



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

THIS IS THE BEGINNING OF MUR # 3380

DATE FILMED 11-3-93 CAMERA NO. 4

CAMERAMAN S.E.G.

93030962020

06-C 0899

# PERKINS COIE

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION  
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

91 APR 23 PM 5:44

April 23, 1991

Pre-MUR 243

Ms. Lois Lerner  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: Collins for Congress  
C00250605

Dear Lois:

I am writing to confirm formally and with supporting detail my request to initiate a pre-MUR in the circumstances discussed below.

This firm now represents the Collins for Congress Committee, the principal campaign committee of Jim Collins, who is a Democratic candidate in the special election for Massachusetts' first congressional district. Over a brief period of time (about a week), Mr. Collins borrowed funds on behalf of his campaign in a manner inconsistent with the requirements of the Act. This borrowing has been restructured to meet those requirements, but the campaign now seeks guidance on the steps necessary to address any and all remaining enforcement issues, including reporting issues.

FACTS

On Monday, April 8, 1991, Jim Collins obtained a \$50,000 loan from an individual supporter for use on his campaign. At various times, in arranging for this loan, he consulted a young attorney from my firm. This attorney, introduced to Mr. Collins through a mutual friend sometime before, had from time to time provided advice to Mr. Collins on FECA compliance, on an unpaid basis, as a favor to this friend. This attorney advised Mr. Collins that he could lawfully borrow the funds from this individual so long as the transaction had an "ordinary course of business" commercial character. This is what Mr. Collins designed, executing a promissory note in favor of the lender which pledged repayment in two years at 10% simple interest, secured by personal assets of the candidate.

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Based on this advice, Collins executed a mortgage on his house as collateral for the \$50,000 loan. Then, one week later, on April 15, Collins secured two additional personal loans from individuals for use on his campaign, using his personal assets as security. The first was for \$15,000, the second for \$8,000.

On Wednesday, April 17, the attorney mentioned these conversations to me during the normal course of business, and I immediately informed her that FECA would treat these loans from individuals, however structured, as a "contribution" subject to the \$1,000 per election limit.

The attorney immediately phoned Mr. Collins to inform him of the problem. Mr. Collins spoke to his bank, Heritage Bank for Savings, that same day, and within 24 hours had applied for and received sufficient bank loans secured by bona fide personal assets to repay the three loans. Mr. Collins consulted with Massachusetts counsel (on state banking issues) as well as Perkins Coie attorneys at every step while obtaining the loans from Heritage Bank. These loans were collateralized in full with Mr. Collins' personal assets.

With this bank loan, the three initial lenders were repaid in full with interest on Thursday, April 18. Mr. Collins' 48-hour reports on the \$15,000 and \$8,000 reflect these transactions, and his 12-day pre-primary report has been amended to reflect the change in the source of the \$50,000 loan. Copies of these previous FEC documents are enclosed.

#### DISCUSSION

Mr. Collins' loans to the campaign did not meet the FECA standards for a period of ten days for the \$50,000 loan, and for three days for the \$15,000 and \$8,000 loans. He sought and relied upon legal advice during this time that was inaccurate. As soon as he learned of the error, he corrected it, obtaining a bank loan collateralized by his personal assets within 24 hours, and repaying the improper loans.

All of Collins for Congress' transactions are now in full compliance with the law. The improper loans did not yield any special benefit to his campaign because he, as subsequently demonstrated, had at all times sufficient personal assets and creditworthiness with which to secure the loans from a bank. He borrowed from individuals in the belief that, no less legal

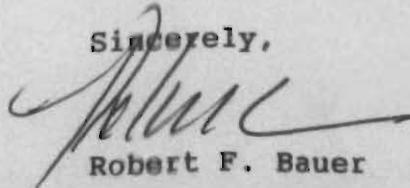
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Ms. Lois Lerner  
Federal Election Commission  
Page 3

than a bank loan, these personal loans could be obtained promptly and efficiently.

I am now seeking Commission guidance on additional steps to be taken to correct the record and satisfy any and all other legal requirements in this situation. This letter may be treated as an initiation of a pre-MUR. However, the campaign and the candidate will take the position that, in view of the circumstances and the remedial action taken, the Commission should take no further action.

Sincerely,



Robert F. Bauer

Enclosures

0064M

93030962023

# Collins for Congress

50 Shumway Street • Amherst, MA 01002 • 415/253-5999

VIA FAX (202/225-7781)

April 18, 1991

The Clerk of the House of Representatives  
Office of Records & Registration  
1036 Longworth House Office Building  
Washington, D.C. 20515-6612

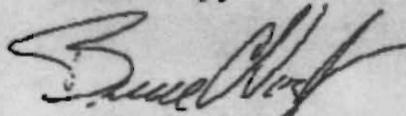
Re: Jim Collins for Congress  
C00250605

Dear Sir/Madam:

This is to advise your office that we received a loan in the amount of \$15,000 from the Candidate, Jim Collins, secured with Collins' personal assets from Mrs. Commager and a loan in the amount of \$8,000 from the Candidate, secured with Collins' personal assets from Mr. Surner, on April 15, 1991.

However, upon learning that FEC regulations require all business loans to a candidate for use on his campaign to be secured from a bona fide financial institution, the Candidate, Jim Collins, secured \$23,000 in loans based on personal assets from Heritage Bank for Savings on April 18, 1991. With this money, he repaid Mrs. Commager and Mr. Surner on that same date. Accordingly, this letter is to advise your office of loans in the amount of \$23,000 from the Candidate, Jim Collins, 166 Shays Street, Amherst, MA 01002, secured with Collins' personal assets from Heritage Bank for Savings on April 18, 1991.

Sincerely,



Bruce C. Vogt

9300962024

# Collins for Congress

60 Shumway Street • Amherst, MA 01002 • 413/253-5999

April 23, 1991

Clerk of the House of Representatives  
Office of Records and Registration  
1036 Longworth HOB  
Washington, D.C. 20515

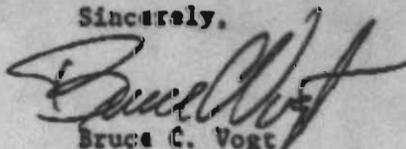
RE: Jim Collins for Congress  
C00250605  
Amendment

Dear Sir/Madam:

We would like to bring to your attention information relative to a loan by the Candidate, Jim Collins, to the campaign committee, reflected on our twelve day pre-primary report on Schedule C.

Mr. Collins has obtained a loan from Heritage Bank for Savings, 330 Whitney Street, Holyoke, MA, 01014, secured by personal assets and repayable quarterly at a rate of 13% apr. This loan was made available by Mr. Collins for campaign-related purposes.

Sincerely,



Bruce C. Vogt  
Treasurer

91 APR 24 AM 11:00



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 29, 1991

Robert F. Bauer, Esquire  
Perkins Coie  
1110 Vermont Avenue, N.W.  
Washington, D.C. 20005

RE: Pre-MUR 243

Dear Mr. Bauer:

This is to acknowledge receipt of your letter dated April 23, 1991, pertaining to Collins for Congress. You will be notified as soon as the Federal Election Commission takes action on your submission.

If you have any questions, please call Jeffrey Long, the staff person assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling matters such as this.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Procedures

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00-1867

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

July 12, 1991

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
91 JUL 12 PM 4:27

Ms. Joy Roberson  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

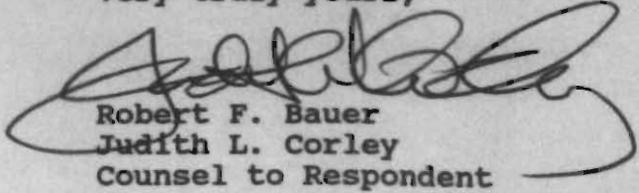
Re: Pre-MUR 243

Dear Ms. Roberson:

As we discussed, enclosed please find the affidavit of James Collins.

If you have any questions or need additional information, please let me know.

Very truly yours,

  
Robert F. Bauer  
Judith L. Corley  
Counsel to Respondent

RFB/JLC:smb

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BEFORE THE FEDERAL ELECTION COMMISSION  
PRE-MUR 243

AFFIDAVIT OF JAMES G. COLLINS

I, JAMES G. COLLINS, hereby state as follows:

1. I have personal knowledge of the facts set forth herein and if called to testify in this matter, I would testify as set forth herein.

2. I was a candidate for the U.S. House of Representatives in the First District of Massachusetts in the special primary election held April 30, 1991.

3. On April 8, 1991, I received a personal loan in the amount of \$50,000 from an individual supporter of my campaign and in turn loaned the full amount to my campaign. I executed a promissory note and, as collateral, a mortgage on my personal residence which I own in fee simple.

4. On April 11, 1991 and April 15, 1991, I received two additional personal loans in the amounts of \$15,000 and \$8,000 from two individual supporters of my campaign. I loaned my campaign the full amount of both loans on April 15, 1991. I executed promissory notes and, as collateral, mortgages on real estate owned solely by me in fee simple for both loans.

5. On April 18, 1991, as described in a letter to the Commission from Washington, D.C. counsel dated April 23, 1991, I undertook to refinance the loans described above in accordance with federal campaign laws. To that end, I obtained personal loans from Heritage Bank for Savings in the following amounts:

a. Twenty-two thousand dollars (\$22,000) secured by an increase in an equity line of credit on my personal residence on 166 Shays Street, Amherst, Massachusetts. This home is owned by me in fee simple.

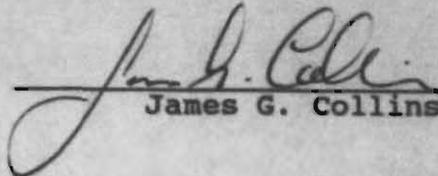
b. Eighty-eight thousand five hundred eighty-eight dollars (\$88,588), secured by one hundred forty-seven thousand six hundred fifty-nine dollars (\$147,659) worth of stocks owned by my wife in which I have an equitable interest.

6. In determining what assets to use as collateral for these loans, I obtained from Massachusetts counsel a legal opinion dated April 18, 1991, verifying my legal right of access to the stock owned by my wife, resulting in an equitable interest in the stock.

7. On April 18, 1991, I repaid the loans, including interest, to the individual lenders.

8. In reviewing the documents, sometime afterward, I noticed that I had not signed the loan for eighty-eight thousand five hundred eighty-eight dollars (\$88,588) during the transaction with the bank on April 18, 1991. Therefore, on June 7, 1991, I requested that the bank rewrite the loan in order to put the loan in a form that clearly shows what was originally intended: that the loan was to me and that the loan was collateralized by my equitable interest in the stocks owned by my wife and the loan was to me.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the Laws of the United States of America that the foregoing is true and correct. Executed this 11<sup>th</sup> day of July, 1991.

  
James G. Collins

RECEIVED  
F.E.C.  
SECRETARIAT

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463  
AUG 13 AM 10:16

FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

PRE-MUR 243  
STAFF MEMBER: Joi Roberson

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Collins for Congress and Bruce C. Vogt, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)A  
2 U.S.C. § 441a(f)  
2 U.S.C. § 431(8)(A)  
11 C.F.R. § 100.7(a)(1)  
11 C.F.R. § 100.7(a)(1)(i)(A)  
11 C.F.R. § 100.7(a)(1)(i)(B)  
11 C.F.R. § 110.1(b)(1)  
11 C.F.R. § 110.10(b)3

INTERNAL REPORTS CHECKED: Candidate's disclosure statements

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress on April 23, 1991.<sup>1</sup> Counsel for Mr. Collins brought this matter to the attention of the Commission after discovering that the candidate had obtained loans in a manner inconsistent with the Act. Immediately upon this discovery, Mr. Collins restructured his borrowing to meet the requirements of the Act.

II. FACTUAL AND LEGAL ANALYSIS

According to the information contained in the submission,

1. Mr. Collins lost in his bid to become the candidate for the Democratic nomination to Congress for the First District of Massachusetts. He garnered 10.9% of the vote in the special primary held on April 30, 1991.

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Mr. Collins was advised by an attorney that he could lawfully borrow campaign funds from an individual supporter so long as the transaction had a commercial character. On April 8, 1991, pursuant to this advice, Mr. Collins obtained a \$50,000.00 loan from an individual supporter for use on his campaign. Based upon this advice, Mr. Collins executed a promissory note in favor of the supporter which pledged repayment in two years at 10% simple interest, secured by a mortgage on his home. One week later, on April 15, Collins obtained two more personal loans, one for \$15,000.00 and one for \$8,000.00 from individuals for use on his campaign. Both of these loans were secured also with his personal assets. On April 17, Mr. Collins was informed by his attorney that a mistake had been made and that these loans would be treated by the Commission as a contribution and as such would be subject to the \$1,000.00 ceiling. Mr. Collins immediately secured sufficient bank loans to repay the three loans. In obtaining the bank loans, Mr. Collins used his personal assets as security. Using the proceeds from the bank loan, Mr. Collins repaid the three individual loans on April 18.

Information from the referral and Commission records indicate that Mr. Collins originally only recorded the \$50,000.00 loan and did not indicate the source of the loan. However, on April 18, Mr. Collins amended his disclosure statement to include the loans from individual supporters of \$8,000.00 and \$15,000.00. This amendment also noted that the individual loans were repaid with a loan from Heritage Bank for Savings. On April 23, 1991, Mr. Collins provided a second

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amendment to his disclosure statement. According to this amendment and his request for review, the source of the \$50,000.00 loan to the campaign was shifted from an individual supporter to a bank loan repayable at 13% APR, obtained by Mr. Collins from Heritage Bank for Savings.

Subsequently, Mr. Collins provided an affidavit on July 12, 1991 detailing the collateralization of the three individual loans and the bank loan. According to the affidavit, Mr. Collins secured a \$22,000.00 personal loan from Heritage Bank for Savings with an increase in an equity line of credit on his personal residence owned by him in fee simple. Mr. Collins secured an \$88,588.00 personal loan from Heritage Bank for Savings with \$147,659.00 worth of stock owned by his wife in which he has claimed to have an equitable interest based on a legal opinion from his Massachusetts counsel.

**B. Statement of Law**

**1. Loans obtained from individuals**

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election. Pursuant to 2 U.S.C. § 441a(a)(1)(A), contributions from individual supporters are subject to a \$1,000.00 limitation per election.

Pursuant to 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. The aggregate amount loaned to a candidate or committee by a contributor, when added to other

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contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 C.F.R. Part 110. Pursuant to 11 C.F.R. § 100.7(a)(1)(i)A, a loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. Part 110 shall be unlawful whether or not it is repaid.

As noted previously, Mr. Collins obtained loans from individual supporters for the purpose of furthering his campaign for Congress. Each of these loans were made by individual supporters for the purpose of influencing the election. Thus, clearly the three loans obtained by Mr. Collins fall within the definition of a contribution.

As a contribution each of the loans was subject to the \$1,000.00 ceiling for individual supporters. See 2 U.S.C. § 441a(a)(1)(A). However, Mr. Collins obtained loans from individual supporters in the following amounts; \$8,000.00, \$15,000.00, and \$50,000.00. In each of these loans, Mr. Collins exceeded the \$1,000.00 limit on individual contributions in violation of 11 C.F.R. § 110.1(b)(1) and 2 U.S.C. § 441a(a)(1)(A).

The focus of 11 C.F.R. § 100.7(a)(1)(i)(A) is the original loan amount and not the amount after repayment or the time of repayment. 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).

Pursuant to 11 C.F.R. § 103.3(b)(3), a committee is not considered to have knowingly accepted an illegal contribution,

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if the committee refunds the apparent excessive contribution within 60 days. Any contribution that appears to be illegal under the Act and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. 11 C.F.R. § 103.3(b)(4).

As noted above, pursuant to advice from an attorney, Mr. Collins obtained a loan of \$50,000.00 from an individual supporter on April 8, 1991. The twelve day report for the period February 19, 1991 through April 10, 1991 revealed a disbursement of \$50,012.00 on April 8, 1991 to Strubble & Totten, a media consulting firm. For this period the committee reported \$4,887.71 cash on hand at the close of the reporting period, \$46,006.00 in contributions, and \$91,128.23 in operating expenditures. Mr. Collins obtained a bank loan on April 18, 1991 and repaid the individual loan of \$50,000.00.<sup>2</sup> A review of the Mid-Year Report dated July 1991 reveals that this loan is still outstanding. Based upon the above, it appears that the \$50,000.00 loan was used to make disbursements. Thus, the safe harbor provision of 11 C.F.R. § 103.3(b) does not apply, and it appears that the committee accepted an excessive contribution in violation of 2 U.S.C. § 441a(f). We make no recommendations at

2. Thus, the individual loan was only outstanding for 9 days.

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this time regarding the individual contributor who made the \$50,000.00 loan.<sup>3</sup>

As noted above, pursuant to legal advice, Mr. Collins also obtained additional loans of \$8,000.00 and \$15,000.00 from Mr. Surner and Mrs. Commager, respectively, on April 15, 1991. On April 18, 1991 Mr. Collins obtained a loan from Heritage Bank for Savings in the amount of \$23,000.00 and repaid the two individual loans. Thus, the two individual loans were only outstanding for two days. The committee report filed on April 10, 1991 showed an ending cash on hand balance of \$4,887.71. The committee received an additional \$6,675.00 in contributions from April 11 to April 18, 1991, the date the bank loan was received. The Committee during this time period also made disbursements totaling \$3,841.50. Based upon the above, it does not appear that the individual loans of \$8,000.00 and \$15,000.00 were used to make disbursements. Based upon the above, it appears that the Committee has not accepted excessive contributions with respect to these loans.

2. Loans obtained from Heritage Bank for Savings

Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section.

Pursuant to 11 C.F.R. § 110.10(b)(3), 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

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3. Furthermore, nothing in the record has indicated the name of the individual supporter.

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shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

Pursuant to 11 C.F.R. § 110.10(b)(1), personal funds means any asset 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.

As noted previously, Mr. Collins secured a \$22,000.00 personal loan from Heritage Bank for Savings by an increase in an equity line of credit on his personal residence. According to Mr. Collins' affidavit the personal residence is owned by Mr. Collins in fee simple. Based upon the above, it appears that Mr. Collins secured the loan for \$22,000.00 with his personal funds in accordance with 11 C.F.R. § 110.10(b)(3).

According to the affidavit, Mr. Collins also secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by his wife in which he claimed to have an equitable interest. Mr. Collins stated in the affidavit "In determining what assets to use as collateral for these loans, I obtained from Massachusetts counsel a legal opinion dated April 18, 1991 verifying my legal right of access to the stock owned by my wife, resulting in an equitable interest in the stock." It is unclear what Mr. Collins means by his having an

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equitable interest in the stocks or his having a legal right of access to it. If Mr. Collins gained an equitable interest only through the use of the stock as collateral, it would not constitute a use of personal funds but would instead constitute an excessive contribution on the part of his wife. See also Advisory Opinion 91-10. However, if Mr. Collins had a prior equitable interest and a legal right of access, the use of the stock as collateral would constitute a use of personal funds. Based upon the above, Mr. Collins affidavit raises more questions than it answers, particularly, since he admits that the stock is owned by his wife. Thus, the Office of the General Counsel recommends that the Commission find reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f). We make no recommendations at this time regarding Mr. Collins' wife pending further clarification regarding this loan.

III. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f).

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3. Approve the appropriate letter and the attached Factual and Legal Analysis.

Lawrence M. Noble  
General Counsel

8/12/91  
Date

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

**Attachments:**

1. Twelfth Day Report dated April 12, 1991
2. July Mid-Year Report dated July 30, 1991
3. Revised Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

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

DATE: AUGUST 15, 1991

SUBJECT: Pre-MUR 243 - FIRST GENERAL COUNSEL'S REPORT  
DATED AUGUST 12, 1991.

The above-captioned document was circulated to the  
Commission on TUESDAY, AUGUST 13, 1991 at 4:)) 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 XXX  
Commissioner McDonald \_\_\_\_\_  
Commissioner McGarry XXX  
Commissioner Thomas \_\_\_\_\_

This matter will be placed on the meeting agenda  
for TUESDAY, AUGUST 20, 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 )

Collins for Congress and Bruce C. )  
Vogt, as treasurer. )

Pre-MUR 243

(MUR 3380)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 20, 1991, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions with respect to Pre-MUR 243:

1. Open a MUR.
2. Find reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f).
3. Approve the appropriate letter and the Factual and Legal Analysis as recommended in the General Counsel's report dated August 12, 1991.

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

Attest:

8-22-91  
Date

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

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 6, 1991

Collins for Congress and  
Bruce C. Vogt, as treasurer  
C/O Robert F. Bauer, Esquire  
Judith L. Corley, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Collins for Congress and  
Bruce C. Vogt, as treasurer

Dear Mr. Bauer:

On August 20, 1991, the Federal Election Commission found that there is reason to believe the Collins for Congress ("Committee") and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f), 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 Collins for Congress and Bruce C. Vogt, 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 Collins for Congress and Bruce C. Vogt, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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

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Collins for Congress  
MUR 3380  
Page 2.

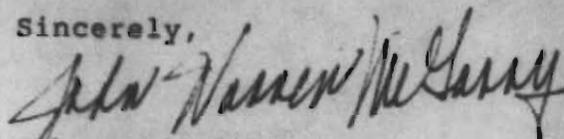
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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 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 Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



John Warren McGarry  
Chairman

Enclosures  
Questions  
Factual and Legal Analysis  
Procedures

93030962043

FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Collins for Congress and  
Bruce C. Vogt, as treasurer

MUR 3380

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This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress on April 23, 1991. According to the information contained in the submission, Mr. Collins was advised by an attorney that he could lawfully borrow campaign funds from an individual supporter so long as the transaction had a commercial character. On April 8, 1991, pursuant to this advice, Mr. Collins obtained a \$50,000.00 loan from an individual supporter for use on his campaign. Based upon this advice, Mr. Collins executed a promissory note in favor of the supporter which pledged repayment in two years at 10% simple interest, secured by a mortgage on his home. One week later, on April 15, Collins obtained two more personal loans, one for \$15,000.00 and one for \$8,000.00 from individuals for use on his campaign. Both of these loans were secured also with his personal assets. On April 17, Mr. Collins was informed by his attorney that a mistake had been made and that these loans would be treated by the Commission as a contribution and as such would be subject to the \$1,000.00 ceiling. Mr. Collins immediately secured sufficient bank loans to repay the three

loans. In obtaining the bank loans, Mr. Collins used his personal assets as security. Using the proceeds from the bank loan, Mr. Collins repaid the three individual loans on April 18.

Information from the referral and Commission records indicate that Mr. Collins originally only recorded the \$50,000.00 loan and did not indicate the source of the loan. However, on April 18, Mr. Collins amended his disclosure statement to include the loans from individual supporters of \$8,000.00 and \$15,000.00. This amendment also noted that the individual loans were repaid with a loan from Heritage Bank for Savings. On April 23, 1991, Mr. Collins provided a second amendment to his disclosure statement. According to this amendment and his request for review, the source of the \$50,000.00 loan to the campaign was shifted from an individual supporter to a bank loan repayable at 13% APR., obtained by Mr. Collins from Heritage Bank for Savings.

Subsequently, Mr. Collins provided an affidavit on July 12, 1991 detailing the collateralization of the three individual loans and the bank loan. According to the affidavit, Mr. Collins secured a \$22,000.00 personal loan from Heritage Bank for Savings with an increase in an equity line of credit on his personal residence owned by him in fee simple. Mr. Collins secured an \$88,588.00 personal loan from Heritage Bank for Savings with \$147,659.00 worth of stock owned by his wife in which he has claimed to have an equitable interest based on a legal opinion from his Massachusetts counsel.

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution

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includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election. Pursuant to 2 U.S.C. § 441a(a)(1)(A), contributions from individual supporters are subject to a \$1,000.00 limitation per election.

Pursuant to 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. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 C.F.R. Part 110. Pursuant to 11 C.F.R. § 100.7(a)(1)(i)(A), a loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. Part 110 shall be unlawful whether or not it is repaid.

As noted previously, Mr. Collins obtained loans from individual supporters for the purpose of furthering his campaign for Congress. Each of these loans was made by an individual supporter for the purpose of influencing the election. Thus, clearly the three loans obtained by Mr. Collins fall within the definition of a contribution.

As a contribution each of the loans was subject to the \$1,000.00 ceiling for individual supporters. See 2 U.S.C. § 441a(a)(1)(A). However, Mr. Collins obtained loans from individual supporters in the following amounts; \$8,000.00, \$15,000.00, and \$50,000.00. In each of these loans, Mr. Collins exceeded the \$1,000.00 limit on individual contributions in

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violation of 11 C.F.R. § 110.1(b)(1) and 2 U.S.C. § 441a(a)(1)(A).

The focus of 11 C.F.R. § 100.7(a)(1)(i)(A) is the original loan amount and not the amount after repayment or the time of repayment. 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).

Pursuant to 11 C.F.R. § 103.3(b)(3), a committee is not considered to have knowingly accepted an illegal contribution, if the committee refunds the apparent excessive contribution within 60 days. Any contribution that appears to be illegal under the Act and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. 11 C.F.R. § 103.3(b)(4).

As noted above, pursuant to advice from an attorney, Mr. Collins obtained a loan of \$50,000.00 from an individual supporter on April 8, 1991. The twelve day report for the period February 19, 1991 through April 10, 1991 revealed a disbursement of \$50,012.00 on April 8, 1991 to Strubble & Totten, a media consulting firm. For this period the committee reported \$4,887.71 cash on hand at the close of the reporting period, \$46,006.00 in contributions, and \$91,128.23 in operating expenditures. Mr. Collins obtained a bank loan on April 18,

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1991 and repaid the individual loan of \$50,000.00.<sup>1</sup> A review of the Mid-Year Report dated July 1991 reveals that this loan is still outstanding. Based upon the above, it appears that the \$50,000.00 loan was used to make disbursements. Thus, the safe harbor provision of 11 C.F.R. § 103.3(b) does not apply, and it appears that the committee accepted an excessive contribution in violation of 2 U.S.C. § 441a(f).

As noted above, pursuant to legal advice, Mr. Collins also obtained additional loans of \$8,000.00 and \$15,000.00 from Mr. Sumner and Mrs. Commager, respectively, on April 15, 1991. On April 18, 1991 Mr. Collins obtained a loan from Heritage Bank for Savings in the amount of \$23,000.00 and repaid the two individual loans. Thus, the two individual loans were only outstanding for two days. The committee report filed on April 10, 1991 showed an ending cash on hand balance of \$4,887.71. The committee received an additional \$6,675.00 in contributions from April 11 to April 18, 1991, the date the bank loan was received. The Committee during this time period also made disbursements totaling \$3,841.50. Based upon the above, it does not appear that the individual loans of \$8,000.00 and \$15,000.00 were used to make disbursements. Based upon the above, it appears that the Committee has not accepted excessive contributions with respect to these loans.

Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make any

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1. Thus, the individual loan was only outstanding for 9 days.

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expenditure in violation of the provisions of this section.

Pursuant to 11 C.F.R. § 110.10(b)(3), 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 considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

Pursuant to 11 C.F.R. § 110.10(b)(1), personal funds means any asset 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.

As noted previously, Mr. Collins secured a \$22,000.00 personal loan from Heritage Bank for Savings by an increase in an equity line of credit on his personal residence. According to Mr. Collins' affidavit the personal residence is owned by Mr. Collins in fee simple. Based upon the above, it appears that Mr. Collins secured the loan for \$22,000.00 with his personal funds in accordance with 11 C.F.R. § 110.10(b)(3).

According to the affidavit, Mr. Collins also secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by his wife in which he claimed to have an equitable interest. Mr. Collins stated in the affidavit "In determining what assets to use as collateral for these loans,

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I obtained from Massachusetts counsel a legal opinion dated April 18, 1991 verifying my legal right of access to the stock owned by my wife, resulting in an equitable interest in the stock." It is unclear what Mr. Collins means by his having an equitable interest in the stocks or his having a legal right of access to it. If Mr. Collins gained an equitable interest only through the use of the stock as collateral, it would not constitute a use of personal funds but would instead constitute an excessive contribution on the part of his wife. See also Advisory Opinion 91-10. However, if Mr. Collins had a prior equitable interest and a legal right of access, the use of the stock as collateral would constitute a use of personal funds. Based upon the above, Mr. Collins affidavit raises more questions than it answers, particularly, since he admits that the stock is owned by his wife. Therefore, there is reason to believe Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3380

INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS

TO: James Collins and Collins  
for Cogress and Bruce C. Vogt,  
as treasurer  
C/O Robert F. Bauer, Esquire  
Judith L. Corley, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

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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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1989 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

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

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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**Interrogatories and Request For  
Production of Documents**

1. In your affidavit submitted to the Commission on July 12, 1991, you indicated that you obtained a loan of \$50,000.00 from an individual supporter on April 8, 1991.

a. Give the name and address of the individual supporter you obtained the loan of \$50,000.00 from.

b. Indicate the relationship between this supporter and yourself.

c. Provide copies of all documents (such as checks, executed promissory note, etc...) evidencing the \$50,000.00 loan transaction. Also provide a copy of the repayment check in this matter.

2. The twelve day report for the period of February 19, 1991 through April 10, 1991 indicated that a disbursement of \$50,012.00 was made on April 8, 1991 to Strubble & Totten, a media consulting firm.

a. Indicate what this payment was for.

b. Provide copies of all documents evidencing this transaction.

c. Provide a copy of the Collins for Congress bank statement for the month of April of 1991.

3. In your affidavit you indicated that a loan was obtained from the Heritage Bank for Saving on April 18, 1991. Provide copies of all documents evidencing this transaction.

4. You also indicated that a personal loan of \$88,588.00 was secured from Heritage Bank for Saving using \$147,659.00 worth of stocks owned by your wife, which you stated that you have an equitable interest in the stock based on a legal opinion from your Massachusetts counsel.

a. Provide copies of all documents evidencing this loan transaction.

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MUR 3380

Page 5.

b. Explain how you obtained an equitable interest in the \$147,659.00 worth of stocks owned by your wife. Indicate when you obtained this interest in the stocks.

c. Provide a copy of the legal opinion from your Massachusetts counsel which your claim of equitable interest is based on.

5. Provide copies of all documents relating to the above questions in this matter.

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PERKINS COIE

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

600# 3026

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

31 OCT -7 AM 10:47

October 7, 1991

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

Re: MUR 3380 - Collins for Congress and Bruce C. Vogt,  
as Treasurer

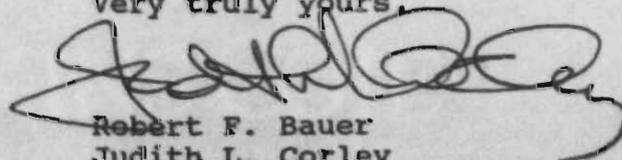
Dear Mr. Parrish:

This letter is to request an extension of time to respond to the Commission's reason to believe finding in the above referenced Matter Under Review.

I apologize for requesting this extension at the last moment, but I believed we would be able to gather the documents and prepare the response within the allotted 15 days. Unfortunately, due to scheduling problems, and the need to coordinate with campaign staff in Massachusetts, the process is not yet complete. With an additional 10 days to respond, the response will be complete.

Thank you for your consideration of this matter. Our response, with the extension, will be filed no later than close of business on Wednesday, October 16. If you have any questions, or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel for Respondents

[09901-0001/DA912800.001]

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 11, 1991

Robert F. Bauer, Esquire  
Judith L. Corley, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3390  
Collins for Congress and  
Bruce C. Vogt, as treasurer

Dear Mr. Bauer:

This is in response to your letter dated October 7, 1991, which we received on October 7, 1991, requesting an extension of 10 days to respond to the Commission's findings. 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 October 16, 1991.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

*George F. Rishel*

BY: George F. Rishel  
Assistant General Counsel

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BGC 3146

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

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# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

October 16, 1991

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

**Re: MUR 3380 - Collins for Congress and  
Bruce C. Vogt, as Treasurer**

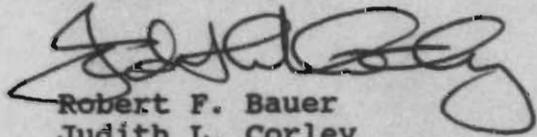
Dear Mr. Parrish:

Enclosed is the response of Respondents in the above-referenced Matter Under Review.

I am submitting today a copy of the response to the interrogatories and request for production of documents. As soon as the executed original is received from the client, I will forward it to you.

If you have any questions, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel for Respondents

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October 16, 1991

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

Re: MUR 3380 - Collins for Congress and  
Bruce C. Vogt, as Treasurer

Dear Mr. Parrish:

The Collins for Congress Committee ("the Committee") and Bruce C. Vogt, as Treasurer ("Respondents") hereby respond through counsel to the Commission's letter dated September 6, 1991. Attached to this letter are Respondents' responses to the Interrogatories and Requests for Production of Documents. In addition to these responses, Respondents wish to clarify the following.

The Commission's concern regarding the use of the stock of Mr. Collins' wife as collateral is unfounded. As stated in the enclosed legal opinion, under Massachusetts law, an equitable interest in a spouse's property is created at the time of the marriage. Mr. Collins, therefore, had an equitable interest in, and the right of access to, the stocks at all time relevant to this matter. The interest was not created upon the use of the stocks as collateral for the loan. There was no excessive contribution on the part of his wife.

Ordinarily in a case such as this, Respondents would request pre-probable cause conciliation. Here, however, there does not appear to be any need for conciliation of any kind. The violations in question were called to the attention of the Commission by Respondents themselves. The need for conciliation is nonexistent: Respondents themselves corrected their own error upon being informed by their attorney that earlier advice was incorrect before any Commission intervention was necessary. The amount of time involved in the violation was miniscule. It was only to confirm that the steps taken to correct the matter were adequate that the matter was brought to the Commission's attention at all. Such self-correcting efforts should be encouraged by the Commission.

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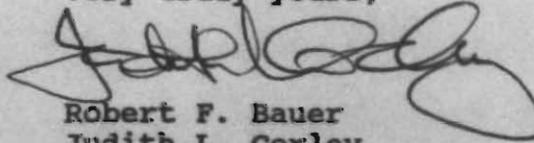
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Lawrence D. Parrish  
October 16, 1991  
Page 2

and the most effective way to do this would be to simply  
acknowledge that a violation has occurred and take no further  
action.

If you have any questions, or need additional  
information, please do not hesitate to contact the  
undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel for Respondents

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## Before the Federal Election Commission

MUR 3380

Respondents: Collins for Congress and Bruce C. Vogt,  
as Treasurer

ANSWERS TO INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS

The answers to the interrogatories are based primarily on the recollections of James G. Collins.

Interrogatory No. 1

In your affidavit submitted to the Commission on July 12, 1991, you indicated that you obtained a loan of \$50,000.00 from an individual supporter on April 8, 1991.

- a. Give the name and address of the individual supporter you obtained the loan of \$50,000 from.
- b. Indicate the relationship between this supporter and yourself.
- c. Provide copies of all documents (such as checks, executed promissory note, etc...) evidencing the \$50,000.00 loan transaction. Also provide a copy of the repayment check in this matter.

RESPONSE:

- a. Stephen P. Puffer, Jr.  
P.O. Box D, 72 Montague Road  
North Amherst, MA 01059
- b. Mr. Puffer is a local businessman and supporter of James G. Collins' campaign.
- c. Copies of all documents evidencing the \$50,000 loan transaction of April 8, 1991, are attached as Exhibits A-1 through A-6.<sup>1</sup> A copy of the repayment

<sup>1</sup> Note with respect to the mortgage (Exhibit A-2) dated April 5, 1991, Mr. Collins intended and attempted to deliver the mortgage to Mr. Puffer during the week of April 8, 1991.

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check (principal plus interest) in this matter is attached as Exhibit A-7.

Interrogatory No. 2

The twelve day report for the period of February 19, 1991 through April 10, 1991 indicated that a disbursement of \$50,012.00 was made on April 8, 1991 to Strubble & Totten, a media consulting firm.

- a. Indicate what this payment was for.
- b. Provide copies of all documents evidencing this transaction.
- c. Provide a copy of the Collins for Congress bank statement for the month of April of 1991.

RESPONSE:

- a. The payment, made by wire transfer from the campaign, was for production costs, fees and the purchase of air time by the campaign's media consultant.
- b. Copies of all documents evidencing the transaction are attached as Exhibits B-1 and B-3.
- c. A copy of the Collins for Congress bank statement for the month of April 1991 is attached as Exhibit B-4.<sup>2</sup>

Interrogatory No. 3

In your affidavit you indicated that a loan was obtained from the Heritage Bank for Saving on April 18, 1991. Provide copies of all documents evidencing this transaction.

RESPONSE: Copies of all documents evidencing this transaction are attached as Exhibits C-1 through C-2.

<sup>2</sup> Note that the statement attached closed as of April 16, 1991, but contained all bank transactions relevant to this matter. A copy of the statement for the remainder of the month of April will be provided should the Commission request it.

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Interrogatory No. 4

You also indicated that a personal loan of \$88,588.00 was secured from Heritage Bank for Saving using \$147,659.00 worth of stocks owned by your wife, which you stated that you have an equitable interest in the stock based on a legal opinion from your Massachusetts counsel.

- a. Provide copies of all documents evidencing this loan transaction.
- b. Explain how you obtained an equitable interest in the \$147,659.00 worth of stocks owned by your wife. Indicate when you obtained this interest in the stocks.
- c. Provide a copy of the legal opinion from your Massachusetts counsel which your claim of equitable interest is based on.

RESPONSE:

- a. Copies of all documents evidencing this loan transaction were provided in response to Interrogatory No. 3.
- b. James G. Collins obtained an equitable interest in his wife's stocks on May 9, 1987, the date of their marriage. Since the enactment of Chapter 565 of the Acts of 1974, Massachusetts General Laws c.208, § 34, created an "equitable division" framework for assigning "to either husband or wife all or any part of the estate of the other." Property subject to negotiation and division is not limited to property acquired during the marriage, but includes all property, "whenever and however acquired." Rice v. Rice, 372 Mass. at 400, 361 N.E. 2d at 1307 (1977).
- c. A copy of the legal opinion from my Massachusetts counsel is attached as Exhibit D-1.

Interrogatory No. 5

Provide copies of all documents related to the above questions in this matter.

RESPONSE: All documents related to the above questions have been provided in earlier responses.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16th day of October, 1991.

*James G. Collins*  
James G. Collins

93080962064





PROMISSORY NOTE

\$50,000.00

April 5, 1991

FOR VALUE RECEIVED, I, JAMES G. COLLINS, of 166 Shays Street, Amherst, Massachusetts, promise to pay to the order of STEPHEN P. PUFFER, JR., of 64 Montague Road, Amherst, Massachusetts, the sum of

----- FIFTY THOUSAND (\$50,000.00) Dollars -----

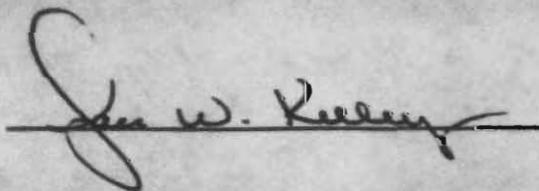
with interest of ten per cent (10%) per annum, payable by December 31, 1991, should the maker of this note be elected to the Congress, or by December 31, 1992, should the maker of this note not be elected to the Congress.

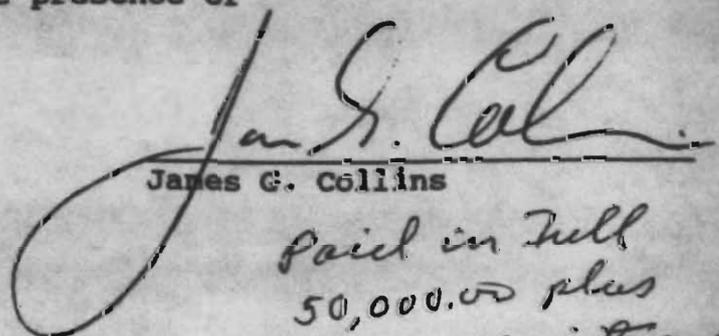
The maker of this note waives presentment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this note, and expressly agrees that this note may be extended from time to time without in any way affecting the liability of the maker hereof.

If suit is brought to collect this note, the note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

The maker shall have the right of anticipating payment and of paying the whole or any portion of the principal before demand, with the interest due adjusted and apportioned for any outstanding amount of the principal.

Signed and sealed in the presence of

  
James W. Kealey

  
James G. Collins

paid in full  
50,000.00 plus  
150.68 in interest  
Stephen P. Puffer  
April 19 1991

930 40962066

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EXHIBIT A-2

NEENAH Bond

25% COL. 1952

JAMES G. COLLINS

of Amherst, Hampshire County, Massachusetts, being unmarried, for consideration paid, grants to STEPHEN F. PUFFER, JR.

of Amherst, Massachusetts with mortgage covenants to secure the payment of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) Dollars

December 31, 1992, ten (10%) per cent interest, per annum on demand after ~~payment~~ with payable in one payment on demand as provided in my note of even date, the land in Amherst at 166 Shays Street, Amherst, Massachusetts,

166 Shays St., Amherst, MA

[Description and encumbrances, if any]

and further described and subject to a first mortgage to Heritage Bank in Book 2901, Page 269, of January 26, 1987, and a second mortgage to Heritage/NIS in Book 3052, Page 151, of September 4, 1987.

This mortgage is upon the statutory condition,

for any breach of which the mortgagee shall have the statutory power of sale

~~release to the mortgagee all rights and interests in the property and the proceeds of any sale thereof without recourse to the mortgagee or its assigns~~

Witness my hand and seal this 5th day of April 1991  
*Robert Ritchie*  
James G. Collins

The Commonwealth of Massachusetts

Hampshire ss April 5, 1991

Then personally appeared the above named James G. Collins

and acknowledged the foregoing instrument to be his free act and deed, before me, *Robert W. Ritchie*  
Notary Public - Justice of the Peace

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EXHIBIT A-3

NEENAH Bond  
75% Cotton Fiber

1417

STEPHEN P. PUFFER, JR.

April 8 1991

53-28/118

PAY TO THE ORDER OF

Jones G Collins

\$ 50 000 <sup>00</sup>/<sub>100</sub>

Forty thousand

00

DOLLARS

**BANK OF NEW ENGLAND**  
WEST, N.A.  
SPRINGFIELD, MASSACHUSETTS

FOR

Stephen P Puffer, Jr.

9304962070

NEENAH Bond  
25% Cotton Fiber

EXHIBIT A-4

9308<sup>d</sup>0962071



NEENAH Bond

28% Cotton Fiber

EXHIBIT A-5

9303<sup>4</sup>0962073

930540962074

1419

SS-7127/2118

April 8, 1991

JAMES G. COLLINS

PAY TO THE ORDER OF Collins for Congress \$ 50,000.00

Fifty-thousand and 00/100 DOLLARS

**HERITAGE-NBS**  
BANK FOR SAVINGS  
NORTHAMPTON MASSACHUSETTS 01860

MEMO: LOAN TO CAMPAIGN L. G. Collins

WILSON Duff  
25% cotton fiber

EXHIBIT A-6

930<sup>d</sup> 0962075

DEPOSIT TICKET

COLLINS FOR CONGRESS  
BRUCE C. VOGT, TREAS.  
172 ROLLING RIDGE RD.  
AMHERST, MA 01002

FOR CLEAR COPY, PRESS TRIMMY WITH BALL POINT PEN

CASH	DOLLARS	CENTS
CHECKS AND MONEY	50,000	00
<b>TOTAL</b>	<b>50,000</b>	<b>00</b>



53-7127/2118

BE SURE EACH ITEM IS  
PROPERLY ENDORSED  
DEPOSITS MAY NOT  
BE AVAILABLE FOR  
IMMEDIATE WITHDRAWAL

11/18/91

HERITAGE BANK LINE 500039228 01A80 50000.00

500150002 SEQ # 3622

+ 1:211871277: 1750 0039726# 9970

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT.

93040962076

930 40962077

EXHIBIT A-7

NEENAH Bond

25% Cotton Fiber

JAMES & COLLINS

1480

00012000

52-7127/2118

PAY TO THE ORDER OF

*Sept 18, 1991*  
*Stephen P. Puffer, Jr.*

\$ 50,150.00

*Fifty thousand one hundred fifty and 00/100* DOLLARS



NORTHAMPTON MASSACHUSETTS 01060

Regular Personal Loans available

*L. G. Collins*

930840962078

*Sept 18 1991*

*for deposit only*

NEENAH Bond  
25% Cotton Fiber

EXHIBIT B-1

930 340962079

#146

STRUBBEL + TOTKUN.

date 4/8/91

AMT 50012

for: iMedica consulting Jado.

930340962080

NEENAH Bond  
25% Cotton Fiber

EXHIBIT B-2

930840962081

930840962082

<b>COLLINS FOR CONGRESS</b> BRUCE C. VOGT, TREAS. 172 ROLLING RIDGE RD. AMHERST, MA 01002		146
PAY TO THE ORDER OF <u>Heritage Bank for Savings</u>		April 8, 1991 53-7127/2118
<u>Fifty thousand and twelve dollars and 00/100</u>		\$ 50,012.00 DOLLARS
 <b>HERITAGE BANK</b> FOR SAVINGS      HOLYOKE, MASSACHUSETTS 01906		
MEMO _____ <u>L. G. Coll</u>		
⑆ 26876277 ⑆ 1750 0038726 ⑆ 0146		

NEENAH Bond

25% Cotton Fibre

EXHIBIT B-3

930 10962083



NEENAH Bond  
25% Cotton Fiber

EXHIBIT D-1

930 340962085

MAHONEY, HAWKES & GOLDINGS

ATTORNEYS AND COUNSELLORS AT LAW

CHARLES FRANCIS MAHONEY  
MORRIS M. GOLDINGS  
WILLIAM S. HAWKES  
MARK PETERS  
H. GLENN ALBERICH  
FRANCES ALLOU GERSHWIN  
BRUCE W. EDMANIS  
JOHN E. BRADLEY

RICHARD S. JACOBS  
JAMES B. COX  
ELLEN S. SHAPIRO  
JOHN W. FEEL III  
PETER J. HARRINGTON  
JONATHAN G. BAKER  
C. FORBES SARGENT III  
DAVID R. KEENEHAN  
AMY J. AKELBOD  
DANIEL W. DOHERTY  
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40 ROWES WHARF  
BOSTON, MASSACHUSETTS 02110

TELEPHONE (617) 439-7600  
TELECOPIER (617) 737-3521

NORTH SHORE OFFICE  
EIGHTEEN DALE AVENUE  
GLOUCESTER, MASSACHUSETTS 01900

OF COUNSEL  
BARRY BROWN  
JOHN H. FLOOR

April 18, 1991

The Honorable and Mrs. James G. Collins  
166 Shays Street  
Amherst, Massachusetts 01002

Dear Mr. and Mrs. Collins:

You have requested my opinion as to whether the interest of James G. Collins, as husband of Eugenia D. Collins, in certain stocks and bonds presently owned in the name of Eugenia D. Collins is such as to constitute a legal right of access (with Eugenia's consent) and results in an equitable interest in favor of James, within the meaning of 11 C.F.R. 110.10, while James and Eugenia are husband and wife.

In order to render this opinion, I have reviewed the present Massachusetts law with respect to property owned by a husband or a wife and in particular have considered the Massachusetts common law as well as appropriate statutes relating to property of married persons. In my opinion, under Massachusetts law, the husband does have the legal right of access, with the wife's consent, to property in her name and, particularly in view of the established doctrine of equitable division of property as articulated in such statutes as G.L.c. 208, §34, a married person has an equitable interest in the property of a spouse. I am further persuaded that this is the case by the established doctrines of our Probate & Family Courts which consider equitable principles in the division of assets.

Based on this analysis, I am of the opinion that the stocks and bonds described to me satisfy the definition of property as to which there is a legal right of access, with the spouse's consent, and an equitable interest within the meaning of the cited provision of the Code of Federal Regulations.

930 40962086

MAHONEY, HAWKES & GOLDINGS

The Honorable and Mrs. James G. Collins

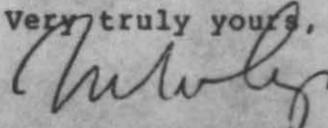
Page - 2 -

April 18, 1991

If you have further questions in this regard, please feel to contact me.

Thank you for your attention in this matter.

Very truly yours,



Morris M. Goldings

MMG:heb

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RECEIVED  
F.E.C.  
SECRETARIAT

92 FEB 10 AM 10:45

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )  
 )  
 )  
 )  
 Collins for Congress and )  
 Bruce C. Vogt, as treasurer )  
 )

MUR 3380

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress on April 23, 1991. Counsel for Mr. Collins brought this matter to the attention of the Commission after discovering that the candidate had obtained loans in a manner inconsistent with the Act.

On August 20, 1991, the Commission found reason to believe Collins for Congress and Bruce C. Vogt, as treasurer (the "CFC"), violated 2 U.S.C. § 441a(f), by accepting an excessive contribution.

On September 6, 1991, the Commission submitted Interrogatories and a Request for Documents to CFC. On October 16, 1991, counsel for CFC submitted documents and answers to the Commission's interrogatories. See Attachment 1. Counsel for CFC has also requested that the Commission take no further action in this matter.

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II. ANALYSIS

1. Loans obtained from individual

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election. Under 2 U.S.C. § 441a(a)(1), no person shall make contributions<sup>1</sup> to any candidate and his authorized political committee with respect to any election for Federal office, which in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section.

Pursuant to 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. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 C.F.R. part 110. Pursuant to 11 C.F.R. § 100.7(a)(1)(i)(A), a loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. part 110 shall be unlawful whether or not it is repaid.

As noted in the prior General Counsel's Report, Mr. Collins obtained a \$50,000.00 loan from an individual supporter on April 8, 1991 for the purpose of furthering his campaign for Congress.

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1. 2 U.S.C. § 431(11) defines "person" to include a committee.

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Mr. Collins obtained a bank loan on April 18, 1991 and repaid the \$50,000.00, plus \$150.00 in interest, to the individual supporter on the same date.

In responding to the Commission's Interrogatories, Mr. Collins stated that he obtained the \$50,000 loan from Stephen P. Puffer, Jr., a local businessman and supporter of his campaign. It appears from the documentation provided along with Mr. Collins' response that Mr. Collins executed a promissory note in favor of Mr. Puffer in the the sum of \$50,000.00, payable over two years at 10% per annum, secured by a mortgage on his home. See Attachment 1, page 9. This documentation further reveals that on April 8, 1991, Mr. Collins received the \$50,000.00 in the form of a check, payable to James G. Collins. On the same date this check for \$50,000.00 was deposited into Mr. Collins' personal bank account and a check in the same amount was drawn on Mr. Collins' personal account, payable to Collins for Congress. This check for \$50,000.00 from Mr. Collins' account was also deposited on the same date in the Collins for Congress' bank account. Subsequently, on the same date, April 8, 1991, CFC wrote a check out in the amount of \$50,012.00 to its bank for payment of a \$50,012.00 wire transfer to Strubble & Totten, a media consulting firm.

As noted in this Office's prior report, the twelve day report for the period February 19, 1991 through April 10, 1991 revealed a disbursement of \$50,012.00 on April 8, 1991 to Strubble & Totten. For this period CFC reported \$4,887.71 cash on hand at the close of the reporting period, \$46,006.00 in

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contributions and \$91,128.23 in operating expenditures. A copy of CFC's bank account for the same period indicates that at the time of the deposit of the loan from Stephen P. Puffer, Jr., and the wire transfer to Strubble & Totten, CFC only had about \$5,928.00 in its bank account. See Attachment 1, page 31.

Even though the \$50,000.00 loan was repaid to Stephen P. Puffer, Jr., on April 18, 1991, CFC's bank account clearly indicates that CFC violated 2 U.S.C. § 441a(f) by accepting the \$50,000.00 loan and using it to make the \$50,012.00 disbursement to Strubble & Totten.<sup>2</sup> In addition, because Stephen P. Puffer, Jr., made a contribution to Mr. Collins in the form of a loan for the purpose of furthering his campaign for Congress which exceeded the limitation of the Act by \$49,500.00,<sup>3</sup> therefore, the Office of the General Counsel recommends a new finding that the Commission find reason to believe that Stephen P. Puffer, Jr., violated 2 U.S.C. § 441a(a)(1)(A).

## 2. Loan obtained from Heritage Bank for Savings

Pursuant to 11 C.F.R. § 110.10(b)(3), 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

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2. Since CFC did not have sufficient funds to cover its disbursements during this period in question, without using the excessive contribution, then 11 C.F.R. § 103.3(b) does not provide a way out of the violation.

3. In addition to the \$50,000 loan, a review CFC's 1991 12 Day Pre-Special Report, covering February 19, 1991 through April 10, 1991, revealed a March 27, 1991 \$500 contribution from Stephen P. Puffer. Stephen P. Puffer's \$500 contribution totaled with his \$50,000 loan equals an amount of \$49,500 in excess of the \$1,000 limit.

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shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

Pursuant to 11 C.F.R. § 110.10(b)(1), personal funds means any asset 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.

Under 2 U.S.C. § 441a(a)(1), no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office, which in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section.

As noted in the prior General Counsel's Report, Mr. Collins secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by his wife in which he claimed to have an equitable interest. Mr. Collins stated in his prior affidavit "In determining what assets to use as collateral for these loans, I obtained from Massachusetts counsel a legal opinion dated April 18, 1991 verifying my legal right of access to the stock owned by my wife, resulting in an equitable interest in the stock." In response to the

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Commission's Interrogatories, Mr. Collins stated the following as to how he obtained this equitable interest in the stock:

James G. Collins obtained an equitable interest in his wife's stocks on May 9, 1987, the date of their marriage. Since the enactment of Chapter 565 of the Acts of 1974, Massachusetts General Laws c.208, § 34, created an "equitable division" framework for assigning "to either husband or wife all or any part of the estate of the other." Property subject to negotiation and division is not limited to property acquired during the marriage, but includes all property, "whenever and however acquired." Rice v. Rice, 372 Mass. at 400, 361 N.E. 2d at 1307 (1977).

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A copy of the legal opinion from Mr. Collins' Massachusetts counsel, on which Mr. Collins bases his claim of equitable interest in his wife's stock, is attached to this report. See Attachment 1., page 45. This legal opinion from Mr. Collins' Massachusetts counsel rendered an opinion that Mr. Collins, as husband of Eugenia D. Collins, held a legal right of access ("with Eugenia's consent") of stocks and bonds presently owned in her name and that this legal right of access resulted in an equitable interest in favor of Mr. Collins, as defined by 11 C.F.R. § 110.10. Mr. Collins' Massachusetts counsel has rested their conclusion on their interpretation of current Massachusetts law and such statutes as M.G.L.A. 208 § 34 (Massachusetts General Laws Annotated) with respect to property owned by a husband or a wife. Mr. Collins' Massachusetts counsel asserts that M.G.L.A. 208 § 34 provides that a married person has an equitable interest in the property of a spouse.

After a review of M.G.L.A. 208 § 34, this Office is unable to find any evidence which would refute Mr. Collins'

Massachusetts Counsel assertion that a married person in Massachusetts has an equitable interest in the property of their spouse. However, it still appears that Mr. Collins' loan of \$88,588.00 from Heritage Bank for Savings would still not be in accordance with 11 C.F.R. § 110.10(b)(3). As mentioned-above, Mr. Collins secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by his wife in which he claimed to have an equitable interest. If we are to accept Mr. Collins' counsel assertion that Mr. Collins has an equitable interest in stock owned by his wife, that equitable interest would not be valued more than 73,829.50, which is half the value of the stock.

According to 11 C.F.R. § 110.10(b)(3), a candidate may use a portion of assets jointly owned with their spouse as personal funds, but 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. Furthermore, in Advisory Opinion 1991-10, the Commission concluded, that under the Commission's regulations and current Massachusetts law, a candidate in Massachusetts may obtain a bank loan for his or her campaign by using as collateral up to one half of the value of the property held with his spouse as tenants by the entirety. Thus, \$13,758.50 of the \$88,588.00 loan from Heritage Bank for Saving would not constitute a use of personal funds but would instead constitute an excessive

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contribution on the part of Mr. Collins' wife.<sup>4</sup> CFC violated 2 U.S.C. § 441a(f) by accepting this excessive contribution.

Based upon the foregoing, the Office of the General Counsel recommends a new finding that there is reason to believe that Eugenia D. Collins violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution which exceeded the \$1,000.00 contribution limitation. In addition, based upon the foregoing, this Office recommends a new finding that there is reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f) by accepting an excessive contribution from Mr. Collins' wife.

**III. CONCLUSION**

Based upon the above-mentioned information, the Office of the General Counsel recommends that the Commission reject the Respondent's request to take no further action in this matter.

**IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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4. The amount of \$14,758.50 is the difference of the amount (\$88,588.00) borrowed from Heritage Bank for Saving and the value of Mr. Collins' equitable interest (\$73,829.50) in stock owned by his wife. A review of the the reports filed by CFC does not indicate that Mr. Collins' wife made any contributions to CFC. Mr. Collins' wife would have been allowed to contribute up to \$1,000.00 to CFC. Therefore, the total amount of the \$14,758.50 difference which would be considered an excessive contribution by Mr. Collins' wife is \$13,758.50.

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**V. RECOMMENDATIONS**

1. Reject Respondent's request to take no further action.
2. Find reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f), and enter into conciliation prior to a finding of probable cause to believe.
3. Find reason to believe Stephen P. Puffer, Jr., violated 2 U.S.C. § 441a(a)(1)(A), and enter into conciliation prior to a finding of probable cause to believe.
4. Find reason to believe Eugenia D. Collins violated 2 U.S.C. § 441a(a)(1)(A), and enter into conciliation prior to a finding of probable cause to believe.
5. Approve the attached Factual and Legal Analysis and conciliation agreements, and the appropriate letters.

Lawrence M. Noble  
General Counsel

2-9-92  
Date

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

**Attachments**

1. CFC's October 16, 1991 response
2. Factual and Legal Analysis (CFC)
3. Factual and Legal Analysis (Eugenia D. Collins)
4. Factual and Legal Analysis (Stephen P. Puffer, Jr.)
5. Proposed Conciliation Agreement (CFC)
6. Proposed Conciliation Agreement (Eugenia D. Collins)
7. Proposed Conciliation Agreement (Stephen P. Puffer, Jr.)

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

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

DATE: FEBRUARY 19, 1992

SUBJECT: MUR 3380 - GENERAL COUNSEL'S REPORT  
DATED FEBRUARY 9, 1992.

The above-captioned document was circulated to the Commission on MONDAY, FEBRUARY 10, 1992 at 4:00 P.M.

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

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	<u>      </u>
Commissioner Potter	<u>XXX</u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda for TUESDAY, FEBRUARY 25, 1992.

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

93030962098

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3380  
Collins for Congress and )  
Bruce C. Vogt, as treasurer )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 25, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3380:

1. Reject Respondent's request to take no further action.
2. Find reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f), and enter into conciliation prior to a finding of probable cause to believe.
3. Find reason to believe Stephen P. Puffer, Jr., violated 2 U.S.C. § 441a(a)(1)(A), and enter into conciliation prior to a finding of probable cause to believe.
4. Find reason to believe Eugenia D. Collins violated 2 U.S.C. § 441a(a)(1)(A), and enter into conciliation prior to a finding of probable cause to believe.
5. Approve the Factual and Legal Analysis as recommended in the General Counsel's report dated February 9, 1992, subject to amendment as agreed during the meeting discussion.

(continued)

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6. Approve the conciliation agreements and the appropriate letters as recommended in the General Counsel's report dated February 9, 1992

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

Attest:

2/29/92  
Date

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

93080962100



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 9, 1992

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Collins for Congress and  
Bruce C. Vogt, as treasurer

Dear Ms. Corley:

On September 6, 1992, your clients were notified that the Federal Election Commission found reason to believe that the Collins for Congress ("Committee") and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f). On October 16, 1991, you submitted a response to the Commission's finding. After considering the circumstances of the matter, the Commission determined on February 25, 1992, to reject your client's request to take no further action in this matter.

Furthermore, on February 25, 1992, the Federal Election Commission found that there is reason to believe the Collins for Congress ("Committee") and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), as a result of the acceptance of an excessive contribution from Eugenia D. Collins. 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 your clients. 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 your clients, 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

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Judith L. Corley, Esquire  
Page 2

Enclosed is a conciliation agreement that the Commission has approved.

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.

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 Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

*Joan D. Aikens*

Joan D. Aikens  
Chairman

Enclosures  
Factual and Legal Analysis  
Conciliation Agreement

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FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Collins for Congress and  
Bruce C. Vogt, as treasurer

MUR: 3380

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. 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

a. Receipt of \$50,000 loan from Stephen P. Puffer, Jr.

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election. Under 2 U.S.C. § 441a(a)(1), no person shall make contributions<sup>1</sup> to any candidate and his authorized political committee with respect to any election for Federal office, which in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section.

Pursuant to 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. The aggregate amount loaned to a candidate or committee by a contributor, when added to other

1. 2 U.S.C. § 431(11) defines "person" to include a committee.

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contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 C.F.R. part 110. Pursuant to 11 C.F.R. § 100.7(a)(1)(i)(A), a loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. part 110 shall be unlawful whether or not it is repaid.

This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress on April 23, 1991. Counsel for Mr. Collins brought this matter to the attention of the Commission after discovering that a younger attorney from his firm had incorrectly advised the candidate on whether he could borrow funds from an individual.

According to Mr. James G. Collins, Stephen P. Puffer, Jr., a local businessman and supporter of his campaign, loaned him \$50,000.00 on April 8, 1991 for the purpose of furthering his campaign for Congress. A copy of the canceled check shows that it was drawn on a Bank of New England account for "STEPHEN P. PUFFER, JR., P.O. BOX D. 72 MONTAGUE RD, NORTH AMHERST. MA 01059." The check was written out to "pay to the order of James G. Collins" and appeared to be signed by Stephen P. Puffer. This transaction was secured by an executed promissory note and a mortgage on Mr. Collins' personal residence as collateral. The copy of the promissory note indicated that the loan interest rate was ten percent (10%) and that the due date was December 31, 1992. On the same date of Mr. Collins' receipt of this \$50,000.00 loan a check in the same amount was drawn on Mr. Collins' personal account, payable to Collins for Congress.

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This check for \$50,000.00 from Mr. Collins' account was also deposited on the same date in the Collins for Congress' bank account. Subsequently, on the same date, April 8, 1991, the Committee wrote a check out in the amount of \$50,012.00 to its bank for payment of a \$50,012.00 wire transfer to Strubble & Totten, a media consulting firm. Mr. Collins obtained a bank loan on April 18, 1991 and repaid the \$50,000.00, plus \$150.00 in interest, to Stephen P. Puffer, Jr., on the same date.

If any person, including a relative or friend of the candidate, gives or loans the candidate money in connection with his or her campaign, the funds are not considered personal funds of the candidate. Instead, the loan is considered a contribution from the donor to the campaign, subject to the per-election limit and reportable by the campaign. In addition, a loan which exceeds the contribution limitations of the Act shall be unlawful whether or not it is repaid. See generally 11 C.F.R. § 100.7. See also Advisory Opinion 1985-33.

Stephen P. Puffer, Jr., loan of \$50,000.00 to Mr. Collins was in excess of the \$1,000.00 limits. He could only contribute \$1,000.00 because Mr. Collins only participated in the primary election.<sup>2</sup> This loan of \$50,000.00 was used by Mr. Collins for campaign purposes and, therefore, would be considered a campaign loan and thus a contribution under the Act.

2. Mr. Collins only participated in the Special Primary Election held on August 30, 1991 in the 1st Congressional District of Massachusetts.

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In addition to the \$50,000.00 loan, a review of the Collins for Congress (the "Committee") 1991 12 Day Pre-Special Report, covering February 19, 1991 through April 10, 1991, revealed a March 27, 1991 \$500.00 contribution from Stephen P. Puffer. Stephen P. Puffer's \$500.00 contribution totaled with his \$50,000.00 loan equals an amount of \$49,500.00 in excess of the \$1,000.00 limit. Even though the \$50,000.00 loan was repaid to Stephen P. Puffer, Jr., on April 18, 1991, the Committee's bank account clearly indicates that the Committee violated 2 U.S.C. § 441a(f) by accepting the \$50,000.00 loan and using it to make the \$50,012.00 disbursement to Strubble & Totten.

Therefore, there is reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f).

b. Loan Obtained from Heritage Bank for Savings

Pursuant to 11 C.F.R. § 110.10(b)(3), 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 considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

Pursuant to 11 C.F.R. § 110.10(b)(1), personal funds means any asset which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access

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to or control over, and with respect to which the candidate had either legal and rightful title, or an equitable interest.

Under 2 U.S.C. § 441a(a)(1), no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office, which in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section.

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election.

According to Mr. James G. Collins, he secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by his wife in which he claimed to have an equitable interest. Mr. Collins stated that "[i]n determining what assets to use as collateral for these loans, I obtained from Massachusetts counsel a legal opinion dated April 18, 1991 verifying my legal right of access to the stock owned by my wife, resulting in an equitable interest in the stock."

Mr. Collins also stated the following as to how he obtained this equitable interest in the stock:

James G. Collins obtained an equitable interest in his wife's stocks on May 9, 1987, the date of their marriage. Since the enactment of Chapter 565 of the Acts of 1974, Massachusetts General Laws c.208, § 34, created an "equitable division" framework for assigning "to either husband or wife all or any part of the estate of the other." Property subject to negotiation and division is

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not limited to property acquired during the marriage, but includes all property, "whenever and however acquired." Rice v. Rice, 372 Mass. at 400, 361 N.E. 2d at 1307 (1977).

This legal opinion from Mr. Collins' Massachusetts counsel rendered an opinion that Mr. Collins, as husband of Eugenia D. Collins, held a legal right of access ("with Eugenia's consent") of stocks and bonds presently owned in her name and that this legal right of access resulted in an equitable interest in favor of Mr. Collins, as defined by 11 C.F.R. § 110.10. Mr. Collins' Massachusetts counsel has rested their conclusion on their interpretation of current Massachusetts law and such statutes as M.G.L.A. 208 § 34 (Massachusetts General Laws Annotated) with respect to property owned by a husband or a wife. Mr. Collins' Massachusetts counsel asserts that M.G.L.A. 208 § 34 provides that a married person has an equitable interest in the property of a spouse.

The Commission does not need to resolve Mr. Collins' Massachusetts counsel assertion that a married person in Massachusetts has an equitable interest in the property of their spouse or whether Mr. Collins had legal access to the stock in question. Even if Mr. Collins' argument were accepted, it still appears that Mr. Collins' loan of \$88,588.00 from Heritage Bank for Savings would still not be in accordance with 11 C.F.R. § 110.10(b)(3). As mentioned-above, Mr. Collins secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by Mrs. Collins in which he claimed to have an equitable interest. Ever the Commission were to accept

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Mr. Collins' counsel assertion that Mr. Collins has an equitable interest in stock owned by his wife, that equitable interest would not be valued under the regulation at more than \$73,829.50, which is half the value of the stock.

Regardless of whether the Commission does or does not accept Mr. Collins' counsel argument, under 11 C.F.R. § 110.10(b)(3), a candidate may use a portion of assets jointly owned with their spouse as personal funds, but 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. Furthermore, in Advisory Opinion 1991-10, the Commission concluded, that under the Commission's regulations and Massachusetts law, a candidate in Massachusetts may obtain a bank loan for his or her campaign by using as collateral up to one half of the value of the property held jointly with his spouse. Thus, \$13,758.50 of the \$88,588.00 loan from Heritage Bank for Saving would not constitute a use of the candidate's personal funds but would instead constitute an excessive contribution on the part of Mrs. Collins in violation of 2 U.S.C. § 441a(a)(1)(A).<sup>3</sup>

3. The amount of \$14,758.50 is the difference of the amount (\$88,588.00) borrowed from Heritage Bank for Saving and the value of Mr. Collins' equitable interest (\$73,829.50) in stock owned by his wife. Based on a review of the Collins for Congress reports filed with the Commission, it does not appear that Mrs. Collins made any contributions to her husband's campaign. Mrs. Collins would have been allowed to contribute up to \$1,000.00 to her husband's campaign. Therefore, the total amount of the \$14,758.50 difference which would be considered an excessive contribution by Mrs. Collins is \$13,758.50.

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Furthermore, Collins for Congress violated 2 U.S.C. § 441a(f) by accepting this excessive contribution.

Therefore, there is reason to believe that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f).

Attachments

Advisory Opinion 1991-10

Advisory Opinion 1985-33

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 12, 1991

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-10

Andrew M. Hochberg, P.C.  
184 North Street  
Suite 225  
Pittsfield, MA 01201

Dear Mr. Hochberg:

This responds to your letters dated March 15, 1991, and March 21, 1991, requesting an advisory opinion on behalf of Citizens for Sherwood Guernsey ("the Guernsey Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use by a campaign of assets jointly owned by the candidate and his spouse. The Guernsey Committee is the principal campaign committee of Sherwood Guernsey who is a candidate in the special election in the First District of Massachusetts, scheduled for April 30, 1991.

Mr. Guernsey seeks to obtain a bank loan for his campaign no greater than \$110,000, using as collateral his marital home which is jointly held with his spouse, Carol C. Guernsey, as tenants by the entirety. You state that the present tax assessed value of the home, "upon which the bank will base its valuation of the home," is \$249,000.<sup>1/</sup> You

<sup>1/</sup> Based upon your statement as to the bank's use of the present tax assessed value for valuation purposes, the Commission assumes, for the purposes of this opinion, that the tax assessed value is not greater than the fair market value of the home. The Commission also assumes that such a basis for valuation is in the bank's ordinary course of business. See 2 U.S.C. §431(8)(B)(vii). See also Advisory Opinion 1984-60, footnotes 2 and 5 (where the Commission equates the concepts of fair market value and usual and normal charge and states that it "would view an appraisal by an expert using acceptable appraisal methods as prima facie evidence of the property's usual and normal market price," without ruling out other reliable valuation methods). Note also that other conditions apply to bank loans obtained for campaign purposes. 11 CFR 100.7(b)(11).

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state that the total equity in the home calculated as the tax valuation less the outstanding amount of the mortgage [approximately \$20,000] is approximately \$230,000. You state that Mrs. Guernsey's signature is required to enable the candidate to use jointly owned assets as collateral and ask whether such co-signature would make her a contributor under the circumstances presented.

The candidate also seeks to withdraw 50 percent of the value of assets in a Kidder, Peabody Investor Account, which is held by Mr. and Mrs. Guernsey as joint tenants with right of survivorship. The account is valued at approximately \$68,000 with approximately half the value in cash and money market funds and half in liquid equities. Specifically, the candidate wants to withdraw cash in an amount less than or equal to half of the account's value without liquidating the equities. You state that the signature of each spouse is required to withdraw funds from the account, unless Kidder-Peabody receives written authorization from the non-signing spouse that funds may be disbursed in the name of only one spouse. You also inform us that the rights of each spouse do not vary depending upon the instrument or equity in the account and that each spouse has equal rights to the assets in the account. You ask whether the proposed withdrawal would cause Mrs. Guernsey to be a contributor.

An individual, other than the candidate, is limited to contributions aggregating \$1,000 per election to a Federal candidate and his authorized political committees. 2 U.S.C. §441a(a)(1)(A). This limitation applies to the spouse or family member of a candidate, as well as to other individuals. According to Commission regulations, the candidate may make unlimited expenditures from personal funds. 11 CFR 110.10(a). Personal funds of a candidate are defined, in part, as:

- (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.

11 CFR 110.10(b).

Commission regulations, however, also permit the candidate to use the value of his or her share of assets jointly owned with the spouse for campaign purposes, without making the spouse a contributor. According to 11 CFR 110.10(b)(3),

[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 considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

You state the candidate's concern that Mrs. Guernsey's signature on the bank loan instruments will cause her to be a contributor of an excessive amount to the campaign. The Act and Commission regulations provide that a loan is a contribution and that, as a general rule, a bank loan is a contribution by each endorser or guarantor. 2 U.S.C. 5431(8)(A)(i) and (vii)(I); 11 CFR 100.7(a)(1) and 100.7(a)(1)(i)(C). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount for which he or she agreed to be liable and, in the absence of a stipulation of a portion, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that he or she bears to the total number of guarantors. 11 CFR 100.7(a)(1)(i)(C).

Although the Commission normally considers a guarantor of a loan as making a contribution subject to the section 441a limits, its regulations allow for a spouse of a candidate to co-sign a loan and not be a contributor under certain circumstances. According to 11 CFR 100.7(a)(1)(i)(D),

[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.

As a joint owner of the home with his wife, Mr. Guernsey may consider half of the equity jointly held by them in the home as his personal funds. Since this amount, approximately \$115,000, exceeds the amount of the loan for the campaign, Mrs. Guernsey may co-sign on the loan without becoming a contributor.

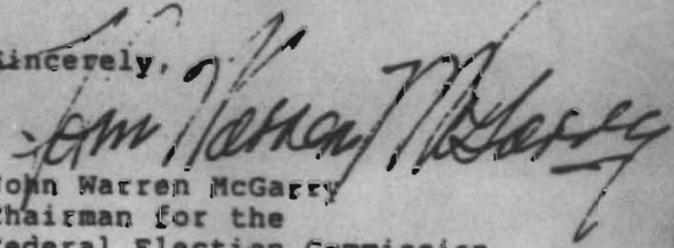
Mr. Guernsey also wishes to withdraw cash from an investment account jointly held with his wife in an amount that comprises less than half the value of the account. Regardless of the fact that the candidate seeks to make his

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withdrawal from one type of asset in the account, your description indicates that the account itself can be construed as one jointly held asset. You have informed us that withdrawals from the account require the signatures of both spouses. Therefore, it appears that the candidate does not have legal right of access to or control over the account, without the benefit of a spousal signature. As stated above, however, the Commission has drawn an exception, at 11 CFR 110.10(b)(3), for the use of assets jointly owned with a spouse. As a joint tenant with his wife, Mr. Guernsey may use up to one-half of the account for his campaign and therefore may make the proposed withdrawal. The Commission assumes that these assets are not otherwise encumbered and expresses no opinion as to the consequences of such encumbrance.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request.

Sincerely,

  
John Warren McGarry  
Chairman for the  
Federal Election Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
OFFICE OF THE SECRETARY  
COMMISSION ON FEDERAL ELECTIONS

05 NOV 25 P 3:08

November 22, 1985

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-33

Honorable Cardiss Collins  
Citizens to Re-Elect Cardiss Collins  
210 Seventh Street, S.E.  
Suite 1985/C  
Washington, D.C. - 20003

Dear Representative Collins:

This responds to your letter of October 3, 1985, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting of loans by your principal campaign committee.

You state that there are "entities" that are willing to make personal loans to you as a candidate but are not willing to make loans to your principal campaign committee, Citizens to Re-Elect Cardiss Collins.<sup>1/</sup> You state that you in turn wish to loan these funds to your committee. You add that as a Member of Congress the personal loans to you are reportable in your financial disclosure report.<sup>2/</sup>

You ask whether your committee may report the receipt of these funds as a personal loan from the candidate to the committee.

Commission regulations permit a candidate to make unlimited contributions, including loans, from the candidate's personal funds to her authorized committees. See 11 CFR 110.10(a) and

1/ Your principal campaign committee reported the receipt of \$38,660 in contributions during the period of January 1, 1985, through June 30, 1985. You filed your Statement of Candidacy on September 26, 1985. See 2 U.S.C. §431(2) and 11 CFR 100.3.

2/ This report is filed with the Clerk of the House of Representatives pursuant to the Ethics In Government Act of 1978, 2 U.S.C. §701 et seq. The Commission does not address any questions regarding the filing of your financial disclosure report since such questions are not within its jurisdiction.

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Advisory Opinion 1984-60.<sup>3/</sup> Such loans are reportable by the committee as loans made to the committee by the candidate. See 2 U.S.C. §434(b)(2)(G) and (3)(E); 11 CFR 104.3(a)(3)(vii) and 104.3(a)(4)(iv). This procedure applies to loans to the committee from the candidate's personal funds.

The Act and Commission regulations, however, specifically provide that when a candidate receives a loan for use in connection with her campaign, the candidate receives such a loan as an agent of her authorized committee or committees. 2 U.S.C. §432(e)(2); 11 CFR 101.2 and 102.7(d). Such loans are reportable by the committee and itemized as loans from the lender to the committee, rather than as loans from the candidate to the committee. 2 U.S.C. §434(b)(2)(H) and (3)(E); 11 CFR 104.3(a)(3)(vii) and 104.3(a)(4)(iv); see also 11 CFR 104.3(d). Furthermore, the repayment of such loans are reported and itemized as disbursements to the lender. 2 U.S.C. §434(b)(4)(E) and (5)(D); 11 CFR 104.3(b)(2)(iii) and 104.3(b)(4)(iii) and (iv).<sup>4/</sup>

The Act further provides that loans by lending institutions described in the Act made in accordance with applicable law and in the ordinary course of business do not constitute contributions to the candidate or her authorized committees. 2 U.S.C. §431(8)(B)(vii); 11 CFR 100.7(b)(11). Thus, any loans to a candidate as an agent of her authorized committees or to her authorized committees from persons or entities, other than those lending institutions described in the Act, come within the Act's definition of contribution. See 2 U.S.C. §431(8)(A)(i); 11 CFR 100.7(a)(1). As contributions, such loans become subject to the prohibitions and limitations of the Act. See 2 U.S.C. §§441a, 441b, 441c, 441e, and 441f; Advisory Opinions 1982-64 and 1978-40.

You are a candidate who will receive personal loans which you then plan to loan to your committee. The Act specifies that you will be treated as receiving or obtaining these loans as an agent of your committee. Therefore, these loans do not qualify

<sup>3/</sup> Commission regulations also define "personal funds." See 11 CFR 110.10(b); Advisory Opinions 1982-64 and 1978-40.

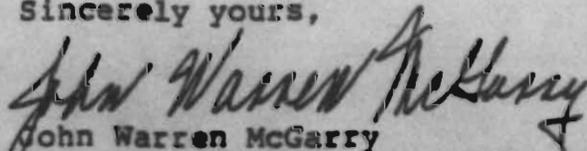
<sup>4/</sup> The Act and regulations also provide that debts and obligations owed to or by a political committee which remain outstanding shall be continuously reported until extinguished. See 2 U.S.C. §434(b)(8); 11 CFR 104.3(d) and 104.11. This reporting requirement attaches to both loans of a candidate's personal funds to her authorized committees and loans obtained by the candidate as an agent of her committees. This reporting requirement also continues into subsequent election cycles where the debt or obligation remains outstanding.

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as your personal funds. Accordingly, your committee should report and itemize these loans as loans from the initial lender rather than as loans of your personal funds. See Advisory Opinions 1982-64 and 1978-40.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. 2 U.S.C. §437f.

Sincerely yours,

  
John Warren McGarry  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1984-60, 1982-64 and 1978-40)

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 9, 1992

Stephen P. Puffer, Jr.  
P.O. Box D.  
72 Montague Road  
North Amherst, Massachusetts 01059

RE: MUR 3380  
Stephen P. Puffer, Jr.

Dear Mr. Puffer:

On February 25, 1992, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), 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 you. 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 you, 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.

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.

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Stephen P. Puffer, Jr.  
Page 2

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 Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

*Joan D. Aikens*

Joan D. Aikens  
Chairman

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

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FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Stephen P. Puffer, Jr.

MUR: 3380

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. 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

Receipt of \$50,000 loan from Stephen P. Puffer, Jr.

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election. Under 2 U.S.C. § 441a(a)(1), no person shall make contributions<sup>1</sup> to any candidate and his authorized political committee with respect to any election for Federal office, which in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section.

Pursuant to 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. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or

1. 2 U.S.C. § 431(11) defines "person" to include a committee.

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committee, shall not exceed the contribution limitations set forth at 11 C.F.R. part 110. Pursuant to 11 C.F.R. § 100.7(a)(1)(i)(A), a loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. part 110 shall be unlawful whether or not it is repaid.

This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress on April 23, 1991. Counsel for Mr. Collins brought this matter to the attention of the Commission after discovering that a younger attorney from his firm had incorrectly advised the candidate on whether he could borrow funds from an individual.

According to Mr. James G. Collins, Stephen P. Puffer, Jr., a local businessman and supporter of his campaign, loaned him \$50,000.00 on April 8, 1991 for the purpose of furthering his campaign for Congress. A copy of the canceled check shows that it was drawn on a Bank of New England account for "STEPHEN P. PUFFER, JR., P.O. BOX D. 72 MONTAGUE RD, NORTH AMHERST. MA 01059." The check was written out to "pay to the order of James G. Collins" and appeared to be signed by Stephen P. Puffer. This transaction was secured by an executed promissory note and a mortgage on Mr. Collins' personal residence as collateral. The copy of the promissory note indicated that the loan interest rate was ten percent (10%) and that the due date was December 31, 1992. Mr. Collins obtained a bank loan on April 18, 1991 and repaid the \$50,000.00, plus \$150.00 in interest, to Stephen P. Puffer, Jr., on the same date.

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If any person, including a relative or friend of the candidate, gives or loans the candidate money in connection with his or her campaign, the funds are not considered personal funds of the candidate. Instead, the loan is considered a contribution from the donor to the campaign, subject to the per-election limit and reportable by the campaign. In addition, a loan which exceeds the contribution limitations of the Act shall be unlawful whether or not it is repaid. See generally 11 C.F.R. § 100.7. See also Advisory Opinion 1985-33.

Stephen P. Puffer, Jr., loan of \$50,000.00 to Mr. Collins was in excess of the \$1,000.00 limits. He could only contribute \$1,000.00 because Mr. Collins only participated in the primary election.<sup>2</sup> This loan of \$50,000.00 was used by Mr. Collins for campaign purposes and, therefore, would be considered a campaign loan and thus a contribution under the Act.

In addition to the \$50,000.00 loan, a review of the Collins for Congress (the "Committee") 1991 12 Day Pre-Special Report, covering February 19, 1991 through April 10, 1991, revealed a March 27, 1991 \$500.00 contribution from Stephen P. Puffer. Stephen P. Puffer's \$500.00 contribution totaled with his \$50,000.00 loan equals an amount of \$49,500.00 in excess of the \$1,000.00 limit. Stephen P. Puffer has violated 2 U.S.C. § 441a(a)(1)(A) by loaning Mr. Collins \$50,000.00, and by

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2. Mr. Collins only participated in the Special Primary Election held on August 30, 1991 in the 1st Congressional District of Massachusetts.

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contributing \$500.00 to his Committee, which totals an amount of \$49,500.00 in excess of the \$1,000.00 limitation.

Therefore, there is reason to believe that Stephen P. Puffer violated 2 U.S.C. § 441a(a)(1)(A).

Attachment  
Advisory Opinion 1985-33

930840962123



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION COMMISSION SECRETARY

05 NOV 25 P 3: 08

November 22, 1985

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1985-33

Honorable Cardiss Collins  
Citizens to Re-Elect Cardiss Collins  
210 Seventh Street, S.E.  
Suite 1985/C  
Washington, D.C. - 20003

Dear Representative Collins:

This responds to your letter of October 3, 1985, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the reporting of loans by your principal campaign committee.

You state that there are "entities" that are willing to make personal loans to you as a candidate but are not willing to make loans to your principal campaign committee, Citizens to Re-Elect Cardiss Collins.<sup>1/</sup> You state that you in turn wish to loan these funds to your committee. You add that as a Member of Congress the personal loans to you are reportable in your financial disclosure report.<sup>2/</sup>

You ask whether your committee may report the receipt of these funds as a personal loan from the candidate to the committee.

Commission regulations permit a candidate to make unlimited contributions, including loans, from the candidate's personal funds to her authorized committees. See 11 CFR 110.10(a) and

<sup>1/</sup> Your principal campaign committee reported the receipt of \$38,660 in contributions during the period of January 1, 1983, through June 30, 1985. You filed your Statement of Candidacy on September 26, 1985. See 2 U.S.C. §431(?) and 11 CFR 100.J.

<sup>2/</sup> This report is filed with the Clerk of the House of Representatives pursuant to the Ethics In Government Act of 1978, 2 U.S.C. §701 et seq. The Commission does not address any questions regarding the filing of your financial disclosure report since such questions are not within its jurisdiction.

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Advisory Opinion 1984-60.<sup>3/</sup> Such loans are reportable by the committee as loans made to the committee by the candidate. See 2 U.S.C. §434(b)(2)(G) and (3)(E); 11 CFR 104.3(a)(3)(vii) and 104.3(a)(4)(iv). This procedure applies to loans to the committee from the candidate's personal funds.

The Act and Commission regulations, however, specifically provide that when a candidate receives a loan for use in connection with her campaign, the candidate receives such a loan as an agent of her authorized committee or committees. 2 U.S.C. §432(e)(2); 11 CFR 101.2 and 102.7(d). Such loans are reportable by the committee and itemized as loans from the lender to the committee, rather than as loans from the candidate to the committee. 2 U.S.C. §434(b)(2)(H) and (3)(E); 11 CFR 104.3(a)(3)(vii) and 104.3(a)(4)(iv); see also 11 CFR 104.3(d). Furthermore, the repayment of such loans are reported and itemized as disbursements to the lender. 2 U.S.C. §434(b)(4)(E) and (5)(D); 11 CFR 104.3(b)(2)(iii) and 104.3(b)(4)(iii) and (iv).<sup>4/</sup>

The Act further provides that loans by lending institutions described in the Act made in accordance with applicable law and in the ordinary course of business do not constitute contributions to the candidate or her authorized committees. 2 U.S.C. §431(8)(B)(vii); 11 CFR 100.7(b)(11). Thus, any loans to a candidate as an agent of her authorized committees or to her authorized committees from persons or entities, other than those lending institutions described in the Act, come within the Act's definition of contribution. See 2 U.S.C. §431(8)(A)(i); 11 CFR 100.7(a)(1). As contributions, such loans become subject to the prohibitions and limitations of the Act. See 2 U.S.C. §§441a, 441b, 441c, 441e, and 441f; Advisory Opinions 1982-64 and 1978-40.

You are a candidate who will receive personal loans which you then plan to loan to your committee. The Act specifies that you will be treated as receiving or obtaining these loans as an agent of your committee. Therefore, these loans do not qualify

<sup>3/</sup> Commission regulations also define "personal funds." See 11 CFR 110.10(b); Advisory Opinions 1982-64 and 1978-40.

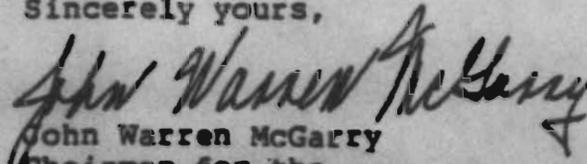
<sup>4/</sup> The Act and regulations also provide that debts and obligations owed to or by a political committee which remain outstanding shall be continuously reported until extinguished. See 2 U.S.C. §434(b)(8); 11 CFR 104.3(d) and 104.11. This reporting requirement attaches to both loans of a candidate's personal funds to her authorized committees and loans obtained by the candidate as an agent of her committees. This reporting requirement also continues into subsequent election cycles where the debt or obligation remains outstanding.

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as your personal funds. Accordingly, your committee should report and itemize these loans as loans from the initial lender rather than as loans of your personal funds. See Advisory Opinions 1982-64 and 1978-40.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. 2 U.S.C. §437f.

Sincerely yours,



John Warren McGarry  
Chairman for the  
Federal Election Commission

Enclosures (AOs 1984-60, 1982-64 and 1978-40)

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 9, 1992

Eugenia D. Collins  
166 Shays Street  
Amherst, Massachusetts 01002

RE: MUR 3380  
Eugenia D. Collins

Dear Mrs. Collins:

On February 25, 1992, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), 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 you. 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 you, 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.

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

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Eugenia D. Collins  
Page 2

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 Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

*Joan D. Aikens*

Joan D. Aikens  
Chairman

Enclosures

Factual and Legal Analysis  
Procedures  
Designation of Counsel Form  
Conciliation Agreement

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FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Eugenia D. Collins

MUR: 3380

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. 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

Loan Obtained from Heritage Bank for Savings

Pursuant to 11 C.F.R. § 110.10(b)(3), 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 considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

Pursuant to 11 C.F.R. § 110.10(b)(1), personal funds means any asset 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.

Under 2 U.S.C. § 441a(a)(1), no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office, which

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in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section.

Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election.

According to Mr. James G. Collins, he secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by his wife in which he claimed to have an equitable interest.<sup>1</sup> Mr. Collins stated that "[i]n determining what assets to use as collateral for these loans, I obtained from Massachusetts counsel a legal opinion dated April 18, 1991 verifying my legal right of access to the stock owned by my wife, resulting in an equitable interest in the stock." Mr. Collins also stated the following as to how he obtained this equitable interest in the stock:

James G. Collins obtained an equitable interest in his wife's stocks on May 9, 1987, the date of their marriage. Since the enactment of Chapter 565 of the Acts of 1974, Massachusetts General Laws c.208, § 34, created an "equitable division" framework for assigning "to either husband or wife all or any part of the estate of the other." Property subject to negotiation and division is not limited to property acquired during the marriage, but includes all property, "whenever and however acquired." Rice v. Rice, 372 Mass. at 400, 361 N.E. 2d at 1307 (1977).

1. This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress on April 23, 1991.

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This legal opinion from Mr. Collins' Massachusetts counsel rendered an opinion that Mr. Collins, as husband of Eugenia D. Collins, held a legal right of access ("with Eugenia's consent") of stocks and bonds presently owned in her name and that this legal right of access resulted in an equitable interest in favor of Mr. Collins, as defined by 11 C.F.R. § 110.10. Mr. Collins' Massachusetts counsel has rested their conclusion on their interpretation of current Massachusetts law and such statutes as M.G.L.A. 208 § 34 (Massachusetts General Laws Annotated) with respect to property owned by a husband or a wife. Mr. Collins' Massachusetts counsel asserts that M.G.L.A. 208 § 34 provides that a married person has an equitable interest in the property of a spouse.

The Commission does not need to resolve Mr. Collins' Massachusetts counsel assertion that a married person in Massachusetts has an equitable interest in the property of their spouse or whether Mr. Collins had access to the stock in question. Even if Mr. Collins' argument were accepted, it still appears that Mr. Collins' loan of \$88,588.00 from Heritage Bank for Savings would still not be in accordance with 11 C.F.R. § 110.10(b)(3). As mentioned-above, Mr. Collins secured an \$88,588.00 loan from Heritage Bank for Savings with \$147,659.00 worth of stocks owned by Mrs. Collins in which he claimed to have an equitable interest. Even if the Commission were to accept Mr. Collins' counsel assertion that Mr. Collins has an

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equitable interest in stock owned by his wife, that equitable interest would not be valued under the regulations at more than \$73,829.50, which is half the value of the stock.

Regardless of whether the Commission does or does not accept Mr. Collins' counsel argument, under 11 C.F.R. § 110.10(b)(3), a candidate may use a portion of assets jointly owned with their spouse as personal funds, but 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. Furthermore, in Advisory Opinion 1991-10, the Commission concluded, that under the Commission's regulations and Massachusetts law, a candidate in Massachusetts may obtain a bank loan for his or her campaign by using as collateral up to one-half of the value of the property held jointly with his spouse. Thus, \$13,758.50 of the \$88,588.00 loan from Heritage Bank for Saving would not constitute a use of the candidate's personal funds but would instead constitute an excessive contribution on the part of Mrs. Collins in violation of 2 U.S.C. § 441a(a)(1)(A).<sup>2</sup>

2. The amount of \$14,758.50 is the difference of the amount (\$88,588.00) borrowed from Heritage Bank for Saving and the value of Mr. Collins' equitable interest (\$73,829.50) in stock owned by his wife. Based on a review of the Collins for Congress reports filed with the Commission, it does not appear that Mrs. Collins made any contributions to her husband's campaign. Mrs. Collins would have been allowed to contribute up to \$1,000 to her husband's campaign. Therefore, the total amount of the \$14,758.50 difference which would be considered an excessive contribution by Mrs. Collins is \$13,758.50.

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Therefore, there is reason to believe that Eugenia D. Collins violated 2 U.S.C. § 441a(a)(1)(A).

Attachment  
Advisory Opinion 1991-10

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 12, 1991

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-10

Andrew M. Hochberg, P.C.  
184 North Street  
Suite 225  
Pittsfield, MA 01201

Dear Mr. Hochberg:

This responds to your letters dated March 15, 1991, and March 21, 1991, requesting an advisory opinion on behalf of Citizens for Sherwood Guernsey ("the Guernsey Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use by a campaign of assets jointly owned by the candidate and his spouse. The Guernsey Committee is the principal campaign committee of Sherwood Guernsey who is a candidate in the special election in the First District of Massachusetts, scheduled for April 30, 1991.

Mr. Guernsey seeks to obtain a bank loan for his campaign no greater than \$110,000, using as collateral his marital home which is jointly held with his spouse, Carol C. Guernsey, as tenants by the entirety. You state that the present tax assessed value of the home, "upon which the bank will base its valuation of the home," is \$249,000.<sup>1/</sup> You

1/ Based upon your statement as to the bank's use of the present tax assessed value for valuation purposes, the Commission assumes, for the purposes of this opinion, that the tax assessed value is not greater than the fair market value of the home. The Commission also assumes that such a basis for valuation is in the bank's ordinary course of business. See 2 U.S.C. §431(8)(B)(vii). See also Advisory Opinion 1984-60, footnotes 2 and 5 (where the Commission equates the concepts of fair market value and usual and normal charge and states that it "would view an appraisal by an expert using acceptable appraisal methods as prima facie evidence of the property's usual and normal market price," without ruling out other reliable valuation methods). Note also that other conditions apply to bank loans obtained for campaign purposes. 11 CFR 100.7(b)(11).

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state that the total equity in the home calculated as the tax valuation less the outstanding amount of the mortgage [approximately \$20,000] is approximately \$230,000. You state that Mrs. Guernsey's signature is required to enable the candidate to use jointly owned assets as collateral and ask whether such co-signature would make her a contributor under the circumstances presented.

The candidate also seeks to withdraw 50 percent of the value of assets in a Kidder, Peabody Investor Account, which is held by Mr. and Mrs. Guernsey as joint tenants with right of survivorship. The account is valued at approximately \$68,000 with approximately half the value in cash and money market funds and half in liquid equities. Specifically, the candidate wants to withdraw cash in an amount less than or equal to half of the account's value without liquidating the equities. You state that the signature of each spouse is required to withdraw funds from the account, unless Kidder-Peabody receives written authorization from the non-signing spouse that funds may be disbursed in the name of only one spouse. You also inform us that the rights of each spouse do not vary depending upon the instrument or equity in the account and that each spouse has equal rights to the assets in the account. You ask whether the proposed withdrawal would cause Mrs. Guernsey to be a contributor.

An individual, other than the candidate, is limited to contributions aggregating \$1,000 per election to a Federal candidate and his authorized political committees. 2 U.S.C. §441a(a)(1)(A). This limitation applies to the spouse or family member of a candidate, as well as to other individuals. According to Commission regulations, the candidate may make unlimited expenditures from personal funds. 11 CFR 110.10(a). Personal funds of a candidate are defined, in part, as:

- (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.

11 CFR 110.10(b).

Commission regulations, however, also permit the candidate to use the value of his or her share of assets jointly owned with the spouse for campaign purposes, without making the spouse a contributor. According to 11 CFR 110.10(b)(3),

[a] candidate may use a portion of assets jointly owned with his or her spouse as

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personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) 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.

You state the candidate's concern that Mrs. Guernsey's signature on the bank loan instruments will cause her to be a contributor of an excessive amount to the campaign. The Act and Commission regulations provide that a loan is a contribution and that, as a general rule, a bank loan is a contribution by each endorser or guarantor. 2 U.S.C. §431(8)(A)(i) and (vii)(I); 11 CFR 100.7(a)(1) and 100.7(a)(1)(i)(C). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount for which he or she agreed to be liable and, in the absence of a stipulation of a portion, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that he or she bears to the total number of guarantors. 11 CFR 100.7(a)(1)(i)(C).

Although the Commission normally considers a guarantor of a loan as making a contribution subject to the section 441a limits, its regulations allow for a spouse of a candidate to co-sign a loan and not be a contributor under certain circumstances. According to 11 CFR 100.7(a)(1)(i)(D),

[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.

As a joint owner of the home with his wife, Mr. Guernsey may consider half of the equity jointly held by them in the home as his personal funds. Since this amount, approximately \$115,000, exceeds the amount of the loan for the campaign, Mrs. Guernsey may co-sign on the loan without becoming a contributor.

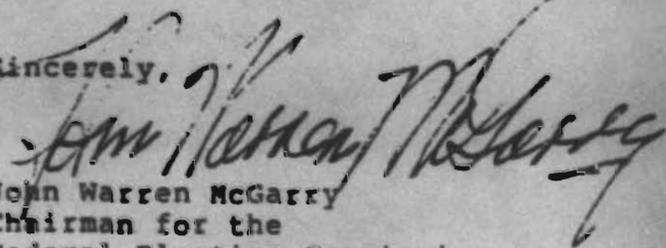
Mr. Guernsey also wishes to withdraw cash from an investment account jointly held with his wife in an amount that comprises less than half the value of the account. Regardless of the fact that the candidate seeks to make his

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withdrawal from one type of asset in the account, your description indicates that the account itself can be construed as one jointly held asset. You have informed us that withdrawals from the account require the signatures of both spouses. Therefore, it appears that the candidate does not have legal right of access to or control over the account, without the benefit of a spousal signature. As stated above, however, the Commission has drawn an exception, at 11 CFR 110.10(b)(3), for the use of assets jointly owned with a spouse. As a joint tenant with his wife, Mr. Guernsey may use up to one-half of the account for his campaign and therefore may make the proposed withdrawal. The Commission assumes that these assets are not otherwise encumbered and expresses no opinion as to the consequences of such encumbrance.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request.

Sincerely,

  
John Warren McGarry  
Chairman for the  
Federal Election Commission

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COMMISSION  
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March 23, 1992

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

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
92 MAR 23 PM 4: 10

Re: 3380

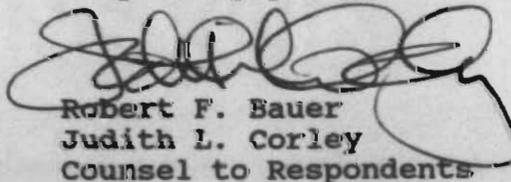
Dear Mr. Parrish:

Please find enclosed designations of counsel for Mrs. Eugenia Collins and Mr. Stephen Puffer for the above-referenced Matter Under Review.

Our law firm has been retained to represent Mrs. Collins and Mr. Puffer, in addition to being retained to prepare a response to the Commission's findings related to the Collins for Congress Committee. We request that the Commission grant an extension of time of 20 days to allow us to review the materials relevant to these findings, consult with the clients, and prepare their responses. Since the Commission's notifications were apparently received by the Respondents on or about March 12, with the extension, the responses would be due on April 16.

We appreciate your attention to this matter. If you have any questions, or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,

  
Robert F. Bauer  
Judith L. Corley  
Counsel to Respondents

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3380

NAME OF COUNSEL: Robert F. Bauer

ADDRESS: Perkins Coie

607 Fourteenth Street, N.W.

Washington, D.C. 20005

TELEPHONE: 202-628-6600

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.

March 16, 1992  
Date

Stephen P. Puffer, Jr.  
Signature Stephen P. Puffer, Jr.

RESPONDENT'S NAME: Stephen P. Puffer, Jr.

ADDRESS: P.O. Box D, 72 Montague Road  
North Amherst, MA 01059

HOME PHONE: (413) 549-1871

BUSINESS PHONE: (413) 549-0145

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3380

NAME OF COUNSEL: Robert F. Bauer

ADDRESS: Perkins Coie

607 Fourteenth Street, N.W.

Washington, D.C. 20005

TELEPHONE: 202-628-6600

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.

March 16, 1992  
Date

Eugenia D. Collins  
Signature

RESPONDENT'S NAME: Eugenia D. Collins

ADDRESS: 166 Shays Street

Amherst, MA 01002

HOME PHONE: 413-256-0966

BUSINESS PHONE: 413-256-0966

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 24, 1992

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

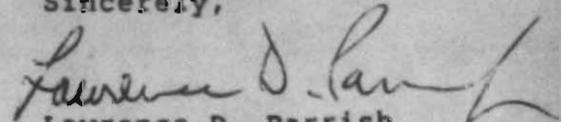
RE: MUR 3380  
Eugenia Collins  
Stephen Puffer

Dear Ms. Corley and Mr. Bauer:

This is in response to your letter dated March 23, 1992, which we received on March 23, 1992, requesting an extension of 20 days to respond to the Commission's findings. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on April 16, 1992.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

  
Lawrence D. Parrish  
Attorney

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June 25, 1992

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
92 JUN 25 PM 2:38

Lawrence D. Parrish  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20464

Re: MUR 3380 - Eugenia Collins

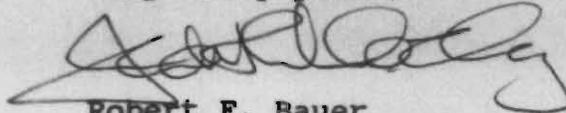
Dear Mr. Parrish:

This is in response to the Commission's letter which notified Mrs. Collins that the Commission had found reason to believe that she had violated the Federal Election Campaign Act, as amended.

We incorporate here by reference the arguments and documentary evidence set out in the response filed today on behalf of the Collins for Congress Committee. As that material shows, Mrs. Collins did not at any time violate the federal campaign laws. This matter should be dismissed and the Commission should take no further action.

If you have any questions or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to Eugenia Collins

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RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
92 JUN 25 PM 2:38

June 25, 1992

Lawrence D. Parrish  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20464

**Re: MUR 3380 - Stephen P. Puffer, Jr.**

Dear Mr. Parrish:

This is in response to the Commission's letter which notified Mr. Puffer that the Commission had found reason to believe that he had violated the Federal Election Campaign Act, as amended.

We incorporate here by reference the arguments and documentary evidence set out in the response filed today on behalf of the Collins for Congress Committee. As that material shows, Mr. Puffer was without fault in this matter. At no time did he intend to make an excessive political contribution to Mr. Collins' campaign. He relied on the same information as had Mr. Collins that the loan to Mr. Collins was lawful if made in the regular course of business with proper terms of repayment. He had no way of knowing that Mr. Collins' understanding was based on the erroneous advice of another attorney.

Although it may be argued that Mr. Puffer should have made an independent inquiry of the matter, this would not be a reasonable expectation in this case. Mr. Puffer was already advised in the matter by Mr. Collins, who, in turn, had sought the advice of counsel before proceeding with the loan.

Given these facts, this matter should be dismissed and the Commission should take no further action against Mr. Puffer.

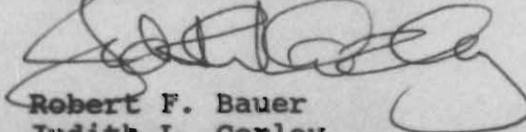
[09901-0001/DA921190.002]

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Lawrence D. Parrish  
June 25, 1992  
Page 2

If you have any questions or need additional information,  
please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to  
Stephen P. Puffer, Jr.

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PERKINS COIE

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

June 25, 1992

Lawrence D. Parrish  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20464

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF THE GENERAL COUNSEL  
92 JUN 25 PM 2:38

Re: MUR 3380 - Collins for Congress and Bruce C. Vogt,  
as Treasurer

Dear Mr. Parrish:

This is in response to the Commission's letter dated March 9, 1992, with respect to the above-referenced Matter Under Review.<sup>1</sup> In that letter, the Commission made an additional finding of reason to believe that Eugenia Collins had made an excessive contribution to Respondents and rejected Respondents' request that no action be taken against them.

The following discussion will demonstrate that the Commission was in error in finding an excessive contribution from Mrs. Collins

The Commission's finding of an excessive contribution by Eugenia Collins is based on an assumption that more than half of the value of stock was used by James Collins for campaign purposes, including the repayment of the \$50,000 loan by an individual to Mr. Collins. The Commission noted that the bank loan for \$88,588 was secured by stock valued at \$147,659, one half of which, or the amount attributable to Mr. Collins, would be worth only \$73,829.50. Having assumed that the entire loan was used for campaign purposes, the difference in the available value of the stocks used to collateralize the loan appeared to result in an excessive contribution by Mrs. Collins of \$13,758.50 (\$88,588.00 - \$73,829.50 = \$14,758.50 less the value of a \$1,000 contribution).

<sup>1</sup>We apologize for the delay in submitting our response, but we have been attempting to obtain the relevant information from the Collins campaign media consultants discussed below.

[09901-0001/DA921190.035]

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In fact, however, as stated in Respondents' earlier submission and confirmed in the attached affidavit, on April 18, 1991, Mr. Collins obtained two loans from Heritage Savings, the loan for \$88,588, secured by the stock as described above, and a second loan, for \$22,000.00, in the form of an increase in an equity line of credit issued on Mr. Collins' personal residence, owned by him in fee simple.<sup>2</sup> Both loans, for a total value of \$110,588.00, were placed into Mr. Collins' personal checking account which at the time had an additional \_\_\_\_\_ of his own funds in it. See attached bank statements.

Of the amount in his personal checking account, Mr. Collins used only \$83,685.75 for campaign purposes (including the repayment to Stephen Puffer of his loan plus interest). At no time did his campaign expenditures exceed the assets that were legally available to him for this purpose (\$73,829.50 available from stock loan, at least \$11,000 available from equity line increase, \_\_\_\_\_ in personal funds from salary and rents owned by him in fee simple). Thus, not only did Mrs. Collins not make a contribution of \$14,758.50, because none of this sum was ever used by Mr. Collins for a campaign purpose, but his account contained additional clearly personal funds which were also never used for a campaign purpose.

- Mr. Collins made every effort from the beginning to ensure that the transaction that has resulted in this MUR was entered into in complete compliance with the federal campaign laws. He consulted counsel and, through no fault of his own, received bad advice.

---

<sup>2</sup>While the Equity Line of Credit was issued in both Mr. and Mrs. Collins' name, it was secured by Mr. Collins' personal residence, owned by him in fee simple with a first mortgage in his name only. In any event, as described below, no more than one-half of the \$22,000 was used by Mr. Collins in his campaign.

9308/0962146

- Upon learning of the problem with the loan as originally constructed, Mr. Collins acted within 24 hours with commendable speed to correct the situation and bring the transaction into compliance with the federal campaign laws.
- The original loan in question was outstanding for a brief period of time.
- The matter was corrected and quickly brought to the Commission's attention by Mr. Collins himself. Mr. Collins initiated the Pre-MUR during the closing week of his campaign, when the campaign was at its busiest. This action on his part was not the result of review by the Commission, a press inquiry, or the filing of a complaint.
- During the entire time the loan from the individual in question was outstanding, Mr. Collins had available the means and the assets to obtain a loan from a bank in compliance with the campaign laws. Had he been advised correctly from the beginning, this is clearly the option he would have chosen.

93030962147

One concern, we are told, is that the loan at issue here financed an immediate media buy, so that Mr. Collins campaign realized some immediate benefit. The presumed benefit is illusory for the following reasons: (1) Mr. Collins could have arranged completely proper financing at the outset on April 8, 1991, as he did on April 18, 1991, had he received correct legal advice; (2) an examination of the accompanying documents from Struble Totten and ProMedia, Inc., consultants and agents for Collins for Congress Committee for media and media buying, respectively, shows that actual expenditures for the purchase of media time and fees in the amounts of \$11,834 and \$19,316, were made for period of only seven days and two days, respectively, before Mr. Collins restructured his loan on April 18, 1991, and brought his campaign into compliance (most of these purchases (approximately 85 percent) being for advertisements which played after the April 18, 1991 date and therefore, which could have been paid with funds which were in compliance with FEC regulations); and (3) correcting the error itself was costly in requiring for its correction a major diversion of time and effort in mid-campaign. Time is money

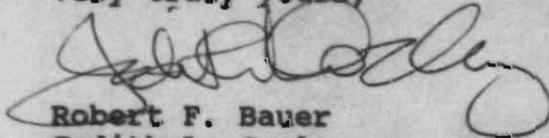
Lawrence D. Parrish  
June 25, 1992  
Page 4

in campaigns, and much was spent in dealing with this problem. This was the price Mr. Collins had to pay for an error that was not his fault and he paid it conscientiously.

Mr. Collins should not be penalized for his efforts to comply with federal campaign laws. He has exhibited the qualities that the Commission seeks to encourage in all candidates -- a willingness and duty to comply not only with the letter of the law, but with its spirit. As soon as Mr. Collins was informed by his attorney that prior advice regarding the structuring of loans was in error, he made a priority the correction of the error, bringing his campaign rapidly into compliance, taking the initiative to self-report the error by initiating a pre-MUR and seeking further advice from the Commission itself. How many candidates place honor above just getting by election day and dealing with the issue if someone else brings it up?

We respectfully request the Commission to not find a violation of campaign laws by Mrs. Collins since she did not make an excessive contribution and to take no further action regarding the Collins for Congress Committee.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to Respondents

Attachments

93030962148

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 3380

Respondents: Collins for Congress and Bruce C. Vogt, as  
Treasurer

AFFIDAVIT OF JAMES G. COLLINS

Regarding the above-referenced matter, I make the following  
statements and attach the accompanying documents:

1. On April 18, 1991, I obtained two loans from Heritage Bank  
for Savings. The first loan was in the amount of \$88,588.00  
collateralized with \$147,659.00 of stocks in which I had equitable  
interest. The second loan was for \$22,000.00 and was to be repaid  
in three months by increasing the equity line mortgage on my home  
which is located at 166 Shays Street, Amherst, Massachusetts, and  
was and is now owned by me in fee simple, the first mortgage on  
which is in my name only and the equity line is in Eugenia D.  
Collins' and my name. (Documents regarding both loans were provided  
to the Commission as part of the response of the Respondents on  
October 16, 1991.)

2. Both of the loans described in Paragraph One were to me  
personally and were deposited by me into my personal checking  
account. Neither of the loans was deposited into the checking  
account for Collins for Congress. I am enclosing a copy of the  
statement of my personal checking account as Attachment "A". The  
statement reflects the deposit of \$110,588.00 (\$88,588.00 plus  
\$22,000.00) on April 18, 1991.

3. Between April 18, 1991 and April 24, 1991, I made five  
disbursements from my personal checking account for campaign  
purposes. These disbursements totaled \$83,685.75.

4. At all times during this period, it was my intention not  
to use more than \$73,829.50 of the \$88,588.00 stock loan, i.e., one-  
half the value of the stocks. That is why I obtained the additional  
\$22,000.00 loan on April 18, 1991.

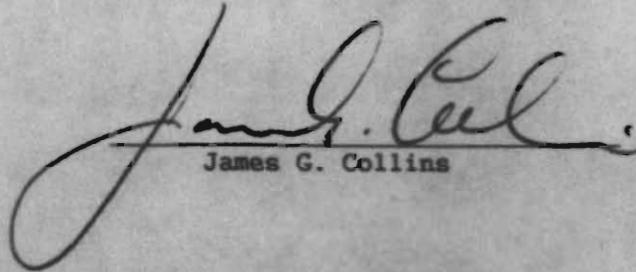
5. At all times during this period, my personal checking  
account had personal funds derived from the value of 1) my equitable  
interest in my wife's stocks (\$73,829.50), 2) one-half the above-  
referenced personal loan to me (\$11,000), and 3) other funds from  
salary and other income (The balance in my personal account prior to

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
92 JUN 25 PM 2:42

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my obtaining the stock-secured loan and the personal loan was in an amount more than the aggregate payments for campaign purposes, i.e., \$88,870.31 in personal funds compared to \$83,685.75 in campaign expenditures. I neither contributed to the Collins for Congress Committee nor used for any campaign purpose any of the \$14,758.50 which is the difference between the value of my equitable interest in stock owned by my wife (\$73,829.50) and the amount of the overall stock loan (\$88,588.00).

Pursuant to 28 U.S.C. s. 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this fifth day of June, 1992.

  
James G. Collins

93030962150

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 3380

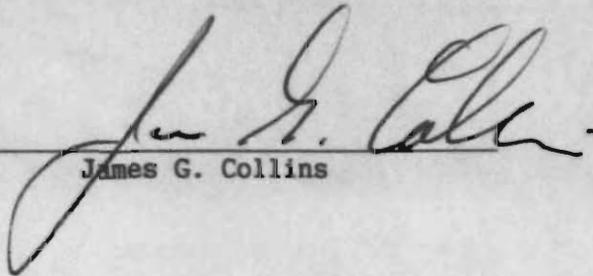
Respondents: Collins for Congress and Bruce C. Vogt, as  
Treasurer

AFFIDAVIT OF JAMES G. COLLINS

Regarding the above-referenced matter, I make the following  
statements and attach the accompanying documents:

In order to provide further information to the Commission regarding  
the expenditure of certain funds by my Committee, I have requested from  
Struble Totten of Washington, D.C., media consultant for my campaign, and  
from ProMedia, Inc., of Needham, Massachusetts, media buyer for my  
campaign, information regarding the timeframe and amounts of expenditures  
made on behalf of my Committee. I believe the information included in  
these documents is true and correct.

Pursuant to 28 U.S.C. s. 1746, I declare under penalty of  
perjury under the laws of the United States of America that the  
foregoing is true and correct. Executed this fifth day of June,  
1992.

  
James G. Collins

930370962151



pro medio, inc.

FAX TRANSMISSION COVER SHEET

TO: Jim Collins

COMPANY: \_\_\_\_\_

FAX TEL #: \_\_\_\_\_

FROM: Susan Ryan

DATE: 5/22/92 TIME: 11:30A

TOTAL NUMBER OF PAGES: 2

If you do not receive all pages, or if fax is not legible, please call sender.

PRO MEDIA, INC.  
150 GOULD STREET, NEEDHAM, MA 02194  
617/455-8910 Fax: 617/455-8613

NOTES / COMMENTS / SPECIAL INSTRUCTIONS:

Dear Jim -

Please let me know if I can be of any more help in this

Have a great weekend & keep in touch

Best regards,

SIGNED: Susan

93060962152

PRO MEDIA, INC.

POLITICAL CASH-FLOW WORK SHEET

Pg.

1

CANDIDATE:

JIM COLLINS

JOB NUMBER:

1991	CHK	REF				NOTES AND	
DATE	W/T	NO.	DESCRIPTION	CASH IN	CASH OUT	CASH BAL.	COMMENTS

BALANCE BROUGHT FORWARD-----) \$

PR 11	WT	471	CASH RECEIVED	31,150.00		31,150.00	
PR 15	CK	5337	PRO MEDIA INC		1,400.00	29,750.00	
PR 11	CK	5331	WMLP TV		2,826.25	26,923.75	
PR 11	CK	5332	WGG8 TV		2,813.50	24,110.25	
PR 11	CK	5333	WFS8 TV		1,700.00	22,410.25	
PR 12	CK	5334	WGG8 TV		1,266.50	21,143.75	
PR 12	CK	5335	WMLP TV		1,317.50	19,826.25	
PR 12	CK	5336	WFS8 TV		510.00	19,316.25	
PR 15	WT	341	CASH RECEIVED	23,000.00		42,316.25	
PR 16	CK	5338	PRO MEDIA INC		920.00	41,396.25	
PR 16	CK	5339	WGG8 TV		16,086.25	25,310.00	
PR 16	CK	5340	WMLP TV		13,976.00	11,336.00	
PR 16	CK	5341	NATL CABLE		7,650.36	3,685.66	
PR 19	WT	224	CASH RECEIVED	8,738.00		7,423.66	
PR 22	CK	5342	PRO MEDIA INC		168.00	7,255.66	
PR 22	CK	5343	WMLP TV		1,989.00	5,266.66	
PR 22	CK	5344	WGG8 TV		658.75	4,607.91	
PR 24	WT	408	CASH RECEIVED	7,100.00		11,707.91	
PR 25	CK	5345	PRO MEDIA INC		284.00	11,423.91	
PR 26	CK	5346	WRSB TV		5,321.00	6,102.91	
PR 26	CK	5347	WTEN TV		1,317.50	4,785.41	
PR 26	CK	5348	WNYT TV		1,300.50	3,484.91	
AY 20	CK	5352	STRUBLE TOTTEM		3,484.91		
UL 19	CK	3704	NATL CABLE (refund)		( 50.73)	50.73	
UG 6	CK	8503	WMLP TV (refund)		( 170.00)	220.73	
UG 9	CK	5378	WGG8 TV		170.00	50.73	

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4 24 230000

64,988.00

64,937.27

50.73

TO: JIM COLLINS

FR: ALLISON - STRUBLE TOTTEN

DATE: JUNE 5

COLLINS

APRIL 8 - WIRE TO STC 50,000

APRIL 9 - STC WIRES 31,500 TO PRO MEDIA  
(includes PRO MEDIA commission)

STC keeps 3850 for 11% commission

OFF ORIGINAL \$50,000, \$15,000 remains w/ STC

\$7500 - FOR FEES (2500 due 3/25  
5000 due 4/1)

Remaining 7500 applied to production ! other.  
MISC. EXPENSES incurred prior to April 8

+ 50,000	ORIGINAL WIRE
- 35,500	BUY
- 7,500	FEE
7,500	EXPENSES PRIOR TO APRIL 8
<hr/>	
-0-	

93030962154

INVOICE/AFFIDAVIT

AGENCY: PRO MEDIA  
160 GOLD STREET  
NEEDHAM, MA  
02194

930340962155

WGGB-TV 40

WGGB-TV 05/01/91 PAGE:

REMIT: WGGB-TV  
P.O. BOX 40  
SPRINGFIELD, MA

01102-0040

KATZ/BOSTON	HENDERSON, D (30S)
COLLINS FOR CONGRESS	COLLINS FOR CONG (D)

ORDER TYPE	AGENCY ESTIMATE NO
REVISION-05	
CONTRACT NUMBER	BROADCAST MONTHS
9791	4/01-04/30/91
SCHEDULE DATES	BILLING PERIOD
4/17-04/30/91	STANDARD

INVOICE DOES NOT INCLUDE ANY POSSIBLE FUTURE REBATE, DISCOUNT, OR MERCHANDISING BONUS. NET AMOUNT MAY BE SUBJECT TO AGENCY COMMISSION

MTWTFSS	SPOTS	START DATE	END DATE	TIME	LENGTH	SPOTS	PRODUCT	RATE	AMOUNT	COMMISSION	NET DUE	REMARKS
X		4/22	MO	527P	30	1	CJUSC492	100.00				
X		4/23	TH	515P	30	1	CJUSC492	100.00				
X		4/26	FR	504P	30	1	CJUSC492	100.00				
X X X X X		4/17	WE	529P	30	5	CJUSC492	150.00				
X X X X X		4/18	TH	529P	30	1	CJUSC492	150.00				
X X X X X		4/19	FR	529P	30	1	CJUSC491	150.00				
X X X X X		4/22	MO	553P	30	1	CJUSC491	150.00				
X X X X X		4/23	TU	529P	30	1	CJUSC492	150.00				
X X X X X		4/24	WE	529P	30	1	CJUSC491	150.00				
X X X X X		4/25	TH	553P	30	1	CJUSC492	150.00				
X X X X X		4/26	FR	545P	30	1	CJUSC492	150.00				
X X X X X		4/17	WE	558P	30	5	CJUSC492	150.00				
X X X X X		4/18	TH	558P	30	1	CJUSC492	150.00				
X X X X X		4/22	MO	618P	30	1	CJUSC492	150.00				
X X X X X		4/23	TU	624P	30	1	CJUSC492	150.00				
X X X X X		4/19	FR	545P	30	1	CJUSC492	150.00	150.00		150.00	AUTO A.
X X X X X		4/24	WE	558P	30	1	CJUSC492	150.00				
X X X X X		4/26	FR	558P	30	1	CJUSC492	150.00				
X X X X X		4/17	WE	1128P	30	7	CJUSC492	150.00				
X X X X X		4/18	TH	1110P	30	1	CJUSC491	150.00				
X X X X X		4/19	FR	1111P	30	1	CJUSC492	150.00				
X X X X X		4/20	SA	1120P	30	1	CJUSC492	150.00				
X X X X X		4/21	SU	1121P	30	1	CJUSC492	150.00				
X X X X X		4/22	MO	1116P	30	1	CJUSC492	150.00				

SCHEDULE DATES FOR BROADCAST PERIOD	ACTUAL ORDER DATES	AGENCY COMMISSION	NET DUE	TOTAL	REMARKS
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WE WARRANT THAT THE ACTUAL BROADCAST INFORMATION SHOWN ON THIS INVOICE WAS TAKEN FROM THE PROGRAM LOG AND WILL BE MADE AVAILABLE, ON REQUEST, FOR INSPECTION BY ADVERTISER OR AGENCY FOR AT LEAST 12 MONTHS

06/24/92 17:03 5617 135 8613 PRO MEDIA, INC. JUN 7 1991 14:12 No.008 P.08 001/007

INVOICE/AFFIDAVIT

AGENCY: PRO MEDIA  
140 GOULD STREET  
NEEDHAM, MA  
02194

93030962156

WGGB-TV 40

WGGB-TV 05/01/91 PAGE:

REMIT: WGGB-TV  
P.O. BOX 40  
SPRINGFIELD, MA

01102-0040

KATZ/BOSTON		HENDERSON, D (809)	
COLLINS FOR CONGRESS		COLLINS FOR CONG (D)	

ORDER TYPE	AGENCY ESTIMATE NO
REVISION-05	
CONTRACT NUMBER	BROADCAST MONTH
9791	4/01-04/28/91
SCHEDULE DATES	BILLING PERIOD
4/17-04/30/91	STANDARD

INVOICE DOES NOT INCLUDE ANY POSSIBLE FUTURE REBATE, DISCOUNT, OR MERCHANDISING BONUS. NET AMOUNT MAY BE SUBJECT TO AGENCY COMMISSION

SP	LN	W	D	T	F	TIME	SEC	SP	DAY	TIME	SEC	PRODUCT	RATE	DEPT	CREDIT	REMARKS
X	X	X				9:00-10:00 AM	50.00	2	4/24	WE	948A	30	CJUSC491	50.00		
									4/26	FR	924A	30	CJUSC492	50.00		
X	X	X	X			958AM-1100AM	30.00	4	4/18	TH	1025A	30	CJUSC492	30.00		
									4/19	FR	1025A	30	CJUSC491	30.00		
									4/22	MO	1035A	30	CJUSC492	30.00		
									4/23	TU	1011A	30	CJUSC492	30.00		
	X	X	X			958AM-1100AM	30.00	3	4/24	WE	1058A	30	CJUSC492	30.00		
									4/25	TH	1044A	30	CJUSC492	30.00		
									4/26	FR	1050A	30	CJUSC492	30.00		
X	X	X	X	X		12N/NEWSMATCH	40.00	5	4/17	WE	1225P	30	CJUSC492	40.00		
									4/18	TH	1224P	30	CJUSC491	40.00		
									4/19	FR	1224P	30	CJUSC492	40.00		
									4/22	MO	1224P	30	CJUSC491	40.00		
									4/23	TU	1159A	30	CJUSC492	40.00		
X	X	X	X			12N/NEWSMATCH	40.00	3	4/24	WE	1218P	30	CJUSC492	40.00		
									4/25	TH	1218P	30	CJUSC492	40.00		
									4/26	FR	1213P	30	CJUSC492	40.00		
X	X		X			4:00-5:00 PM	50.00	3	4/19	FR	453P	30	CJUSC492	50.00		
									4/22	MO	449P	30	CJUSC492	50.00		
									4/23	TU	432P	30	CJUSC491	50.00		
X			X			4:00-5:00 PM	50.00	1	4/26	FR	453P	30	CJUSC492	50.00		
X	X	X	X			5-5:30P/COURT	100.00	4	4/17	WE	515P	30	CJUSC491	100.00		
									4/18	TH	504P	30	CJUSC492	100.00		
									4/19	FR	504P	30	CJUSC492	100.00		

SCHEDULE CHG	ACTUAL GROSS BILLS	AGENCY COMMISSION	NET DUE	SUB-TOTALS
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WE WARRANT THAT THE ACTUAL BROADCAST INFORMATION SHOWN ON THIS INVOICE WAS TAKEN FROM THE PROGRAM LOG AND WILL BE MADE AVAILABLE, ON REQUEST, FOR INSPECTION BY ADVERTISER OR AGENCY FOR AT LEAST 12 MONTHS

05/25/92 17:04 0417 455 9613 TEL No. 4157811553 PRO MEDIA, INC. JUN 17 91 14:12 No. 008 P. 09 002/007

INVOICE/AFFIDAVIT

AGENCY: PRO MEDIA  
160 BOLD STREET  
NEEDHAM, MA  
02194

93030962157

WGGB-TV 49

WGGB-TV 05/01/91 PAGE 1

SHIP TO: WGGB-TV  
P.O. BOX 40  
SPRINGFIELD, MA  
01102-0040

KATZ/BOSTON		SALESMAN	
HENDERSON, D (BOB)			
COLLINS FOR CONGRESS		PRODUCT	
COLLINS FOR CONG (D)			

ORDER TYPE	AGENCY ESTIMATE NO
REVISION-05	
CONTRACT NUMBER	BROADCAST MONTH
9791	4/01-04/28/91
SCHEDULE DATES	BILLING PERIOD
4/17-04/30/91	STANDARD

INVOICE DOES NOT INCLUDE ANY POSSIBLE FUTURE REBATE, DISCOUNT, OR MERCHANDISING BONUS. NET AMOUNT MAY BE SUBJECT TO AGENCY COMMISSION

SP	TO	MTWTFSS	TIME	SECS	RATE	START DATE	END DATE	SPOTS	PRODUCT	PAGE	DEBIT	CREDIT	REMARKS							
X	X	X	X	X		615AM-0630AM		4	4/17 WE 627A	30			CJUSC492 30.00							
									4/18 TH 617A	30			CJUSC492 30.00							
									4/19 FR 622A	30			CJUSC492 30.00							
									4/23 TU 622A	30			CJUSC491 30.00							
X	X	X	X			615AM-0630AM		2	4/24 WE 622A	30			CJUSC492 30.00							
									4/25 TH 622A	30			CJUSC492 30.00							
X	X	X	X	X		645AM-0700AM		5	4/17 ME 656A	30			CJUSC491 40.00							
									4/18 TH 647A	30			CJUSC492 40.00							
									4/19 FR 652A	30			CJUSC491 40.00							
									4/22 MO 656A	30			CJUSC492 40.00							
									4/23 TU 656A	30			CJUSC492 40.00							
X	X	X	X	X		645AM-0700AM		2	4/25 TH 656A	30			CJUSC492 40.00							
									4/26 FR 652A	30			CJUSC492 40.00							
X	X	X	X	X		C MNR AMERICA		5	4/17 ME 858A	30			CJUSC492 50.00							
									4/18 TH 737A	30			CJUSC491 50.00							
									4/19 FR 723A	30			CJUSC492 50.00							
									4/22 MO 813A	30			CJUSC491 50.00							
									4/23 TU 823A	30			CJUSC492 50.00							
X	X	X	X	X		C MNR AMERICA		3	4/24 ME 845A	30			CJUSC492 50.00							
									4/25 TH 737A	30			CJUSC492 50.00							
									4/26 FR 813A	30			CJUSC492 50.00							
X	X	X	X	X		9:00-10:00 AM		4	4/18 TH 941A	30			CJUSC492 50.00							
									4/19 FR 953A	30			CJUSC492 50.00							
									4/22 MO 944A	30			CJUSC492 50.00							
									4/23 TU 916A	30			CJUSC491 50.00							
SCHEDULE COST FOR THE FULLY PERIOD											ACTUAL GROSS BILLING		AGENCY COMMISSION		NET DUE		SUB-TOTALS		REMARKS	

WE WARRANT THAT THE ACTUAL BROADCAST INFORMATION SHOWN ON THIS INVOICE WAS TAKEN FROM THE PROGRAM LOG AND WILL BE MADE AVAILABLE, ON REQUEST, FOR INSPECTION BY ADVERTISER OR AGENCY FOR AT LEAST 62 MONTHS

05/24/92 17:05  
017 455 8613  
TELE No. 4137811563  
PRO MEDIA, INC.  
Jun 17 91 14:12 No. 008 P. 10  
003 007

INVOICE/AMOUNT

AGENCY: PRO MEDIA  
160 GOULD STREET  
NEEDHAM, MA  
02194

93040962158

WGGB-TV 40

WGGB-TV 05/01/91 PAGE:

REMIT: WGGB-TV  
P.O. BOX 40  
SPRINGFIELD, MA

01102-0040

KATZ/BOSTON	HENDERSON, D (DOB)
COLLINS FOR CONGRESS	COLLINS FOR CONG (D)

ORDER TYPE	AGENCY ESTIMATE
REVISION-05	
CONTRACT NUMBER	BROADCAST MONTH
9792	4/01-04/28/91
START DATE	BILLING PERIOD
4/17-04/30/91	STANDARD

INVOICE DOES NOT INCLUDE ANY POSSIBLE FUTURE REBATE, DISCOUNT, OR MERCHANDISING BONUS. NET AMOUNT MAY BE SUBJECT TO AGENCY COMMISSION

LINE	SP	TYPE	START	END	SEC	DAYS	TIME	LEN	RATE	SPOTS	AMOUNT	PRODUCT	COMMENTS	AGENCY	NET DUE	SUB-TOTALS	REMARKS
X			9:00-10:00 AM		50.00	1	4/23 TH	916A		30		CJUSC492			50.00		
X			758AM-1100AM		30.00	1	4/26 FR									30.00	FREE
X			258PM-0600PM		40.00	1	4/27 SA									40.00	FREE
X			BRINKLEY		75.00	1	4/28 SU	1228P		30		CJUSC492			75.00		
X			608PM-0800PM		150.00	2	4/23 TH	752P		30		CJUSC492			150.00		
							4/24 FR	712P		30		CJUSC492			150.00		
X			SUN 9:00-11PM		500.00	1	4/28 SU	1022P		30		CJUSC492			500.00		
<p>SCHEDULE COST FOR TV SPOTS: 10,125.00          AGENCY COMMISSION: 1,508.25          NET DUE: 8,546.75          SUB-TOTALS: 70.00          REMARKS: 70.00</p>																	

06/24/92 17:08  
2617 455 9013  
PRO MEDIA, INC.  
Jun 17, 91 14:12 No. 008 P.05  
0004 007

WARRANT THAT THE AGENCY BROADCAST INFORMATION SHOWN ON THIS INVOICE WAS TAKEN FROM THE PROGRAM LOG AND WILL BE MADE AVAILABLE, ON REQUEST, FOR INSPECTION BY ADVERTISER OR AGENCY FOR AT LEAST 90 DAYS

10,020 1503.75 8,521.25



INVOICE/AFFIDAVIT  
 AGENCY: PRO MEDIA  
 160 GOLD STREET  
 NEEDHAM, MA  
 02194

930<sup>4</sup>0962160

WGGB-TV 08/09/91 PAGE: 1

**WGGB-TV 40**

REMIT: WGGB-TV  
 P.O. BOX 40  
 SPRINGFIELD, MA  
 01102-0040

KATZ/BOSTON	MEMORANDUM, D (30S)
COLLINS FOR CONGRESS	COLLINS FOR CONG (3)

ORDER TYPE	AGENCY ESTIMATE NO.
REVISION-05	
CONTRACT NUMBER	BROADCAST MONTH
9792	4/29-05/26/91
SCHEDULE DATES	BILLING PERIOD
4/27-05/30/91	STANDARD

INVOICE DOES NOT INCLUDE ANY POSSIBLE FUTURE REBATE, DISCOUNT, OR MERCHANDISING BONUS. NET AMOUNT MAY BE SUBJECT TO AGENCY COMMISSION.

LT	LN	SP	CD	TIME	SEC	START	END	SP	CD	PRICE	AMOUNT	STATION	CD	PRICE	AMOUNT				
X				MON 8-9:00PM	30	4/29	NO	709P		30	500.00	CJBC492		500.00					
X				MON 9-11 PM	30	4/29	NO	1057P		30	700.00	CJBC491		700.00					
X				<del>12N/NEWSMATCH</del>	<del>30</del>	<del>4/30</del>	<del>TU</del>	<del>1157A</del>		<del>30</del>	<del>40.00</del>	<del>CJBC492</del>		<del>40.00</del>					
X				G FROM AMERICA	30	4/29	NO	841A		30	50.00	CJBC492		50.00					
X				4:00-5:00 PM	30	4/29	NO	415P		30	50.00	CJBC492		50.00					
X				<del>G FROM AMERICA</del>	<del>30</del>	<del>4/30</del>	<del>TU</del>	<del>707A</del>		<del>30</del>	<del>50.00</del>	<del>CJBC492</del>		<del>50.00</del>					
X				1025AM	30	4/30	TU	1037A		30	30.00	CJBC492		30.00					
SCHEDULE TOTALS FOR THIS CONTRACT											1,420.00	AGENCY COMMISSION		213.00	NET DUE		1,207.00	RECONCILIATION	

*extra*

*extra*  
*credit*

*ok*

WE WARRANT THAT THE ACTUAL BROADCAST INFORMATION SHOWN ON THIS INVOICE WAS TAKEN FROM THE PROGRAM LOG AND WILL BE MADE AVAILABLE, ON REQUEST, FOR INSPECTION BY ADVERTISER OR AGENCY FOR AT LEAST 12 MONTHS.

1330 - 144.50 - 1130.50

06/24/91 17:05  
 0917 485 8613  
 TEL No. 4157811363  
 PRO MEDIA, INC. JUN 17 91 14:12 NO. 008  
 4/008/007

STYLE/REVISED  
 AGENCY: PRO MEDIA  
 160 GOLD STREET  
 NEEDHAM, MA  
 02194

93030962161

WGGB-TV 40

WGGB-TV 05/09/91 PAGE: 3

REF: WGGB-TV  
 P.O. BOX 40  
 SPRINGFIELD, MA  
 01102-0040

KATZ/BOSTON	HENDERSON, D (30S)
COLLINS FOR CONGRESS	COLLINS FOR CONG (B)

ORDER TYPE	AGENCY ESTIMATE NO
REVISION-08	
CONTRACT NUMBER	BROADCAST MONTH
9191	4/29-05/26/91
SCHEDULE DATES	BILLING PERIOD
4/17-04/30/91	STANDARD

INVOICE DOES NOT INCLUDE ANY POSSIBLE FUTURE REBATE, DISCOUNT, OR MERCHANDISING BONUS. NET AMOUNT MAY BE SUBJECT TO AGENCY COMMISSION

SP	TV	W	TU	TH	F	SAT	SUN	TIME	SPOTS	PRICE	DATE	STATION	SPOTS	PRICE	DATE	STATION	SPOTS	PRICE	DATE	STATION	SPOTS	PRICE	DATE	STATION	SPOTS	PRICE	DATE	STATION	SPOTS	PRICE	DATE	STATION	SPOTS	PRICE	DATE	STATION													
X								615AM-0630AM	30.00	1	4/29	NO	422A	30		CJBC492	30.00																																
X	X							645AM-0700AM	40.00	2	4/29	NO	654A	30		CJBC492	40.00																																
								645AM-0700AM	40.00	2	4/30	TU	654A	30		CJBC492	40.00																																
X		X	X	X				G MFM AMERICA	50.00	1	4/29	NO	737A	30		CJBC492	50.00																																
	X	X	X	X				9:00-10:00 AM	50.00	1	4/30	TU	944A	30		CJBC492	50.00																																
X		X	X	X				12N/NEWSMATCH	40.00	1	4/29	NO	1218P	30		CJBC492	40.00																																
X				X				4:00-5:00 PM	50.00	2	4/29	NO	441P	30		CJBC492	50.00																																
								4:00-5:00 PM	50.00	2	4/29	NO	483P	30		CJBC492	50.00																																
X			X	X				5-5:30P/COURT	100.00	2	4/29	NO	504P	30		CJBC492	100.00																																
								5-5:30P/COURT	100.00	2	4/29	NO	524P	30		CJBC492	100.00																																
X		X	X	X				528PM-0400PM	150.00	1	4/29	NO	552P	30		CJBC492	150.00																																
X		X	X	X				528PM-0430PM	150.00	2	4/29	NO	558P	30		CJBC492	150.00																																
								528PM-0430PM	150.00	2	4/29	NO	615P	30		CJBC492	150.00																																
X			X	X	X	X		NEWSMATCH 11P	150.00	2	4/29	NO	1110P	30		CJBC492	150.00																																
								NEWSMATCH 11P	150.00	2	4/29	NO	1128P	30		CJBC492	150.00																																
X		X	X					11:30P-12:00M	75.00	2	4/29	NO	1143P	30		CJBC492	75.00																																
								11:30P-12:00M	75.00	2	4/29	NO	1157P	30		CJBC492	75.00																																
SCHEDULE COST FOR THIS MONTH									1,450.00	TOTAL SPOTS BILLED									1,450.00	AGENCY COMMISSION									217.50	NET DUE									1,232.50	SUB-TOTALS									

WE WARRANT THAT THE ACTUAL BROADCAST INFORMATION SHOWN ON THIS INVOICE WAS TAKEN FROM THE PROGRAM LOG AND WILL BE MADE AVAILABLE, ON REQUEST, FOR INSPECTION BY ADVERTISER OR AGENCY FOR AT LEAST 90 DAYS

06/24/92 17:08  
 2617 455 8613  
 TEL NO 4137811363  
 PRO MEDIA, INC.  
 JUN 17 91 14:12 NO.009  
 0007/007

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Collins for Congress and )  
Bruce C. Vogt, as treasurer ) MUR 3380  
 )  
Eugenia Collins )  
 )  
Stephen P. Puffer, Jr. )  
 )

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter came before the Commission as a result of a sua sponte submission by Counsel for Collins for Congress ("CFC") on April 23, 1991. Counsel for CFC brought this matter to the attention of the Commission after discovering that the candidate had obtained loans in a manner inconsistent with the Act.<sup>1</sup>

On February 25, 1992, the Commission reviewed and rejected CFC's request to take no further action in this matter. Furthermore, on that same day, the Commission found reason to believe that there is reason to believe that CFC violated 2 U.S.C. § 441a(f); reason to believe that Mrs. Collins violated 2 U.S.C. § 441a(a)(1)(A); and reason to believe that Stephen P. Puffer, Jr. violated 2 U.S.C. § 441a(a)(1)(A). In an effort to resolve this matter, the Commission offered to enter into negotiations directed towards reaching a conciliation agreement in settlement with each respondent in this matter.

1. Mr. Collins was a Democratic candidate in the Special Primary Election held on August 30, 1991 for the 1st Congressional District of Massachusetts.

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On March 23, 1992, this Office received Designation of Counsel forms from CFC's counsels indicating that they will also be representing Mrs. Collins and Stephen P. Puffer, Jr., in this matter. On June 25, 1992, counsels in this matter submitted responses for the respondents in this matter. See Attachment 1, 2 and 3.

According to the information contained in the submission, Mr. Collins was advised by an attorney that he could lawfully borrow campaign funds from an individual supporter so long as the transaction had a commercial character. On April 8, 1991, pursuant to this advice, Mr. Collins obtained a \$50,000.00 loan from Stephen P. Puffer, Jr., a supporter for use on his campaign. Based upon this advice, Mr. Collins executed a promissory note in favor of Mr. Puffer which pledged repayment in two years at 10% simple interest, secured by a mortgage on his home. On April 17, Mr. Collins was informed by his attorneys that a mistake had been made and that this loan would be treated by the Commission as a contribution and as such would be subject to the \$1,000.00 ceiling. Mr. Collins secured a \$22,000.00 personal loan from Heritage Bank for Savings with an increase in an equity line of credit on his personal residence owned by him in fee simple. Mr. Collins also secured an \$88,588.00 personal loan from Heritage Bank for Savings with \$147,659.00 worth of stock owned by his wife in which he claimed to have an equitable interest based on a legal opinion from his Massachusetts counsel. Using the proceeds from the bank loan, Mr. Collins repaid Mr. Puffer's \$50,000.00 loan on April 18.

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In response to the Commission's finding that \$13,758.50 of the \$88,588.00 loan from Heritage Bank for Saving ("HBS") would not constitute a use of the candidate's personal funds but would instead constitute an excessive contribution on the part of Mrs. Collins, respondents' counsels have asserted that this \$13,758.50 was not in fact use for campaign purposes. Furthermore counsels have asserted that Mr. Collins only contributed a total of \$83,685.75 for campaign purposes and that this total did not only consist of funds from the loan of \$88,588.00 from Heritage Bank for Saving.

Counsels state in this response that Mr. Collins received a \$22,000.00 equity line of credit from HBS, which was secured by Mr. Collins personal residence owed solely by him in fee simple on the same day that he received the \$88,588.00. Counsels assert that both of these loans were deposited into Mr. Collins' personal checking account on the same day. An affidavit from Mr. Collins along with a copy of Mr. Collins' bank statement covering the time period in question were attached to CFC's response to confirm that both loans were in fact deposited into Mr. Collins' bank account. See Attachment 1., page 5. Counsels state further that at the time of these deposits Mr. Collins had a balance of this account.

It is counsels assertion that Mr. Collins only used a total of \$73,829.50 out of the \$88,588.00 loan for campaign purposes along with \$11,000.00 from a \$22,000.00 equity line of credit from HBS, which was secured by Mr. Collins personal residence owed solely by him in fee simple and the remainder from his

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personal funds from his checking account in which he had a balance of \_\_\_\_\_ As noted above, the \$88,588.00 loan was secured by stock worth \$147,659.00, which is owned by Mrs. Collins. The Commission, however, elected to treat the stock as if Mr. Collins owned half of the property. Thus limiting the amount attributed to Mr. Collins to \$73,829.50. Therefore, it is counsels' contention that Mrs. Collins did not make an excessive contribution since Mr. Collins did not use more than \$73,829.50 of the \$88,588.00 loan.

A review of CFC's Mid-Year Report covering 4/11/91 through 7/31/91 indicates that the candidate only contributed a total of \$83,500.00 in loans to CFC.<sup>2</sup> Based upon this report, Mr. Collins' affidavit and his bank statement, it does not appear that Mrs. Collins has violated 2 U.S.C. § 441a(a)(1)(A), by making an excessive contribution. Furthermore, it does not appear that Collins for Congress and Bruce C. Vogt, as treasurer, violated 2 U.S.C. § 441a(f), by accepting an excessive contribution from Mrs. Collins. Based upon the foregoing, the Office of the General Counsel recommends that the Commission take no further action against Eugenia Collins.

2. Respondents' counsels indicated that Mr. Collins contributed a total of \$83,685.75 to CFC. The \$185.75 difference in this amount from the amount reported by CFC appears to be the interest paid to Stephen P. Puffer, Jr., for the \$50,000.00 loan Mr. Collins obtained from him.

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As to the issue of the \$50,000.00 loan from Mr. Puffer, counsels

reiterated their argument from their prior response, the fact that "Mr. Collins made every effort from the beginning to ensure that the transaction . . . was entered into in complete compliance with the federal campaign laws," and that he consulted a counsel who gave him the bad advice. In addition, respondents' counsels argue that the original loan in question was only outstanding for a short period of time, that the matter was corrected upon learning of the problem and was quickly brought to the Commission's attention. Counsels for the Respondents state that Mr. Puffer was "without fault" in this matter and that "[a]t no time did he intend to make an excessive political contribution to Mr. Collins' campaign. See Attachment 3. Respondents' counsels further assert that Mr. Puffer relied on the same erroneous information that Mr. Collins had received indicating that the loan to Mr. Collins "was lawful if made in the regular course of business with proper terms of repayment." In addition, counsels for Mr. Puffer present an argument to the issue of CFC using the \$50,000.00 loan from Mr. Puffer for payment to Strubble & Totten. Counsels for the respondents state that if CFC received any immediate benefit from the use of this loan for the purpose of financing an immediate media buy, the presumed benefit is "illusory" for the following reasons:

- (1) Mr. Collins could have arranged completely proper financing at the outset on April 8, 1991, as he did on April 18, 1991, had he received correct legal advice;
- (2) an examination of the

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accompanying documents from Strubble Totten and ProMedia, Inc., consultants and agents for Collins for Congress Committee for media and media buying, respectively, shows that actual expenditures for the purchase of media time and fees in the amounts of \$11,834 and \$19,316, were made for the period of only seven days and two days, respectively, before Mr. Collins restructured his loan on April 18, 1991, and brought his campaign into compliance (most of these purchases (approximately 85 percent) being for advertisements which played after the April 18, 1991 date and therefor, which could have been paid with funds which were in compliance with FEC regulations); and (3) correcting the error itself was costly in requiring for its correction a major diversion of time and effort in mid-campaign. Time is money in campaigns, and much was spend in dealing with this problem. This was the price Mr. Collins had to pay for an error that was not his fault and he paid it conscientiously.

This Office does not dispute counsels' above arguments that Mr. Collins could have made other financial arrangements or acquired a loan in compliance with the Commission's regulation to pay for the media buy, however, the fact of the matter is that Mr. Collins did not. The issue at hand is not what Mr. Collins could have done, but what he did do. Furthermore, it is not relevant what proportion of the advertisements played from April 8, 1991, the time period in which CFC made payment of \$50,012.00 to Strubble & Totten using the funds obtained from Mr. Puffer, until April 18, 1991 when Mr. Collins obtained a bank loan and repaid the \$50,000.00 loan to Mr. Puffer. According to a June 5, 1991 memo from Strubble & Totten, attached to counsel's response (See attachment 1, page 11), out of the \$50,012.00 payment made to them, \$31,500.00 was paid for a media buy, \$3,850.00 was kept for its 11% commission,

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\$7,500.00 went toward past fees due and \$7,500.00 went for production and other miscellaneous expenses incurred prior to April 8, 1991. Even if the Commission accepted counsels' argument that actual expenditures for the purchase of media time and fees in the amounts of \$11,834.00 and \$19,316.00, totaling \$31,150.00, were made for the period of only seven days and two days, respectively, before Mr. Collins restructured his loan on April 18, 1991, the evidence at hand indicates that in addition to the \$31,150.00 expended on the purchase of media time, a total of \$10,850.00 went to expenses incurred prior to April 8, 1991.

As noted in this Office's prior report, a copy of CFC's bank account for the same period indicates that at the time of the deposit of the loan from Mr. Puffer and the wire transfer to Strubble & Totten, CFC only had about \$5,928.00 in its bank account. Furthermore, CFC reported \$4,887.71 cash on hand at the close of the reporting period, \$46,006.00 in contributions and \$91,128.23 in operating expenditures. Therefore, it appears that most of the excessive funds were expended before Mr. Collins repaid Mr. Puffer's \$50,000.00 loan. Based upon the foregoing, this Office recommends that the Commission reject counsels request to take no further action against Collins for Congress and Bruce C. Vogt, as treasurer, and Stephen P. Puffer, Jr.

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II. RECOMMENDATIONS

1. Reject counsels' request to take no further action with respect to Collins for Congress and Bruce C. Vogt, as treasurer, and Stephen P. Puffer, Jr.

2. Take no further action with respect to Eugenia Collins and close the file as it pertains to her.

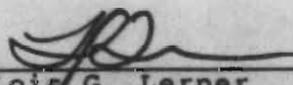
3. Approve the attached new conciliation agreement with respect to Collins for Congress and Bruce C. Vogt, as treasurer.

4. Approve the attached new conciliation agreement with respect to Stephen P. Puffer, Jr.

5. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

8/3/92  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

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Attachments

1. June 25, 1992 response from CFC
2. June 25, 1992 response from Mrs. Collins
3. June 25, 1992 response from Stephen P. Puffer, Jr.
4. Conciliation Agreement (CFC)
5. Conciliation Agreement (Puffer)

Staff assigned: Lawrence D. Parrish

93030962170

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Collins for Congress and ) MUR 3380  
Bruce C. Vogt, as treasurer; )  
 )  
Eugenia Collins; )  
 )  
Stephen P. Puffer, Jr. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 10, 1992, the Commission decided by a vote of 5-0 to take the following actions in MUR 3380:

1. Reject the counsels' request to take no further action with respect to Collins for Congress and Bruce C. Vogt, as treasurer, and Stephen P. Puffer, Jr.
2. Take no further action with respect to Eugenia Collins and close the file as it pertains to her.
3. Approve the new conciliation agreement with respect to Collins for Congress and Bruce C. Vogt, as treasurer, as recommended in the General Counsel's Report dated August 3, 1992.

(Continued)

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4. Approve the new conciliation agreement with respect to Stephen P. Puffer, Jr., as recommended in the General Counsel's Report dated August 3, 1992.
5. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 3, 1992.

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

Attest:

8-11-92  
Date

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

Received in the Secretariat: Wed., August 5, 1992 3:57 p.m.  
Circulated to the Commission: Wed., August 5, 1992 11:00 a.m.  
Deadline for vote: Mon., August 10, 1992 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 24, 1992

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Collins for Congress and  
Bruce C. Vogt, as treasurer

Dear Ms. Corley:

This letter is to confirm the Federal Election Commission's receipt of your letter requesting that the Commission take no further action in this matter, submitted on behalf of your client on June 25, 1992. The Commission has reviewed and rejected this request.

The Commission is still hopeful that this matter can be settled through a conciliation agreement. Insofar as the 30 day period for pre-probable cause conciliation has elapsed, you should respond within five days of your receipt of this notification. If a response is not received within this period, this matter will proceed to the next stage of the enforcement process.

If you have any further questions, please contact me at (202) 219-3400.

Sincerely,

Lawrence D. Parrish  
Attorney

Enclosure  
Conciliation Agreement

93030962173



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 24, 1992

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Stephen P. Puffer

Dear Ms. Corley:

This letter is to confirm the Federal Election Commission's receipt of your letter requesting that the Commission take no further action in this matter, submitted on behalf of your client on June 25, 1992. The Commission has reviewed and rejected this request.

The Commission is still hopeful that this matter can be settled through a conciliation agreement. Insofar as the 30 day period for pre-probable cause conciliation has elapsed, you should respond within five days of your receipt of this notification. If a response is not received within this period, this matter will proceed to the next stage of the enforcement process.

If you have any further questions, please contact me at (202) 219-3400.

Sincerely,

Lawrence D. Parrish  
Attorney

Enclosure  
Conciliation Agreement

93080962174



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 24, 1992

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Eugenia Collins

Dear Ms. Corley:

On March 9, 1992, Eugenia Collins was notified that the Federal Election found reason to believe that she violated 2 U.S.C. § 441a(a)(1)(A). On June 25, 1992, you submitted a response to the Commission's reason to believe finding.

After considering the circumstances of the matter, the Commission determined on August 10, 1992, to take no further action against Eugenia Collins, and closed the file as it pertains to her. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

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.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

*Lawrence D. Parrish*  
Lawrence D. Parrish  
Attorney

93030962175

RECEIVED  
F.E.C.  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION 336978 PH12:59

In the Matter of )  
Collins for Congress and )  
James G. Collins, as treasurer )

MUR 3380

**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which includes a \$6,000.00 civil penalty and has been signed by counsel for the Respondents in this matter. (Attachment). A check has not been received.

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II. RECOMMENDATIONS

1. Accept the executed conciliation agreement.
2. Take no further action with respect to Stephen P. Puffer, Jr.
3. Approve the appropriate letters.
4. Close the file.

Lawrence M. Noble  
General Counsel

10/8/93  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Attachment: Executed Conciliation Agreement

93030962181

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Collins for Congress and James G. ) MUR 3380  
Collins, as treasurer. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 14, 1993, the Commission decided by a vote of 5-0 to take the following actions in MUR 3380:

1. Accept the executed conciliation agreement, as recommended in the General Counsel's Report dated October 8, 1993.
2. Take no further action with respect to Stephen P. Puffer, Jr.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated October 8, 1993.
4. Close the file.

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

Attest:

10-14-93  
Date

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

Received in the Secretariat: Fri., Oct. 08, 1993 12:58 P.M.  
Circulated to the Commission: Fri., Oct. 08, 1993 2:00 P.M.  
Deadline for vote: Thurs., Oct. 14, 1993 4:00 P.M.

jf

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCTOBER 28, 1993

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Collins for Congress and  
James G. Collins, as treasurer

Dear Ms. Corley:

On October 14, 1993, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(f), a provision 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.

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. Please note that the civil

93080962183

Judith L Corley, Esquire  
Robert F. Bauer, Esquire  
page 2

penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

*Lawrence D. Parrish*  
Lawrence Parrish  
Attorney

Enclosure  
Conciliation Agreement

93070962184

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 ) MUR 3380  
Collins for Congress and )  
James G. Collins, 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 Collins for Congress and James G. Collins, as treasurer, ("Respondents") violated 2 U.S.C. § 441a(f).

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. Collins for Congress ("CFC") is a political committee within the meaning of 2 U.S.C. § 431(4) and principal campaign committee of James G. Collins, a candidate for nomination to Congress in the 1989 special election in the 1st District of Massachusetts.

2. James G. Collins is the treasurer of Collins for Congress.

3. Pursuant to 2 U.S.C. § 431(8)(A), the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election. Under 2 U.S.C. § 441a(a)(1), no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office, which in the aggregate, exceed \$1,000.00. Furthermore, under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make expenditure in violation of the provisions of this section. The "knowing acceptance" requirement of Section 441a(f) is satisfied when a recipient committee has knowledge of having accepted the contribution(s) involved. See, FEC v. John A. Damesi, 640 F. Supp. 985 (D.N.J. 1986).

4. Pursuant to 11 C.F.R. § 103.3(b), the treasurer of a committee is responsible for examining all contributions received for evidence of illegality and for ascertaining

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whether contributions received, when aggregated with other contributions, exceed the contribution limitations. When contributions received present genuine questions as to whether they are permissible, within ten days of receipt, the treasurer can deposit the funds into a campaign depository or return them to the contributor. If any such contribution is deposited, the treasurer shall make at least one written or oral request for evidence of the legality of the contribution. If the contribution cannot be determined to be legal, the treasurer shall within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(1). Furthermore, any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. 11 C.F.R. § 103.3(b)(4)

5. Pursuant to 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. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution

limitations set forth at 11 C.F.R. Part 110. Pursuant to 11 C.F.R. § 100.7(a)(1)(i)(A), a loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. Part 110 shall be unlawful whether or not it is repaid.

6. This matter came before the Commission as a result of a sua sponte submission by Mr. Collins, through counsel for CFC on April 23, 1991. Counsel for CFC brought this matter to the attention of the Commission after discovering that Mr. Collins had been incorrectly advised by an attorney that he could borrow funds from an individual and that Mr. Collins had relied on this advice in undertaking the loan transaction at issue here.

7. On April 8, 1991, Mr. Collins obtained a \$50,000.00 loan from an individual supporter, Stephen P. Puffer, Jr., a local businessman and supporter of his campaign for the purpose of furthering his campaign for Congress. Mr. Collins executed a promissory note in favor of Mr. Puffer in the sum of \$50,000.00, payable over two years at 10% per annum, secured by a mortgage on his home.

8. On April 8, 1991, Mr. Collins received the \$50,000.00 in the form of a check, payable to James G. Collins. On the same date this check for \$50,000.00 was deposited into Mr. Collins' personal bank account and a check in the same amount was drawn on Mr. Collins' personal account, payable to Collins for Congress. This check for \$50,000.00 from Mr. Collins' account was also deposited on the same date

in the Collins for Congress' bank account. Subsequently, on the same date, April 8, 1991, CFC wrote a check out in the amount of \$50,012.00 to its bank for payment of a \$50,012.00 wire transfer to Strubble & Totten, a media consulting firm. A copy of CFC's bank account for the same period indicates that at the time of the deposit of the loan from Stephen P. Puffer, Jr., and the wire transfer to Strubble & Totten, CFC only had about \$5,928.00 in its bank account.

9. CFC's twelve day report for the period February 19, 1991 through April 10, 1991 showed a disbursement of \$50,012.00 on April 8, 1991 to Strubble & Totten. For this period CFC reported \$4,887.71 cash on hand at the close of the reporting period, \$46,006.00 in contributions and \$91,128.23 in operating expenditures.

10. On April 17, 1991, counsel informed Mr. Collins that the loan from Mr. Puffer was not in compliance with the Act. The next day, on April 18, 1991, Mr. Collins obtained a bank loan and repaid the \$50,000.00, plus \$150.00 in interest, to Stephen P. Puffer, Jr., on the same day.

V. 1. Respondents knowingly accepted a loan from Stephen P. Puffer, Jr., which exceeded the \$1,000.00 contribution limitation, in violation of 2 U.S.C. § 441a(f).

2. Respondents contend that they made every effort to ensure the transaction at issue here was entered into in compliance with the federal campaign laws and that the violation was the result of erroneous legal advice.

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VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of six thousand dollars (\$6,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

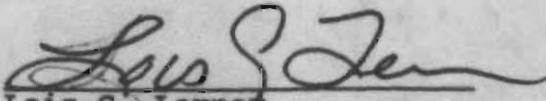
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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,

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that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:  
Lawrence M. Noble  
General Counsel

BY:  10-28-93  
Lois G. Lerner Date  
Associate General Counsel

FOR THE RESPONDENTS:

 8/9/93  
Judith L. Corley Date  
Counsel for Collins  
for Congress

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCTOBER 28, 1993

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Stephen P. Puffer

Dear Ms. Corley:

On March 9, 1992, your client, Stephen P. Puffer, was notified that the Federal Election Commission found reason to believe that he violated 2 U.S.C. § 441a(a)(1)(A). On June 25, 1992, you submitted a response to the Commission's reason to believe finding. After considering the circumstances of the matter, the Commission determined on October 14, 1993, to take no further action against Stephen P. Puffer, and closed the file 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.

The Commission reminds your client that a loan which exceeds the contribution limitations set forth in the Act is a violation of 2 U.S.C. § 441a(a)(1)(A). Your client should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

*Lawrence D. Parrish*  
Lawrence Parrish  
Attorney

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCTOBER 28, 1993

Judith L. Corley, Esquire  
Robert F. Bauer, Esquire  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3380  
Eugenia Collins

Dear Ms. Corley:

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 me at (202) 219-3690.

Sincerely,

*Lawrence D. Parrish*  
Lawrence Parrish  
Attorney

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3380

DATE FILMED 11-3-93 CAMERA NO. 4

CAMERAMAN S.E.G.

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