



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3274

DATE FILMED 10/12/91 CAMERA NO. 2

CAMERAMAN AS

91040865240

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 29 March 1991

ANALYST: JACK MACDONALD

I. COMMITTEE:

Committee to Elect James
McClure Clarke to Congress
(C00141374)
James H. Lee, Treasurer (2/10/89-Present)
John B. Fisher, Treasurer
(1/12/88-2/10/89)
P.O. Box 7434
Asheville, NC 28802

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 Committee to Elect James McClure Clarke to Congress ("the Committee") has failed to file the required Forty-Eight (48) Hour Notifications ("48-Hour Notices") for two (2) contributions and one (1) loan totaling \$27,000 received prior to the 1990 General Election.

The candidate was involved in the 1990 General Election held on November 6, 1990. Prior Notice was sent to the Committee on October 1, 1990 (Attachment 2). The Notice includes a section titled "Last-Minute Contributions". This section reads "Committees must also file special notices if contributions of \$1,000 or more are received during the period of October 18 through November 3, 1990. The notices must reach the appropriate Federal and State offices within 48 hours of the committee's receipt of the contributions."

Schedules A and C of the 30 Day Post-General Report indicate that the Committee failed to file three (3) 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:

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COMMITTEE TO ELECT JAMES MCCLURE CLARKE TO CONGRESS
REPORTS ANALYSIS OGC REFERRAL
PAGE 2

<u>Contributor Name</u>	<u>Date</u>	<u>Amount</u>
Champion International Corp. Political Action Committee	10/30/90	\$1,000
U.A. Political Education Committee	10/26/90	\$1,000
James McClure Clarke and Elspeth McClure Clarke (guarantors of bank loan)	10/22/90	\$25,000 ^{1/}

On January 8, 1991, a Request for Additional Information ("RFAI") was sent to the Committee (Attachment 4). The RFAI notes 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 requests the Committee to review their procedures for checking contributions received during the aforementioned time period. In addition, the notice states that although the Commission may take legal steps, any response will be taken into consideration.

To date, the Committee has failed to respond to this matter.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

¹The loan was repaid within 60 days of the date of receipt.

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

DATE 12MAR91

PAGE 1

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS		DISBURSEMENTS		COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
			PRIMARY	GENERAL	PRIMARY	GENERAL			
CLARKE, JAMES MCCLURE		HOUSE 11 DEMOCRATIC PARTY							
1. STATEMENT OF CANDIDATE									
1990 STATEMENT OF CANDIDATE						26JAN90		1	90HSE/387/3427
2. PRINCIPAL CAMPAIGN COMMITTEE									
COMMITTEE TO ELECT JAMES MCCLURE CLARKE TO CONGRESS							ID #000141374		HOUSE
1989 STATEMENT OF ORGANIZATION - AMENDMENT						21FEB89		1	89HSE/377/1523
MID-YEAR REPORT			39,293		49,944	1JAN89 -30JUN89		16	89HSE/383/4536
YEAR-END			67,720		24,100	1JUL89 -31DEC89		19	90HSE/387/3276
YEAR-END - AMENDMENT						1JUL89 -31DEC89		1	90HSE/417/4883
1990 STATEMENT OF ORGANIZATION - AMENDMENT						26JAN90		1	90HSE/387/3428
48 HOUR CONTRIBUTION NOTICE						30APR90		1	90HSE/397/8786
48 HOUR CONTRIBUTION NOTICE						30APR90		2	90HSE/397/8894
48 HOUR CONTRIBUTION NOTICE						1MAY90		1	90HSE/397/1097
48 HOUR CONTRIBUTION NOTICE						4MAY90		1	90HSE/397/2271
48 HOUR CONTRIBUTION NOTICE						19OCT90		2	90HSE/413/2999
48 HOUR CONTRIBUTION NOTICE						23OCT90		1	90HSE/414/8898
48 HOUR CONTRIBUTION NOTICE						23OCT90		1	90HSE/414/2995
48 HOUR CONTRIBUTION NOTICE						24OCT90		1	90HSE/414/5101
48 HOUR CONTRIBUTION NOTICE						26OCT90		2	90HSE/416/1834
48 HOUR CONTRIBUTION NOTICE						30OCT90		1	90HSE/416/4145
48 HOUR CONTRIBUTION NOTICE						1NOV90		1	90HSE/417/8428
48 HOUR CONTRIBUTION NOTICE						5NOV90		1	90HSE/417/1622
APRIL QUARTERLY			23,425		9,669	1JAN90 -31MAR90		8	90HSE/393/3506
PRE-PRIMARY			3,615		3,135	1APR90 -18APR90		6	90HSE/396/4448
JULY QUARTERLY			66,427		25,935	19APR90 -30JUN90		16	90HSE/400/8874
JULY QUARTERLY - AMENDMENT						19APR90 -30JUN90		3	90HSE/407/5221
OCTOBER QUARTERLY				131,648	139,409	1JUL90 -30SEP90		36	90HSE/410/2387
PRE-GENERAL				38,836	106,052	1OCT90 -17OCT90		15	90HSE/415/8655
PRE-GENERAL - AMENDMENT				38,836	106,888	1OCT90 -17OCT90		5	90HSE/421/2196
PRE-GENERAL - AMENDMENT				38,836	106,052	1OCT90 -17OCT90		17	91HSE/423/2593
REQUEST FOR ADDITIONAL INFORMATION						1OCT90 -17OCT90		1	90FEC/671/2969
POST-GENERAL				95,065	119,106	18OCT90 -26NOV90		24	90HSE/420/3092
POST-GENERAL - AMENDMENT						-18OCT90 -26NOV90		1	90HSE/421/4236
POST-GENERAL - AMENDMENT						-18OCT90 -26NOV90		6	91HSE/423/2272
POST-GENERAL - AMENDMENT						-18OCT90 -26NOV90		1	91HSE/426/1611
REQUEST FOR ADDITIONAL INFORMATION						18OCT90 -26NOV90		6	91FEC/682/8564
REQUEST FOR ADDITIONAL INFORMATION 2ND						18OCT90 -26NOV90		1	91FEC/685/8514
YEAR-END				20,102	22,519	27NOV90 -31DEC90		17	91HSE/423/1944
TOTAL			202,400	285,651	112,783	387,086		216	TOTAL PAGES

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

ALL REPORTS HAVE BEEN REVIEWED
ENDING CASH-ON-HAND AS OF 12/31/90: \$683,93
OUTSTANDING DEBTS AS OF 12/31/90: \$24,157.59

GENERAL ELECTION

ATTACHMENT 2

Page 1 of 2

REPORT NOTICE

FEDERAL ELECTION COMMISSION

CONGRESSIONAL CANDIDATES

October 1, 1990

Report	Reporting Period	Reg./Cert. Mailing Date*	Filing Date
Pre-General	10/01/90** - 10/17/90	10/22/90	10/25/90
Post-General	10/18/90 - 11/26/90	12/06/90	12/06/90

WHO MUST FILE

All 1990 general election principal campaign committees must file the pre- and post-general election reports.

WHO NEED NOT FILE

Principal campaign committees of candidates not active in the 1990 elections (i.e., committees active in past or future elections) and 1990 campaign committees not participating in the general election do not file the pre- and post-general reports.

WHAT MUST BE REPORTED

All financial activity (not previously reported) that occurred during the reporting period.

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.

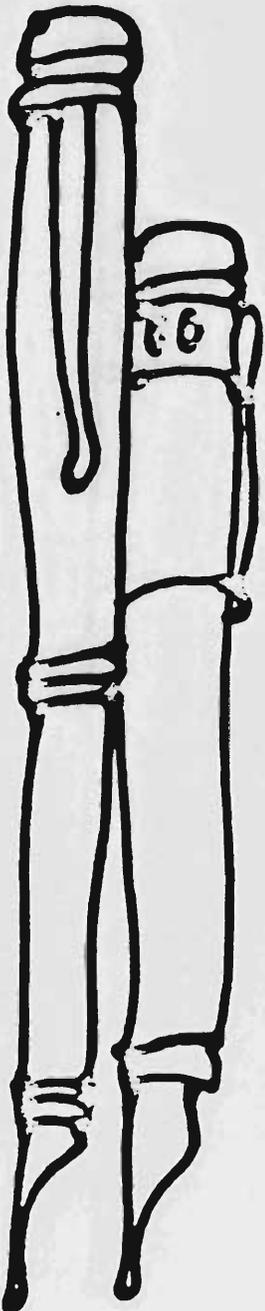
LAST-MINUTE CONTRIBUTIONS

Committees must also file special notices if contributions of \$1,000 or more are received during the period of October 18 through November 3, 1990. The notices must reach the appropriate Federal and State offices within 48 hours of the committee's receipt of the contributions.

*Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

**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.

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CONGRESSIONAL CANDIDATES

GENERAL ELECTION

LABEL

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

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.

9 1 0 4 0 8 6 5 2 4 5

SCHEDULE A

ITEMIZED RECEIPTS

Use separate schedule for each category of the Detailed Summary Page	PAGE	OF
	1	6
FORM LINE NUMBER		11(c)

Contributions from Other Political Committees

All information reported from such Receipts and Statements may not be sold or used by any person for the purpose of collecting contributions but may be for commercial purposes if the recipient is a political committee to which contributions from such committees

NAME OF COMMITTEE: COMMITTEE TO ELECT JAMES MCCLURE CLARKE TO CONGRESS

871040865246

A. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
A. Full Name, Mailing Address and ZIP Code AFWL POLITICAL ACTION COMMITTEE 15 UNION SQUARE NEW YORK NY 10001 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General		11/03/90	500.00
Aggregate Year-to-Date		\$ 1000.00	
B. Full Name, Mailing Address and ZIP Code AFL-CIO AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES 1625 L STREET, N.W. WASHINGTON DC 20036 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General	Name of Employer: PUBLIC EMPLOYEES ORGANISED TO Occupation:	10/23/90	2500.00
Aggregate Year-to-Date		\$ 5500.00	
C. Full Name, Mailing Address and ZIP Code AMERICAN OPTOMETRIC ASSOCIATION (A.O.A.-PAC) 1505 PRINCE STREET, SUITE 300 ALEXANDRIA VA 22314 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General	Name of Employer: Occupation:	10/26/90	1000.00
Aggregate Year-to-Date		\$ 1000.00	
D. Full Name, Mailing Address and ZIP Code AMERICAN POSTAL WORKERS UNION COMMITTEE ON POLITICAL ACTION AFL-CIO, 1300 L ST., N.W. WASHINGTON DC 20005 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General	Name of Employer: Occupation:	10/30/90	2000.00
Aggregate Year-to-Date		\$ 5000.00	
E. Full Name, Mailing Address and ZIP Code BAKERY CONFECTIONERY & TOBACCO WORKERS INT'L UNION PAC 10401 CONNECTICUT AVENUE KENSINGTON MD 20895 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General	Name of Employer: Occupation:	10/23/90	1000.00
Aggregate Year-to-Date		\$ 1000.00	
F. Full Name, Mailing Address and ZIP Code BOILERMAKERS-BLACKSMITHS LEGIS. EDUC. ACTION PROGRAM (LEAP) 570 NEW BROTHERHOOD BUILDING KANSAS CITY KS 66101 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General	Name of Employer: Occupation:	10/23/90	500.00
Aggregate Year-to-Date		\$ 2100.00	
G. Full Name, Mailing Address and ZIP Code CHAMPION INTERNATIONAL CORP. POLITICAL ACTION COMMITTEE ONE CHAMPION PLAZA STAMFORD CT 06921 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General	Name of Employer: Occupation:	10/30/90	1000.00
Aggregate Year-to-Date		\$ 1300.00	

SUBTOTAL of Receipts This Page (optional)	8500.00
TOTAL This Period (use this line number only)	8500.00

SCHEDULE A

ITEMIZED RECEIPTS

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

PAGE 6 OF 6

FIGURE NUMBER 11(c)

Contributions from Other Political Committees

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)
COMMITTEE TO ELECT JAMES MCCLURE CLARKE TO CONGRESS

99040865247

A Full Name, Mailing Address and ZIP Code
CONNECT FOR GOVERNMENT COMMITTEE OF WINN DIXIE STORES
 BOX "B"
 JACKSONVILLE FL 32203
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year) **11/03/90**
 Amount of Each Receipt this Period **1000.00**
 Occupation
 Aggregate Year-to-Date **\$ 1000.00**

B Full Name, Mailing Address and ZIP Code
A POLITICAL EDUCATION COMMITTEE
 901 MASSACHUSETTS AVENUE, N. W.
 WASHINGTON DC 20001
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year) **10/26/90**
 Amount of Each Receipt this Period **1000.00**
 Occupation
 Aggregate Year-to-Date **\$ 2500.00**

C Full Name, Mailing Address and ZIP Code
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year)
 Amount of Each Receipt this Period
 Occupation
 Aggregate Year-to-Date **\$**

D Full Name, Mailing Address and ZIP Code
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year)
 Amount of Each Receipt this Period
 Occupation
 Aggregate Year-to-Date **\$**

E Full Name, Mailing Address and ZIP Code
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year)
 Amount of Each Receipt this Period
 Occupation
 Aggregate Year-to-Date **\$**

F Full Name, Mailing Address and ZIP Code
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year)
 Amount of Each Receipt this Period
 Occupation
 Aggregate Year-to-Date **\$**

G Full Name, Mailing Address and ZIP Code
 Receipt For Other (specify) Primary General

Name of Employer
 Date (month, day, year)
 Amount of Each Receipt this Period
 Occupation
 Aggregate Year-to-Date **\$**

SUBTOTAL of Receipts This Page (optional) **2000.00**
 TOTAL This Page (last page this line number only) **39010.00**

SCHEDULE A

ITEMIZED RECEIPTS

Use separate schedule for each category of the Detailed Summary Page	PAGE	OF
	FOR LINE NUMBER 13(B)	

Loans Made or Guaranteed by the Candidate

All information shown from such Reports and Statements is to be used only for the purpose of obtaining contributions or for commercial purposes other than using the name and address of any political committee to solicit contributions from such committee

NAME OF CANDIDATE (Full) COMMITTEE TO ELECT JAMES M. CLARKE TO CONGRESS

Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
NORTH NATIONAL BANK 68 HATTON AVENUE, P.O. BOX 1101 ASHTON, MD. 20812 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General		10/22/80	25000.00
Aggregate Year-to-Date \$ 25000.00			
B Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General	Occupation		
Aggregate Year-to-Date \$			
C Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General	Occupation		
Aggregate Year-to-Date \$			
D Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General	Occupation		
Aggregate Year-to-Date \$			
E Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General	Occupation		
Aggregate Year-to-Date \$			
F Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General	Occupation		
Aggregate Year-to-Date \$			
G Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General	Occupation		
Aggregate Year-to-Date \$			

SUBTOTAL of Receipts This Page (optional)	25000.00
TOTAL (Carry over from last page this line number only)	25000.00

LOANS

Name of Committee (or Full) Committed to elect James McClure Clarke to Congress			
A Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Comulative Payment To Date	Balance Outstanding at Close of This Period
NCB National Bank of North Carolina P. O. Box 1881 Asheville, NC 28802 Election <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	\$25,000.00	\$15,000.00	\$10,000.00
Terms Date Incurred 10-22-90 Date Due 6-15-91 Interest Rate 12% (Step 1) <input checked="" type="checkbox"/> Secured			
List All Endorsers or Guarantors (if any) to Item A			
1 Full Name, Mailing Address and ZIP Code	Name of Employer	[REDACTED]	[REDACTED]
James McClure Clarke Route 1 Box 108 Fairview, NC 28730	self-employed		
	Occupation Farmer & Apple grower		
	Amount Guaranteed Outstanding		
2 Full Name, Mailing Address and ZIP Code	Name of Employer	[REDACTED]	[REDACTED]
Elsbeth McClure Clarke Route 1 Box 108 Fairview, NC 28730	Housewife		
	Occupation		
	Amount Guaranteed Outstanding		
3 Full Name, Mailing Address and ZIP Code	Name of Employer	[REDACTED]	[REDACTED]
	Occupation		
	Amount Guaranteed Outstanding		
B Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Comulative Payment To Date	Balance Outstanding at Close of This Period
DSG Campaign Fund No. 4 Library Court, S.E. Washington, DC 20003 Election <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	\$3,000.00	None	3,000.00
Terms Date Incurred 9-25-90 Date Due No fixed date Interest Rate None (Step 1) <input type="checkbox"/> Secured			
List All Endorsers or Guarantors (if any) to Item B			
1 Full Name, Mailing Address and ZIP Code	Name of Employer	[REDACTED]	[REDACTED]
	Occupation		
	Amount Guaranteed Outstanding		
2 Full Name, Mailing Address and ZIP Code	Name of Employer	[REDACTED]	[REDACTED]
	Occupation		
	Amount Guaranteed Outstanding		
3 Full Name, Mailing Address and ZIP Code	Name of Employer	[REDACTED]	[REDACTED]
	Occupation		
	Amount Guaranteed Outstanding		
SUBTOTALS This Period This Page (optional)			13,000.00
TOTALS This Period (not page in this line only)			13,000.00
Carry outstanding balance only to LINE 2, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.			

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20541

RG-2

JAN 8 1991

James H. Lee, Treasurer
Committee to Elect James McClure Clarke
to Congress
P.O. Box 7434
Asheville, NC 28802

Identification Number: C00141374

Reference: 30 Day Post-General Report (10/18/90-11/26/90)

Dear Mr. Lee:

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:

-Schedules A and C of your report (pertinent portion attached) discloses a contribution(s) which appears to exceed the limits set forth in the Act. An individual, including a candidate's spouse, may not make contributions to a candidate for federal office in excess of \$1,000 per election. If the contributions or loans in question were secured by property based on joint assets, please clarify your report with the following information:

- the name and address of the lending institution
- the interest rate
- whether or not the loan was secured
- the due date or amortization schedule
- brief description of the collateral or property used as a basis for the loan
- the owners of the collateral or the property used as a basis for the loan
- the type of ownership of such property (e.g., tenants by the entireties, joint tenants, tenants in common, etc.)
- the percentage of such property owned by each owner
- value of such property
- the names of all signatories on both the security instrument and the commercial note
- the capacity in which each signatory signed (e.g., co-maker, endorser, guarantor)

If the contribution(s) in question was incompletely or incorrectly disclosed, you should amend your original

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report with the clarifying information. If the contribution(s) you received exceeds the limits, you should either refund to the donor the amount in excess of \$1,000 or get the donor to redesignate and/or reattribute the contribution in writing. All refunds, redesignations, and reattributions must be made within sixty days of the treasurer's receipt of the contribution. Copies of refund checks and copies of letters reattributing or redesignating the contributions in question may be used to respond to this letter. Refunds and repayments are reported on Line 20 or Line 19, respectively, of the Detailed Summary Page and on Schedule B of the report covering the period in which they are made. Redesignations and reattributions are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation and/or reattribution is received. (11 CFR §§100.7, 100.8, 110.1, and 104.8(d)(2), (3) and (4))

Although the Commission may take further legal steps, prompt action by you to refund or seek redesignation and/or reattribution will be taken into consideration.

-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-General 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))

JM

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) 376-2480.

Sincerely,

Jack MacDonald

Jack MacDonald
Reports Analyst
Reports Analysis Division

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21036301335

91 MAY -6 PM 12: 37

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

SENSITIVE**FIRST GENERAL COUNSEL'S REPORT**

RAD Referral # 91L-36
Staff Member Mark Allen

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

RESPONDENTS: The Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 434(a)(6)

INTERNAL REPORTS CHECKED: Committee Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was referred to the Office of the General Counsel on April 1, 1991. The referral notes that the Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer, ("the Committee") failed to file three 48 Hour notifications ("48-Hour Notices") for a loan and contributions totaling \$27,000 received prior to the 1990 General Election.¹ The Committee was the principal campaign committee of James McClure Clarke, a candidate for election to the U.S. House of Representatives in the Eleventh Congressional District of North Carolina.

II. FACTUAL AND LEGAL ANALYSIS

See Attachment 2.

1. The loan to the Committee was guaranteed by the candidate and his wife, Elspeth McClure Clarke. This loan was repaid within 60 days of the date of receipt, and so does not meet the Reports Analysis Division referral threshold for an excessive contribution regarding Elspeth McClure Clarke's guarantee of the loan.

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III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Committee to Elect James McClure Clarke to Congress and James H. Lee, 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 attached Factual and Legal Analysis, proposed Conciliation Agreement, and the appropriate letter.

Lawrence M. Noble
General Counsel

5/3/91
Date

BY: 
Lois G. Lerner
Associate General Counsel

- Attachments:
- 1-Referral Materials
 - 2-Factual and Legal Analysis
 - 3-proposed Conciliation Agreement



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH *DR*
COMMISSION SECRETARY

DATE: MAY 9, 1991

SUBJECT: RAD REFERRAL 91L-36 - FIRST GENERAL COUNSEL'S RPT.
DATED MAY 3, 1991.

The above-captioned document was circulated to the Commission on MONDAY, MAY 6, 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 _____
- Commissioner Josefiak _____
- Commissioner McDonald _____
- Commissioner McGarry _____
- Commissioner Thomas XXX

This matter will be placed on the meeting agenda for TUESDAY, MAY 14, 1991.

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

91040865254

BEFORE THE FEDERAL ELECTION COMMISSION

(MUR 3274)

In the Matter of)	
)	
The Committee to Elect James)	RAD Referral
McClure Clarke to Congress and)	#91L-36
James H. Lee, as treasurer.)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 14, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to RAD Referral #91L-36:

1. Open a MUR.
2. Find reason to believe that the Committee to Elect James McClure Clarke to Congress and James H. Lee, 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 Factual and Legal Analysis, proposed Conciliation Agreement and the appropriate letter as recommended in the General Counsel's report dated May 3, 1991.

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

Attest:

May 16, 1991
Date

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

91040865255



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 22, 1991

James H. Lee, Treasurer
Committee to Elect James McClure Clarke to Congress
P.O. Box 7434
Asheville, NC 28802

RE: MUR 3274
Committee to Elect James
McClure Clarke to Congress and
James H. Lee, as treasurer

Dear Mr. Lee:

On May 14, 1991, the Federal Election Commission found that there is reason to believe the Committee to Elect James McClure Clarke to Congress ("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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James H. Lee
Page 2

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 Mark Allen, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Vice Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:

MUR 3274

The Committee to Elect James
McClure Clarke to Congress and
James H. Lee, as treasurer

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).

9 1 0 4 0 8 6 5 2 5 8
The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that the principal campaign committee of a candidate shall file notifications of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought, the identification of the contributor, and the date of receipt and amount of the contribution. Id. This notification shall be in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

The Act defines the term "contribution" to include any loan made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i). A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 C.F.R. § 100.7(a)(1)(i)(B).

The Act exempts from this definition any loan of money by a federally chartered depository institution, but such loan shall be considered to be a contribution by the guarantors of the loan. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. § 100.7(b)(11). Each guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. 11 C.F.R. § 100.7(a)(1)(i)(C).

The Committee's 30 Day Post-General report indicates that the Committee failed to file three 48-Hour Notices for contributions and a loan received after the 20th day but more than 48 hours before the election. The contributions and the loan are listed in the chart below.

<u>contributor</u>	<u>date</u>	<u>amount</u>
Champion International Corp. PAC	10-30-90	\$ 1,000
U.A. Political Education Committee	10-26-90	\$ 1,000
James McClure Clarke and Elspeth McClure Clarke	10-22-90	\$25,000

James and Elspeth Clarke were the guarantors of a \$25,000 loan to the Committee from the NCNB National Bank. Under the Act, such a loan is a contribution by the guarantors. See 2 U.S.C. §§ 431(8)(A)(i), 431(8)(B)(vii); 11 C.F.R. § 100.7(b)(11). In light of the Committee's failure to file 48-Hour Notices in connection with this and the other two contributions noted above, there is reason to believe that the Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer, violated 2 U.S.C. § 434(a)(6).

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CLARKE FOR CONGRESS '90

Post Office Box 7434

Asheville, North Carolina 28802

OB-C1500

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 JUN 10 AM 11:19

June 4, 1991

Mr. Mark Allen
Federal Election Commission
Washington, DC 20463

RE: MUR 3274
Committee to Elect James
McClure Clarke to Congress and
James H. Lee, as treasurer

91 JUN 12 AM 3:05

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

Dear Mr. Allen:

I refer to your conversation this morning with Mr. John Fisher, who for nine years was the treasurer of this campaign. I regret the delay in replying to the letter of May 22 of Ms. Aikens, Vice-Chairman of the Federal Election Commission. I was in Europe when the letter was received and it came to my hands only on Saturday, June 1.

The gravamen of Ms. Aikens' letter and of the factual and legal analysis attached thereto is, as we understand it, our alleged failure to file the 48-hour notices for two contributions and for a loan, all of which were received after the twentieth day, but more than 48 hours before the General Election held on November 6, 1990. With respect to the two contributions of \$1,000.00 each, our records indicate that they were reported to the Clerk of the House within the 48-hour period required. Prior to the beginning of the 20-day period we were informed by the FEC that this notification could be made by fax by our Campaign Office in Asheville to the office of Congressman Clarke in Washington, from where they could be delivered to the Office of the Clerk of the House. This suggestion of the FEC was accordingly followed and our records indicate that 22 contributions were faxed by the Campaign Office to the Congressional Office in Washington for delivery to the Clerk of the House. An official of the Congressional Office (now closed) has verbally informed us that all messages of this nature, when received, were passed on to the Clerk's office. There is no written evidence of this as these files are no longer in existence, the office having been closed. However, our records show that all contributions received during the period in question were advised to the Clerk of the House under the system outlined above. All were of course duly reported to the Office of the Clerk in our Thirtieth Day Report following the General Election held on November 6, 1991. It will be evident from that fact that it was far from our intention to dissemble or to withhold any information. We should also wish to point out, with all respect, that the possibility of the two letters in question having gone astray in the Office of the Clerk of the House should not be excluded.

We might mention that we had not failed to note from the letter of Mr. Jack MacDonald, Reports Analyst, Reports Analysis Division, of January 8, 1991, his remark that Schedule A of the 30 day Post-General Report "indicates that our committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions". We did not respond to that observation on the part of the FEC as an examination of our records did not (and does not) reveal any lapse on our part.

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CLARKE FOR CONGRESS '90

Post Office Box 7434
Asheville, North Carolina 28802

Mr. Mark Allen
Page 2

As for the \$25,000.00 loan you state that a loan from a federally chartered bank is not a contribution, but that it is considered as a contribution by the guarantors of the loan. This information is surprising to us as over the past seven years we have reported such loans as "Loans" and never as "Contributions" made to the Campaign by the guarantors. Over the years these loans have ranged from 7 to 40 thousand dollars and duly reported to the FEC as "Loans" and at no time has our classification been challenged.

Once again let us say that it has always been our intention to make full and complete reports in accordance with the regulations of the FEC as we understand them.

Sincerely,


James H. Lee
Treasurer

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CLARKE FOR CONGRESS '90

Post Office Box 7434
Asheville, North Carolina 28802

August 9, 1991

06-C 2192
RECEIVED
FEDERAL ELECTION COMMISSION
MAIN OFFICE ROOM

91 AUG 13 AM 11:43

91 AUG 14 AM 10:28

RECEIVED
FEDERAL ELECTION COMMISSION

Mark Allen, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Allen: RE: MUR 3274

Reference is made to your letter of August 5, 1991 concerning the above matter.

We continue to believe that we have acted in this matter with the utmost good faith and have not on any occasion withheld any information desired by the Federal Election Commission. We have at all times reported all funds and monies received as well as disbursements made.

Although we are of opinion that the civil penalty of \$750 is completely unwarranted, in order to put an end to this affair we enclose our check for \$750, with the understanding that the payment is made under protest and is not to be interpreted as an admission of any wrongdoing on our part.

Sincerely,


James H. Lee
Treasurer

Enclosures
Check for \$750
Conciliation Agreement

91040866262

RECEIVED
F.E.C.
SECRETARIAT

91 SEP -9 PM 12:42

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Committee to Elect James McClure) MUR 3274
Clarke to Congress and James H.)
Lee, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On May 14, 1991, the Federal Election Commission found reason to believe the Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer, violated 2 U.S.C. § 434(a)(6) for failure to file three 48 Hour Notices. Also on this date the Commission determined to enter into conciliation negotiations with respondents prior to a finding of probable cause to believe.

Respondents also submitted a check for \$750. The cover letter, however, states that "the payment is made under protest and is not to be interpreted as an admission of any wrongdoing on our part" (Attachment page 1). Regardless of this language, respondents admit to the violation in the conciliation agreement, and do not state a desire to move on to probable cause. Therefore, this Office recommends that the Commission accept this agreement.

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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer.
2. Close the file.
3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

9/6/91
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachment
Proposed Conciliation Agreement

Staff Assigned: Mark Allen

910408665264

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Committee to Elect James McClure) MUR 3274
Clarke to Congress and James H.)
Lee, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 11, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3274:

1. Accept the conciliation agreement with the Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer, as recommended in the General Counsel's Report dated September 6, 1991.
2. Close the file.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated September 6, 1991.

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

Attest:

9-12-91
Date

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

Received in the Secretariat: Mon., Sept. 9, 1991 12:42 p.m.
Circulated to the Commission: Mon., Sept. 9, 1991 4:00 p.m.
Deadline for vote: Wed., Sept. 11, 1991 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

September 17, 1991

CLOSED

James H. Lee, Treasurer
Committee to Elect James McClure Clarke to Congress
P.O. Box 7434
Asheville, NC 28802

RE: MUR 3274

Dear Mr. Lee:

On September 11, 1991, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of the Committee to Elect James McClure Clarke to Congress and you, as treasurer, in settlement of a violation of 2 U.S.C. § 434(a)(6), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

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

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

91040865266

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Committee to Elect James McClure) MUR 3274
Clarke to Congress and James H.)
Lee, as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Committee to Elect James McClure Clarke to Congress and James H. Lee, as treasurer, ("Respondents") violated 2 U.S.C. § 434(a)(6).

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

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

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

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

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

1. Respondent Committee to Elect James McClure Clarke to Congress is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Respondent James H. Lee is the treasurer of the Committee to Elect James McClure Clarke to Congress.

3. 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, and the Secretary of State, as appropriate, 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).

4. According to 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1)(i)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. Each guarantor of a loan shall be deemed to have contributed that portion of the total amount of the loan for which the guarantor

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agreed to be liable until the loan is repaid. 2 U.S.C. § 431(8)(B)(vii) and 11 C.F.R. § 100.7(a)(1)(i)(C).

5. Respondents received on October 22, 1990 a contribution of \$25,000 in the form of a loan guarantee. Respondents received on October 26 and October 30, 1990 contributions of \$1,000.

6. The contributions were reported on Schedules A and C of the 1990 30 Day Post-General Report. Schedule C lists the candidate, James McClure Clarke, and his wife, Elspeth McClure Clarke, as the guarantors of the loan.

7. Respondents did not submit 48 Hour Notifications for these contributions.

V. Respondents failed to report three campaign contributions of \$1,000 or more received after the 20th day but more than 48 hours before the general election, within 48 hours of receipt of the contributions, in violation of 2 U.S.C. § 434(a)(6).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Seven Hundred and Fifty dollars (\$750), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

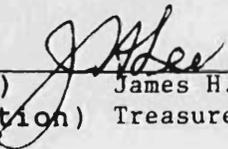
Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

9/16/91
Date

FOR THE RESPONDENTS:


(Name) James H. Lee
(Position) Treasurer

August 9, 1991
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3279

DATE FILMED 10/18/91 CAMERA NO. 2

CAMERAMAN AS

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