law, and based on all available information, there is probable cause to believe that: the Friends of Bill Zeliff Committee and its Treasurer violated 2 U.S.C. § 441b by knowingly accepting corporate contributions; the Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b by making corporate contributions to the Friends of Bill Zeliff Committee; and William H. Zeliff, Jr., violated 2 U.S.C. § 441b by consenting and knowingly accepting contributions from Christmas Farm Inn, Inc.

C. Failure to File 48 Hour Notices

1. Statement of the Law

A complete statement of the law is contained in the General Counsel's Brief In the Matter of Friends of Bill Zeliff Committee and its treasurer at pages 37-38.

On February 27, 1991, the Commission found reason to

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believe in MUR 3226 that the Friends of Bill Zeliff and its treasurer had violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to certain Candidate loans received prior to the September 11, 1990 New Hampshire primary election.[21] The Commission's reason to believe determination involved the Committee's failure to file required notices for two loans totaling $97,000.00 which it had received from the candidate. One loan was for $40,000.00 and was received on August 28, 1990, and a second loan in the amount of $57,000.00 was received on September 4, 1990. The Committee has not contested the Commission's finding.

2. Respondents' Argument

Respondents do not dispute that the Committee failed to timely file pursuant to 2 U.S.C. § 434(a)(6). Rather, they argue that the campaign was staffed by inexperienced volunteers who did not know that the corporate loans received by the Committee were subject to the provisions of 2 U.S.C. § 434(a)(6). Consequently, they propose the Commission take no further action with respect to 48-hour notice issues raised in this MUR. Respondents' Brief at 33-34.

3. Discussion and Conclusion

The reasons provided by respondents in their brief do

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21. Concurrently with its reason to believe finding, the Commission offered to enter into pre-probable cause conciliation. On April 5, 1991, counsel for the respondents requested that further proceedings be deferred in MUR 3226 until the Commission had acted in the present matter. Counsel also asked that the two matters be merged. On August 23, 1991 the Commission voted for merger of MUR 3226 with MUR 3191.

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not excuse respondents' responsibility to file. Accordingly, there is probable cause to believe that the Committee, and its treasurer, failed to comply with the reporting requirements of 2 U.S.C. § 434(a)(6).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

The proposed conciliation agreement with the Friends of Bill Zeliff Committee, and its treasurer

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IV. **RECOMMENDATIONS**

1. Ratify the determination to find reason to believe that the Friends of Bill Zeliff Committee and its treasurer[24] violated 2 U.S.C. § 441b.

2. Ratify the determination to find reason to believe that the Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b.

3. Ratify the determination to find reason to believe that William H. Zeliff, Jr. violated 2 U.S.C. § 441b.

4. Ratify the determination to find reason to believe that the Friends of Bill Zeliff Committee and its treasurer, violated 2 U.S.C. § 434(a)(6).

5. Ratify the determination to approve the Factual and Legal Analysis as recommended in the General Counsel's Report dated August 2, 1991.

6. Ratify the determination to approve the Factual and Legal Analysis attached to the General Counsel's Report dated September 10, 1991.

7. Ratify the determination to approve the Factual and Legal Analysis attached to the General Counsel's

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24. At the time of the Certification, John C. Naramore was the Committee treasurer. Robert D. Goodman is the present treasurer.

Report dated February 22, 1991.

8. Find probable cause to believe that the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 441b.

9. Find probable cause to belief that the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 434(a)(6).

10. Find probable cause to believe that Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b.

11. Find probable cause to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b by consenting to and knowingly accepting contributions from Christmas Farm Inn, Inc.

12. Approve the attached conciliation agreements and appropriate letters.

8/18/94
Date

LMNoble (JJ)
Lawrence M. Noble
General Counsel

Attachments:
1. Counsel's letter, dated January 25, 1994
2. Certifications (3)
3. Respondents' Brief
4. Conciliation Agreements (3)

Staff assigned: Maria C. Fernandez

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/MICHAEL C. KENNEY
COMMISSION SECRETARY

DATE: AUGUST 26, 1994

SUBJECT: MUR 3191 - GENERAL COUNSEL'S REPORT DATED AUGUST 18, 1994.

The above-captioned document was circulated to the Commission on Monday, August 22, 1994 at 11:00.

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

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for Tuesday, September 13, 1994.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3191
Christmas Farm Inn, Inc.;	)	
Friends of Bill Zeliff Committee	)	
and Robert D. Goodman, as	)	
treasurer; and	)	
William H. Zeliff, Jr.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 13, 1994, do hereby certify that the Commission took the following actions in MUR 3191:

1. Decided by a vote of 5-0 to

   a) Ratify the determination to find reason to believe that the Friends of Bill Zeliff Committee and its treasurer, violated 2 U.S.C. § 441b.

   b) Ratify the determination to find reason to believe that the Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b.

   c) Ratify the determination to find reason to believe that William H. Zeliff, Jr. violated 2 U.S.C. § 441b.

(continued)

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d) Ratify the determination to find reason to believe that the Friends of Bill Zeliff Committee and its treasurer, violated 2 U.S.C. § 434(a)(6).

e) Ratify the determination to approve the Factual and Legal Analysis as recommended in the General Counsel's Report dated August 2, 1991.

f) Ratify the determination to approve the Factual and Legal Analysis attached to the General Counsel's Report dated September 10, 1991.

g) Ratify the determination to approve the Factual and Legal Analysis attached to the General Counsel's Report dated February 22, 1991.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself from MUR 3191 and was not present during its consideration.

2. Decided by a vote of 5-0 to

a) Find probable cause to believe that the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 441b.

(continued)

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b) Find probable cause to believe that the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 434(a)(6).

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself from MUR 3191 and was not present during its consideration.

3. Decided by a vote of 5-0 to find probable cause to believe that Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b with respect to the loans at issue in this matter.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself from MUR 3191 and was not present during its consideration.

4. Decided by a vote of 4-1 to find probable cause to believe that Christmas Farm Inn, Inc. violated 2 U.S.C. § 441b with regard to the advances.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Elliott dissented. Commissioner Potter recused himself from MUR 3191 and was not present during its consideration.

(continued)

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5. Failed in a vote of 3-2 to pass a motion to find probable cause to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b by consenting to and knowingly accepting contributions from Christmas Farm Inn, Inc.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion. Commissioners Aikens and Elliott dissented. Commissioner Potter recused himself from MUR 3919 and was not present during its consideration.

6. Decided by a vote of 5-0 to

a) Approve the conciliation agreement with the Christmas Farm Inn, Inc.

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(continued)

b) Approve the conciliation agreement with the Friends of Bill Zeliff and Robert D. Goodman, as treasurer

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself with respect to MUR 3191 and was not present during its consideration.

Attest:

9-14-94
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1994

Mr. Jan W. Baran, Esq.
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington D.C. 20463

RE: MUR 3191; Christmas Farm Inn, Inc.; Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer; and William H. Zeliff, Jr.

Dear Mr. Baran:

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. granted. 114 S.Ct. 2703 (1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While awaiting the Supreme Court's consideration of the Commission's appeal, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On September 13, 1994, the Commission ratified its prior finding of reason to believe that your client, Congressman William H. Zeliff, Jr., violated 2 U.S.C. § 441b. On that same day, the Commission considered whether there is probable cause to believe that your client violated 2 U.S.C. § 441b by consenting to and knowingly accepting contributions from the Christmas Farm Inn, Inc. There was an insufficient number of votes for a finding of probable cause to believe as to your client. Accordingly, the file in this matter has been closed as it pertains to Congressman Zeliff. The Statement of Reasons explaining the Commission's action will be forthcoming.

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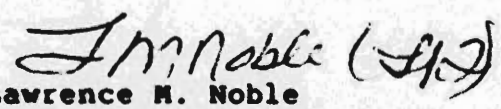
The file will be made part of the public record within 30 days after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

If you have any questions, please contact Maria C. Fernandez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1994

Mr. Jan W. Baran, Esq.
Wiley, Rein and Fielding
1776 K. Street, N.W.
Washington D.C. 20006

RE: MUR 3191; Christmas Farm Inn, Inc.; Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer; and William H. Zeliff, Jr.

Dear Mr. Baran:

On August 13, 1991, the Federal Election Commission found that there is reason to believe your client, the Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended (the Act).

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. granted. 114 S.Ct. 2703 (1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While awaiting the Supreme Court's consideration of the Commission's appeal, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On September 13, 1994, the Commission ratified its prior findings of reason to believe in this matter, and found there is probable cause to believe your client, the Christmas Farm Inn., Inc., violated 2 U.S.C. § 441b. The Commission found your client violated this provision of the Act by making loans to William H. Zeliff, Jr., the candidate, and by permitting him and the Friends of Bill Zeliff Committee the use of other corporate assets in support of Mr. Zeliff's 1990 campaign for the United States House of Representatives.

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The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Maria C. Fernandez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

LM Noble (MF)

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1994

Mr. Jan W. Baran, Esq.
Wiley, Rein and Fielding
1776 K Street N.W.
Washington D.C. 20006

RE: MUR 3191; Christmas Farm Inn, Inc.; Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer; and William H. Zeliff, Jr.

Dear Mr. Baran:

On February 27, 1991 and on August 13, 1991, the Federal Election Commission found that there is reason to believe your clients, Friends of Bill Zeliff Committee and Robert K. Goodman, as treasurer, violated 2 U.S.C. § § 434(a)(6) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the Act).

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. granted. 114 S.Ct. 2703 (1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While awaiting the Supreme Court's consideration of the Commission's appeal, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On September 13, 1994, the Commission ratified its prior findings of reason to believe in this matter, and found that there is probable cause to believe your clients, the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, violated 2 U.S.C. § 441b and 2 U.S.C. § 434(a)(6) of the Act. The Commission found that the Committee and its treasurer violated 2 U.S.C. § 441b by knowingly accepting loans made with funds obtained from the

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Christmas Farm Inn, Inc., and by using other assets of the Christmas Farm Inn, Inc., to support the 1990 campaign of William H. Zeliff for the United States House of Representatives. The Commission also found the Committee and its treasurer violated 2 U.S.C. § 434(a)(6) by failing to file 48 hour reports with regard to the loans made from funds obtained from the Christmas Farm Inn, Inc.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Maria C. Fernandez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

LM Noble (MF)

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph F. Keefe, Esq.
Nixon, Hall and Hess
Attorneys at Law
80 Merrimack Street
Manchester, New Hampshire 03101

RE: MUR 3191

Dear Mr. Keefe:

This is in reference to the complaint you filed on behalf of your Committee with the Federal Election Commission on November 26, 1991, against William H. Zeliff, Jr., in his individual capacity. Your complaint also named the Friends of Bill Zeliff Committee and its treasurer as respondents. This letter only addresses Mr. Zeliff individually.

Based on the complaint, the Commission found that there was reason to believe that Mr. Zeliff violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation in the matter. An investigation was initiated into matters raised by your complaint.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. granted. 114 S.Ct. 2703 (1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While awaiting the Supreme Court's consideration of the Commission's appeal, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On September 13, 1994, the Commission ratified its prior findings of reason to believe in this matter as to Mr. Zeliff and the other respondents.

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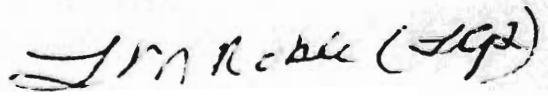
After the investigation was conducted and the General Counsel's and the respondent's briefs were considered, on September 13, 1994, the Commission considered whether there is probable cause to believe that William H. Zeliff violated 2 U.S.C. 441b by consenting to and knowingly accepting contributions from the Christmas Farm Inn, Inc. There was an insufficient number of votes for a finding of probable cause to believe that Mr. Zeliff violated the aforementioned section of the Act. The Statement of Reasons explaining the Commission's action will be forthcoming.

The file in this matter has been closed as it pertains to Mr. Zeliff only. This matter will become part of the public record within 30 days after it has been closed with respect to all other respondents involved. The matters involving the other respondents still remain under the enforcement authority of the Commission. The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect until the entire matter is closed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action as against Mr. Zeliff. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Maria C. Fernandez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
Jun 15 9 15 AM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Christmas Farm Inn, Inc., and	)	MUR 3191
Friends of Bill Zeliff	)	

GENERAL COUNSEL'S REPORT **SENSITIVE**

I. **BACKGROUND**

Attached is a conciliation agreement, signed by Jan W. Baran, counsel of record for Respondents, the Christmas Farm Inn, Inc., and Friends of Bill Zeliff, and submitted on behalf of his clients. The agreement that was signed is identical to the agreement that was forwarded to Respondents.

In light of these considerations and Respondents' willingness to accept the

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$30,000.00 civil penalty approved by the Commission, this Office recommends that the Commission accept the signed conciliation agreement and close the file in this matter.

II. **RECOMMENDATIONS**

1. Accept the attached conciliation agreement with Christmas Farm Inn, Inc., and Friends of Bill Zeliff.
2. Close the file.
3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

6/15/95
Date

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

Attachments
Conciliation Agreement

Staff Assigned: Maria C. Fernandez

95043662535

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Christmas Farm Inn, Inc.;	)	MUR 3191
Friends of Bill Zeliff.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 20, 1995, the Commission decided by a vote of 5-0 to take the following actions in MUR 3191:

1. Accept the conciliation agreement with Christmas Farm Inn, Inc., and Friends of Bill Zeliff, as recommended in the General Counsel's Report dated June 15, 1995.

2. Close the file.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated June 15, 1995.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself from this matter and did not cast a vote.

Attest:

6-20-95
Date

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

Received in the Secretariat: Thurs., June 15, 1995 9:15 a.m.
Circulated to the Commission: Thurs., June 15, 1995 11:00 a.m.
Deadline for vote: Tues., June 20, 1995 4:00 p.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1995

Mr. Jan Witold Baran, Esquire
Wiley, Rein and Fielding
1776 K. Street, N.W.
Washington, D.C. 20006

RE: MUR 3191, Christmas Farm Inn, Inc. and the Friends of Bill Zeliff Committee

Dear Mr. Baran:

Please forward to your client, Congressman Zeliff, the enclosed letter which informs him that the above-captioned matter has been closed and that the confidentiality provision at 2 U.S.C. § 437g(a)(12) no longer apply.

I enjoyed meeting with you and working together in the resolution of this case. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Maria C. Fernandez
Enforcement Attorney

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 26, 1995

The Honorable William H. Zeliff, Jr.
1210 Longworth Building
House Office Building
Washington, D.C 20515

RE: MUR 3191

Dear Representative Zeliff:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact your attorney directly.

Sincerely,

Maria C. Fernandez
Enforcement Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joseph F. Keefe, Esquire
Nixon, Hall and Hess
Attorneys at Law
80 Merrimack Street
Manchester, New Hampshire 03101

RE: MUR 3191

Dear Mr. Keefe:

This is in reference to the complaint you filed with the Federal Election Commission on November 26, 1991, concerning the Friends of Bill Zeliff Committee and the Christmas Farm Inn, Inc.

After conducting an investigation in this matter, the Commission found that there was probable cause to believe that the Friends of Bill Zeliff Committee violated 2 U.S.C. § 441b and 2 U.S.C. § 434(a)6 and that the Christmas Farm Inn, Inc., violated 2 U.S.C. § 441b, provisions of the Federal Election Campaign Act of 1971, as amended. On June 20, 1995, a conciliation agreement signed by the respondents was accepted by the Commission, thereby concluding the matter. Accordingly, the Commission closed the file in this matter on the same. A copy of this agreement is enclosed for your information.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Maria C. Fernandez
Enforcement Attorney

Enclosure
Conciliation Agreement

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1995

Mr. Jan Witold Baran, Esquire
Wiley, Rein and Fielding
1776 K. Street, N.W.
Washington, D.C. 20006

RE: MUR 3191, Christmas Farm Inn, Inc. and the Friends of Bill Zeliff Committee

Dear Mr. Baran:

On June 20, 1995, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, the Friends of Bill Zeliff committee and the Christmas Farm Inn, Inc. The conciliation agreement is in settlement of violations of 2 U.S.C. § 441b and 2 U.S.C. § 434(a)(6) by the Friends of Bill Zeliff committee and a violation of 2 U.S.C. § 441b by the Christmas Farm Inn, Inc., provisions of the Federal Election Campaign Act of 1971, as amended (the Act). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Maria C. Fernandez
Enforcement Attorney

Enclosure
Conciliation Agreement

9504366254 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Christmas Farm Inn, Inc., and	)	MUR 3191
Friends of Bill Zeliff	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Keefe for Congress 1990 Committee. An investigation was conducted, and the Federal Election Commission (the Commission) found probable cause to believe that the Friends of Bill Zeliff and Robert D. Goodman as its treasurer (the Committee) violated 2 U.S.C. § 441b and 2 U.S.C. § 434(a)(6), and that the Christmas Farm Inn, Inc. (the Inn) violated 2 U.S.C. § 441b. The Committee and the Inn are the Respondents.

NOW, THEREFORE, the Commission and Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding.

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

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

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

1. The Friends of Bill Zeliff (the Committee) is a political committee within the meaning of 2 U.S.C. § 431(4). This committee was the authorized committee of William H. Zeliff, Jr.

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during his 1989-90 campaign for the United States House of Representatives.

2. James T. Spinnler is the treasurer of the Friends of Bill Zeliff committee.

3. Christmas Farm Inn (the Inn) is a business entity incorporated in the State of New Hampshire.

4. During 1989 and 1990, William H. Zeliff, Jr., was the president of the Inn and Chairman of its Board of Directors as well as a director and principal stockholder and a candidate for the United States House of Representatives from New Hampshire.

5. Prior to its incorporation, Christmas Farm Inn and all of its assets were owned as proprietorship by Mr. Zeliff and his wife, Sydna. Christmas Farm Inn is now a Chapter S corporation.

6. 2 U.S.C. § 441b(a) prohibits a political committee from knowingly accepting contributions from any corporation in connection with an election to federal office.

7. 2 U.S.C. § 441b(a) prohibits any corporation whatever from making a contribution in connection with an election to federal office.

8. 2 U.S.C. § 441b(b)(2) defines "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money . . . or anything of value . . . in connection with any election" to federal office.

9. 11 C.F.R. § 114.9(a)(1) provides that stockholders and employees of a corporation may make "occasional, isolated, or incidental use" of that corporation's facilities "for individual

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volunteer activity in connection with a Federal election" and reimbursement must be made to the corporation to the extent that the operating costs or overhead of the corporation are increased. Pursuant to 11 C.F.R. § 114.9(a)(2), if stockholders or employees make more than occasional, isolated or incidental use of corporate facilities, reimbursement must be made to the corporation "within a commercially reasonable time for the normal and usual charge . . . for the use of such facilities."

10. 11 C.F.R. § 114.9(d) permits persons, including political committees, who are not stockholders or employees to use corporate facilities such as telephones, typewriters or furniture in connection with a federal election, as long as the corporation is reimbursed for the use of these facilities "within a reasonable time" for "the normal and usual rental charge . . . for the use of the facilities."

11. 11 C.F.R. § 114.9(e)(2) requires that a candidate, candidate's agent, or other person traveling on behalf of a candidate who uses a means of transportation, other than an airplane, owned or leased by a corporation must reimburse the corporation for such use "within a commercially reasonable time . . . at the normal and usual rental charge."

12. 11 C.F.R. § 116.3 and former 11 C.F.R. § 114.10 permit corporations to extend credit to political committees, but only if the credit is extended in the ordinary course of the corporation's own business and provided that the terms of the extension are substantially similar to those granted nonpolitical debtors.

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13. 11 C.F.R. § 110.10 defines a candidate's personal funds as any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title, or an equitable interest.

14. 2 U.S.C. § 434(a)(6)(A) requires principal campaign committees of federal candidates for the U.S. House of Representatives to notify in writing the Clerk of the House or the Commission, as appropriate, and the Secretary of State, of each contribution totaling $1,000.00 or more received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election.

15. William H. Zeliff, Jr. made $216,000.00 in loans to the Friends of Bill Zeliff in 1989 and 1990. Of this amount, $209,000.00 was obtained by Mr. Zeliff from draws against the Inn's corporate funds.

16. The Inn recorded the $209,000.00 in draws as loans to Mr. Zeliff. Mr. Zeliff make a payment of $10,000.00 to the Inn on May 12, 1991, and paid the remaining balance owed on the loans on April 29, 1994.

17. Of the $209,000.00 in loans, the Committee has repaid $143,000.00 to Mr. Zeliff. The Committee made the first payment to Mr. Zeliff on February 20, 1990, and the most recent payment was made on November 20, 1994.

18. Between July 28, 1989 and December 17, 1990, the Inn billed the Committee for a total of $35,094.40 in goods and services which had been supplied by, or paid for by, the Inn.

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19. Pursuant to 11 C.F.R. § 114.9(a)(2) and 11 C.F.R. § 114.9(d), the Inn must be reimbursed within a commercially reasonable time for the use of its telephone and telefax machines if the use was not occasional, isolated or incidental. Mr. Zeliff and the Committee reimbursed the Inn for a total of $5,557.66 in telephone and telefax charges. Mr. Zeliff reimbursed the Inn for $1,795.42, and the Committee repaid the remaining $3,762.24.

20. It is the Commission's finding that the commercially reasonable time for payment of telephone and telefax bills is thirty days. Of the $1,795.42 reimbursed by Mr. Zeliff, $1,236.78 was paid more than thirty days after the charges were billed to the Committee. The payment of $3,762.46 by the Committee was made more than thirty days after the charges were billed by the Inn.

21. Pursuant to 11 C.F.R. § 114.9(a)(2) and 11 C.F.R. § 114.9(d), the Inn must be reimbursed within a commercially reasonable time at the normal and usual rental charge for the use of its copier if the use is not occasional, isolated or incidental. Mr. Zeliff reimbursed the Inn for two charges of $50.00 and $397.00 for use of the Corporation's copier. The payment of $397.00 did not represent a normal and usual charge for the services received. Evidence developed during the investigation reveals that the normal and usual charge is $334.85.

22. It is the Commission's finding that the commercially reasonable time for payment of copying bills is thirty days. The two payments made for the use of the copier were made more than thirty days after the charges were billed by the Inn.

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23. Pursuant to 11 C.F.R. § 114.9(e)(2), the Inn must be reimbursed within a commercially reasonable time for the costs of the use of the Inn's vehicles. Mr. Zeliff and the Committee reimbursed the Inn for the use of the Inn's vehicles in the amount of $16,034.24.

24. It is the Commission's finding that the commercially reasonable time for payment of bills for rental of vehicles is usually a maximum of thirty days. Of the $16,034.24 reimbursed to the Inn by Mr. Zeliff and the Committee for use of the Inn's vehicles, at least $11,751.97 was paid more than thirty days after the charges were billed by the Inn.

25. The Committee made payment to the Inn for the undifferentiated charge of $350.00 for "copies, faxes, phone calls, postage, stationery, and supplies." It is the Commission's finding that reimbursement for these items was not made within a commercially reasonable time.

26. Mr. Zeliff and the Committee made at least $2,607.02 in reimbursements to the Inn for payments made by the Inn to third party vendors on behalf of the Committee. The Commission's finding is that these charges did not involve the use of the Inn's own facilities, nor did the Inn pay these types of charges for its customers in the ordinary course of business pursuant to 11 C.F.R. § 116.3 and 11 C.F.R. § 114.10. Thus, the Commission considers these charges as corporate advances made on behalf of the Committee.

27. The Committee made $5,865.30 in reimbursements to the Inn for payments of secretaries' salaries. The Commission's

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finding is that the use of the paid services of a secretary is not included within the use of corporate facilities by a stockholder permitted by 11 C.F.R. § 114.9(a). The Commission's finding is that the Inn did not extend credit for, or provide, secretarial services to its customers in the ordinary course of business pursuant to 11 C.F.R. § 116.3 and former 11 C.F.R. § 114.10. Thus, the Commission considers these charges as corporate advances made on behalf of the Committee.

28. Pursuant to 11 C.F.R. § 116.3 and former 11 C.F.R. § 114.10, the Inn, as a vendor of food and beverages, could extend credit for such goods and services to the Committee provided that such extension was on terms substantially similar to those extended to nonpolitical debtors. Mr. Zeliff and the Committee made $4,169.85 in reimbursements to the Inn for the costs of food and beverages. The Commission's finding is that the Inn generally required payment from its nonpolitical debtors in thirty days. Of the $4,169.85 reimbursed to the Inn by Mr. Zeliff and the Committee, at least $3,422.44 was paid more than thirty days after the charges were billed by the Inn.

29. As a result of the above transactions, it is the Commission's finding that the Committee accepted the following corporate advances for the Inn:

Telephone, telefax	-	$ 4,999.02
Copying	-	384.85
Undifferentiated payment	-	350.00
Vehicles	-	11,751.97
Third-party vendors	-	2,607.02
Secretarial services	-	5,865.30
Food and beverages	-	3,422.44
Total	-	$29,380.82

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30. Respondents failed to file 48 hour reports with regard to two loans totaling $97,000.00 received from the Candidate, but the Committee reported the loans on its October 15, 1990, Quarterly Report which covered the period the period August 23, 1990 through September 30, 1990. These loans included one in the amount of $40,000.00 received on August 28, 1990, and a second in the amount of $57,000.00 received on September 4, 1990.

V. The Committee accepted $209,000.00 in loans and $29,380.82 in advances from the Inn in violation of 2 U.S.C. § 441b.

VI. Respondents failed to file two 48 hour reports, in violation of 2 U.S.C. § 434(a)(6).

VII. The Committee and Christmas Farm Inn have consistently asserted that no violation of law has occurred because: (i) Congressman Zeliff equitably owned, had a legal right of access to, and controlled all Inn assets used by the Committee and use of the assets was permissible as personal funds pursuant to 11 C.F.R. § 110.10; (ii) had the Committee used the assets of a proprietorship, which the Inn was prior to its incorporation, the assets would have been personal funds of Congressman Zeliff under Commission regulations and his decision to incorporate the Inn for liability purposes did not alter his rights to uses the same assets; (iii) the Inn invoiced the Committee for the fair market value of every use of its facilities and the Committee fully

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reimbursed the Inn in a commercially reasonable time; and (iv) neither the Federal Election Campaign Act of 1971, as amended, nor Commission regulations contain a "thirty-day" rule" for reimbursements.

VIII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Thirty Thousand Dollars ($30,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

XI. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral,

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

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

Date 6/23/95

FOR THE RESPONDENT:

Jan Witold Baran
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000
Attorneys for Christmas Farm Inn, Inc., and Friends of Bill Zeliff

Date June 6, 1995

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3191

DATE FILMED 7/27/95 CAMERA NO. 1

CAMERAMAN EES

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 7/28/95

✓ Microfilm

_____ Public Records

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THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3191

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RECEIVED
FEDERAL ELECTION
COMMISSION
ACCOUNTING
Jul 26 9 28 AM '95

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

July 25, 1995

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

Re: MUR 3191, Christmas Farm Inn, Inc.
and the Friends of Bill Zeliff Committee

Dear Ms. Fernandez:

Enclosed please find a check in the amount of $30,000 in full payment of the civil penalty in the above captioned matter.

Sincerely,

Jan Witold Baran

Encl.
cc: The Hon. Bill Zeliff

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1087

FRIENDS OF BILL ZELIFF '96
P.O. BOX 818
MANCHESTER, NH 03105-0818

July 24 19 95

54-153/114

PAY TO THE ORDER OF U.S. Treasury $ *30,000.00*

Thirty Thousand ********** 00/100 DOLLARS

First NH Bank

FOR

⑈001087⑈ ⑆011401533⑆ 150000316338⑈

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Fernandez

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 26, 1995

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton
Accounting Technician

SUBJECt: Account Determination for Funds Received

We recently received a check from Friends of Bill Zeliff '96, check number 1087, dated July 24, 1995, and in the amount of $30,000.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC, Docket By aa

In reference to the above check in the amount of $30,000.00, the MUR number is 3191 and in the name of Christmas Farm Inn, Inc. The account into which it should be deposited is indicated below:

__ Budget Clearing Account (OGC), 95F3875.16

✓ Civil Penalties Account, 95-1099.160

__ Other: _____

Anita Alexander
Signature

7-26-95
Date

9504364389

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

Date: 9/13/95

✓ Microfilm

_____ Public Records

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3191

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Surina
General Counsel Noble
Assistant General Counsel Convery
Press Officer Harris

FROM: Marjorie W. Emmons/Bonnie J. Ross
Secretary of the Commission

DATE: September 13, 1995

SUBJECT: Statement of Reasons for MUR 3191

Attached is a copy of the Statement of Reasons in MUR 3191 signed by Commissioners Aikens and Elliott. This was received in the Commission Secretary's Office on Wednesday, September 13, 1995 at 2:43 p.m.

Attachment

9504368509 96

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTIONS COMMISSION

In the Matter of	)	
	)	MUR 3191
Christmas Farm Inn, Inc.	)	
	)	
Friends of Bill Zeliff	)	

STATEMENT OF REASONS

Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott

On September 13, 1994, the Commission declined by a vote of 3-2 to find probable cause to believe that William H. Zeliff, Jr., violated 2 U.S.C. § 441b, by consenting to and knowingly accepting contributions from Christmas Farm Inn, Inc. On that same date the Commission approved probable cause to believe findings against the Friends of Bill Zeliff Committee and Robert D. Goodman, as treasurer, and against the Christmas Farm Inn, Inc., for violating 2 U.S.C. § 441b.

By way of background, the General Counsel's report dated August 19,1994, provides:

> the Christmas Farm Inn, Inc. is a New Hampshire corporation composed of three local businesses: Christmas Farm Inn, a country inn; Yesterday's Restaurant, which is located at the Inn; and the Jackson Corner Store, located in the vicinity of the Inn. Mr. Zeliff and his wife incorporated their businesses in 1977, and in so doing, transferred their personal interest in the Christmas Farm Inn, the restaurant, the store and in all the furnishings and equipment to the newly created corporation known as Christmas Farm Inn, Inc. According to information provided by Kenneth Kaslow, bookkeeper for the Corporation, from January 1989 through the 1990 election timeframe, Mr. Zeliff and his wife, Sydna T. Zeliff, were the only shareholders, directors and officers of the Corporation. The Corporation elected Chapter S tax status pursuant to the Internal Revenue Code. 26 U.S.C. §§ 1361-1379.

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against Christmas Farm Inn, Inc. for making the contributions would produce an inequitable result. Mr. Zeliff, in his capacity as sole shareholder2/ of Christmas Farm Inn, Inc., would suffer the civil penalty imposed against Christmas Farm Inn, Inc. for making contributions to himself. Mr. Zeliff, in his capacity as candidate, would also suffer a civil penalty for accepting a contribution from himself.

In order to prevent such a result, we declined to find probable cause to believe that Mr. Zeliff consented to and knowingly accepted contributions from Christmas Farm Inn, Inc.

9-12-95
Date

Joan D. Aikens
Joan D. Aikens

9-12-95
Date

Lee Ann Elliott
Lee Ann Elliott

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2/ Mr. Zeliff is presumed to be sole shareholder because under the Internal Revenue Code, husbands and wives are treated as one shareholder. See n. 1.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

Date: 9/13/95

✓ Microfilm

_____ Public Records

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3191

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Surina
General Counsel Noble
Assistant General Counsel Convery
Press Officer Harris

FROM: Marjorie W. Emmons/Bonnie J. Ross
Secretary of the Commission

DATE: September 13, 1995

SUBJECT: Statement of Reasons for MUR 3191

Attached is a copy of the Statement of Reasons in MUR 3191 signed by Commissioners Aikens and Elliott. This was received in the Commission Secretary's Office on Wednesday, September 13, 1995 at 2:43 p.m.

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

BEFORE THE FEDERAL ELECTIONS COMMISSION

In the Matter of	)	
	)	MUR 3191
Christmas Farm Inn, Inc.	)	
	)	
Friends of Bill Zeliff	)	

STATEMENT OF REASONS

Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott

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By way of background, the General Counsel's report dated August 19,1994, provides:

> the Christmas Farm Inn, Inc. is a New Hampshire corporation composed of three local businesses: Christmas Farm Inn, a country inn; Yesterday's Restaurant, which is located at the Inn; and the Jackson Corner Store, located in the vicinity of the Inn. Mr. Zeliff and his wife incorporated their businesses in 1977, and in so doing, transferred their personal interest in the Christmas Farm Inn, the restaurant, the store and in all the furnishings and equipment to the newly created corporation known as Christmas Farm Inn, Inc. According to information provided by Kenneth Kaslow, bookkeeper for the Corporation, from January 1989 through the 1990 election timeframe, Mr. Zeliff and his wife, Sydna T. Zeliff, were the only shareholders, directors and officers of the Corporation. The Corporation elected Chapter S tax status pursuant to the Internal Revenue Code. 26 U.S.C. §§ 1361-1379.

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Disclosure reports filed with the Commission indicate that Mr. Zeliff made loans totaling $216,000.00 to the Friends of Bill Zeliff Committee during the 1989-1990 election cycle. According to the information provided in response to the complaint, $209,000.00 of the $216,000.00 consisted of funds from the Inn's corporate account.

In determining appropriate civil penalties in this matter, we note that S Corporations1/ enjoy the pass through of income provisions of the Internal Revenue Code. "This means that S corporations do not recognize income on a distribution of money to a stockholder or partner." Id. at p. 517. As a prerequisite to such nonrecognition treatment, the transferor or transferors of property to an S corporation must be in "control" of the corporation. "Control is defined as the ownership of at least 80% of the total combined voting power of stock in the corporation and at least 80% of the total non-voting shares." Id. at p. 496. Additionally, the requirement that S corporations have no more than one class of stock "is designed to insure that each shareholder of an S corporation has the same proportionate interest in each item of income, loss, deduction and credit." Id. at p. 491.

Because of these provisions, which are unique to subchapter S corporations, the assessment of a civil penalty against Mr. Zeliff for consenting to and knowingly accepting contributions from Christmas Farm Inn, Inc. and

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1/The Report notes that:

> A corporation will be treated as an S corporation only if the corporation qualifies as a "small business corporation" and makes a timely election to be so treated. A small business corporation is any domestic corporation that has 35 or fewer shareholders (treating a husband and wife as one shareholder), that has as a shareholder a person who is an individual or a qualified estate or trust, that has outstanding only one class of stock, that does not have a nonresident alien as a shareholder, and that is not an ineligible corporation. Corporations ineligible to be S corporations are those that are members of an affiliated group, banks and saving and loan associations, insurance companies, possessions corporations, DISCs and former DISCs, and RICs, REITs, and REMICs.

"Report on the Comparison of S Corporations and Partnerships Part I," The Tax Lawyer, Vol. 44, No. 2, Winter 1991, p. 490 (footnotes omitted).

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against Christmas Farm Inn, Inc. for making the contributions would produce an inequitable result. Mr. Zeliff, in his capacity as sole shareholder2/ of Christmas Farm Inn, Inc., would suffer the civil penalty imposed against Christmas Farm Inn, Inc. for making contributions to himself. Mr. Zeliff, in his capacity as candidate, would also suffer a civil penalty for accepting a contribution from himself.

In order to prevent such a result, we declined to find probable cause to believe that Mr. Zeliff consented to and knowingly accepted contributions from Christmas Farm Inn, Inc.

9-12-95
Date

Joan D. Aikens
Joan D. Aikens

9-12-95
Date

Lee Ann Elliott
Lee Ann Elliott

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2/ Mr. Zeliff is presumed to be sole shareholder because under the Internal Revenue Code, husbands and wives are treated as one shareholder. See n. 1.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 10/2/95

✓ Microfilm

_____ Public Records

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3191

95043692220

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 29, 1995

Mr. Jan Witold Baran, Esquire
Wiley, Rein and Fielding
1776 K. Street, N.W.
Washington, D.C. 20006

RE: MUR 3191, William H. Zeliff

Dear Mr. Baran:

Enclosed please find a Statement of Reasons from Vice Chairman Lee Ann Elliott and Commissioner Joan D. Aikens explaining their vote. This document will be placed on the public record as part of the file of MUR 3191.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Maria C. Fernandez
Enforcement Attorney

Enclosure
Statement of Reasons

9504369221

Celebrating the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 29, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joseph F. Keefe, Esquire
Nixon, Hall and Hess
Attorneys at Law
80 Merrimack Street
Manchester, New Hampshire 03101

RE: MUR 3191

Dear Mr. Keefe:

By letter dated September 23, 1994, the Office of the General Counsel informed you of the determination made with respect to the complaint filed by you as it pertained to William H. Zeliff. In that letter, you were informed that the matter had gone before the Commission but there was an insufficient number of votes for a finding of probable cause to believe that Mr. Zeliff violated the 2 U.S.C. § 441b by consenting to and knowingly accepting contributions from the Christmas Farm Inn, Inc. You were also informed in that letter that a Statement of Reasons explaining the Commission's action would follow when the entire matter closed.

Enclosed please find a Statement of Reasons from Vice Chairman Lee Ann Elliott and Commissioner Joan D. Aikens explaining their vote. This document will be placed on the public record as part of the file of MUR 3191.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Maria C. Fernandez
Enforcement Attorney

Enclosure
Statement of Reasons

Celebrating the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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