FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3588

DATE FILMED 6/23/93 CAMERA NO. 4

CAMERAMAN E.E.S.

9304095000002

COMPLAINT

The attached letter dated August 3, 1992, addressed to the Federal Election Commission, together with enclosures submitted with that letter, are hereby resubmitted as a complaint against Representative Les AuCoin and the Realtors Political Action Committee. All the terms set forth in the attached letter are incorporated herein by reference, and are made a part hereof. All information contained in the attached letter are true and correct, to the best of the knowledge and belief of the undersigned.

Mark W. Eves

STATE OF OREGON)
) ss.
County of Multnomah)

Subscribed and sworn to before me on this 17th day of August, 1992, by Mark W. Eves.

Deborah Millsap
Notary Public for Oregon
My commission expires: 6/18/93

93040950003

EVES & WADE
ATTORNEYS AT LAW
SUITE 200
3236 S.W. KELLY AVENUE
PORTLAND, OREGON 97201-4679
(503) 227-6226
FAX (503) 227-4971

MARK W. EVES
RONALD L. WADE

OF COUNSEL
FRANCIS I. SMITH
(503) 227-5080

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

AUG 7 2 22 PM '92

August 3, 1992

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

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 AUG -7 PM 2:28

RE: Realtors Political Action Committee
and Representative Les AuCoin of Oregon

Dear Mr. Noble:

This firm represents the Oregon Republican Party. It is the belief of our client that the Realtors Political Action Committee ("Realtors"), has violated the contribution limitations set forth in 2 USC 441a(a)(2), and that Representative Les AuCoin of the State of Oregon has violated applicable law by knowingly accepting unlawful contributions and failing to disclose them as in kind contributions. A prompt investigation is requested. We have set forth below the relevant facts and applicable provisions of law.

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Facts

Representative Les AuCoin of Oregon has had a close relationship with Realtors for a number of years. Realtors has made monetary contributions to Representative AuCoin in the amounts of $2,750 in 1989, $7,250 in 1990, and $5,000 in 1991. In lieu of direct cash contributions to Representative AuCoin in 1992, Realtors expended approximately $118,000 prior to the Oregon primary election in May of 1992 for activities which were in direct support of Representative AuCoin. Our client believes that such expenditures were made in coordination with, and at the request of, Representative AuCoin or agents of his campaign. Realtors has reported the expenditures to the Federal Election Commission as if they were "independent expenditures" not subject to contribution or expenditure limitations.

The contributions by Realtors, for the most part, have included the production and airing of a television advertisement supporting Representative AuCoin, for which $98,510 was expended, and obtaining a survey, for which $17,500 was expended. Our client believes that the products of this survey have been shared with, and provided to, Representative AuCoin or agents of his campaign.

The television advertisement which was produced and aired by Realtors includes four photographs of Representative AuCoin which appear to have been posed and professionally prepared. The first photograph depicts the face of Representative AuCoin next to an American flag. The second depicts Representative AuCoin with children. The third shows Representative AuCoin next to a bridge. The last photograph depicts Representative AuCoin with his wife. It appears that none of the photographs could have been obtained without the assistance of Representative AuCoin or his campaign staff.

The television advertisement addresses themes which are regularly utilized and addressed in the Les AuCoin campaign for United States Senate, as follows:

(1) Courage. The advertisement states "Les AuCoin, the courage to speak out." "He's got the courage and compassion we need in the U.S. Senate."

(2) Jobs. "He's working to create jobs and look out for the people."

(3) Folks back home. "He's never forgotten who sent him to Congress or why." "Les AuCoin understands how the government can be made to work for the folks back home." "He's working to . . . look out for people."

(4) Track record. "One of the more respected voices in Congress." "A superior law maker."

It is the belief of our client that the campaign themes, as well as the campaign photographs, could not have been obtained by Realtors without the direct assistance and cooperation of Representative AuCoin or members of his campaign staff. It is clear that a history of contributions and cooperation exists between Representative AuCoin and Realtors.

Representative AuCoin was involved in a Democrat primary contest in Oregon with Harry Lonsdale. The race was extremely close. Publicized polling did not clearly indicate which candidate would win. Ultimately, Representative AuCoin won by fewer than 400 votes. It was clear that Representative AuCoin was extremely concerned that he might lose in the primary election. It is the belief of the Oregon Republican Party that he sought the assistance of Realtors because he lacked sufficient funds to produce and air additional advertising. At the end of the primary election, Representative AuCoin had spend virtually all of his available funds. Therefore the contribution by Realtors made a significant difference to Representative AuCoin.

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Legal Requirements

A multi-candidate political committee may not contribute more than $5,000 per election to any candidate in any election. See 2 USC 441a(a)(2). Primary and general elections are considered to be separate elections.

A "contribution" is defined to include ". . . expenditures made . . . in cooperation, consultation, or concert, with, or at the suggestion of, a candidate, his authorized political committees, or their agents . . ." See 2 USC 441a(a)(7)(B)(i). An expenditure is made in cooperation or consultation with a candidate if the candidate or his advisors supplies photographs or text for advertising, or the candidate poses for photographs to be used by the committee making the expenditure. See Advisory Option, 1 Fed. Election Camp. Fin. Guide (CCH) Paragraph 5718. "Any arrangement, coordination or direction by the candidate or his or her agent prior to publication, distribution, display, or broadcast of the communication . . . " constitutes cooperation or consultation. See 11 CFR 109.1(b)(4)(i).

The above $5,000 limitation does not apply to "independent expenditures" which are defined as ". . . an expenditure . . . for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate." See 11 CFR 109.1(a). If the expenditure is not truly "independent," it will be considered to be a contribution in kind to the candidate and an expenditure by the candidate. See 11 CFR 109.1(c).

An expenditures under 11 CFR 109.1(b)(4)(i) is not "independent" if:

(1) There is any arrangement, coordination, or direction by the candidate or his or her agent prior to the broadcast, or

(2) If the candidate or his agents provide information to the expending party about candidate's plans, projects, or needs with a view toward having the expenditure made, or

(3) The expenditure is made through someone who is either receiving some form of compensation or reimbursement from the candidate, or is authorized to receive or expend money for the candidate.

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The above definitions relating to "independent" expenditures and contributions are virtually identical. Therefore, if a candidate or his agent cooperates or assists in the development or preparation of a political advertisement, the expenditure for that advertisement will be considered to be a contribution to the candidate and an expenditure by the candidate. The expenditure by a candidate of funds unlawfully contributed constitutes a violation of law.

Summary

There appears to be substantial evidence of coordinated efforts in this matter. Representative Aucoin was locked in a very close primary race. He was short of funds. He needed greater public exposure in order to defeat his primary opponent. He had an established contribution relationship with Realtors. Realtors used posed photographs which could only have been obtained from Representative AuCoin or representatives of his campaign, as well as campaign themes which were commonly used by Representative AuCoin. Realtors also expended substantial sums for polling which would only be useful to Representative AuCoin. The above facts inevitably lead to the conclusion that Realtors Political Action Committee acted at the request of Representative AuCoin, and in coordination with his campaign.

We appreciate your attention to this matter.

Sincerely,

Mark W. Eves

Mark W. Eves

MWE:bh
Enclosures

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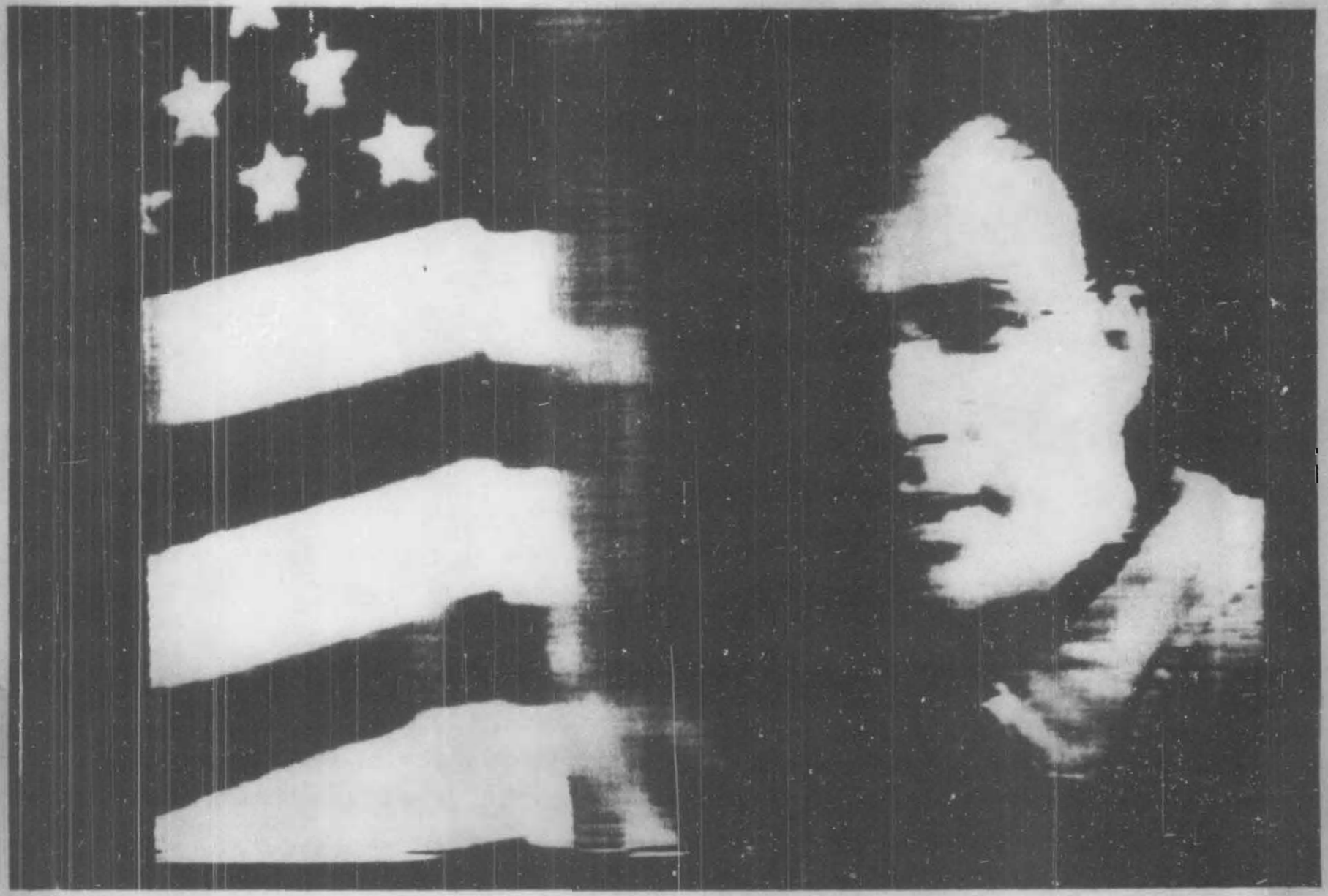

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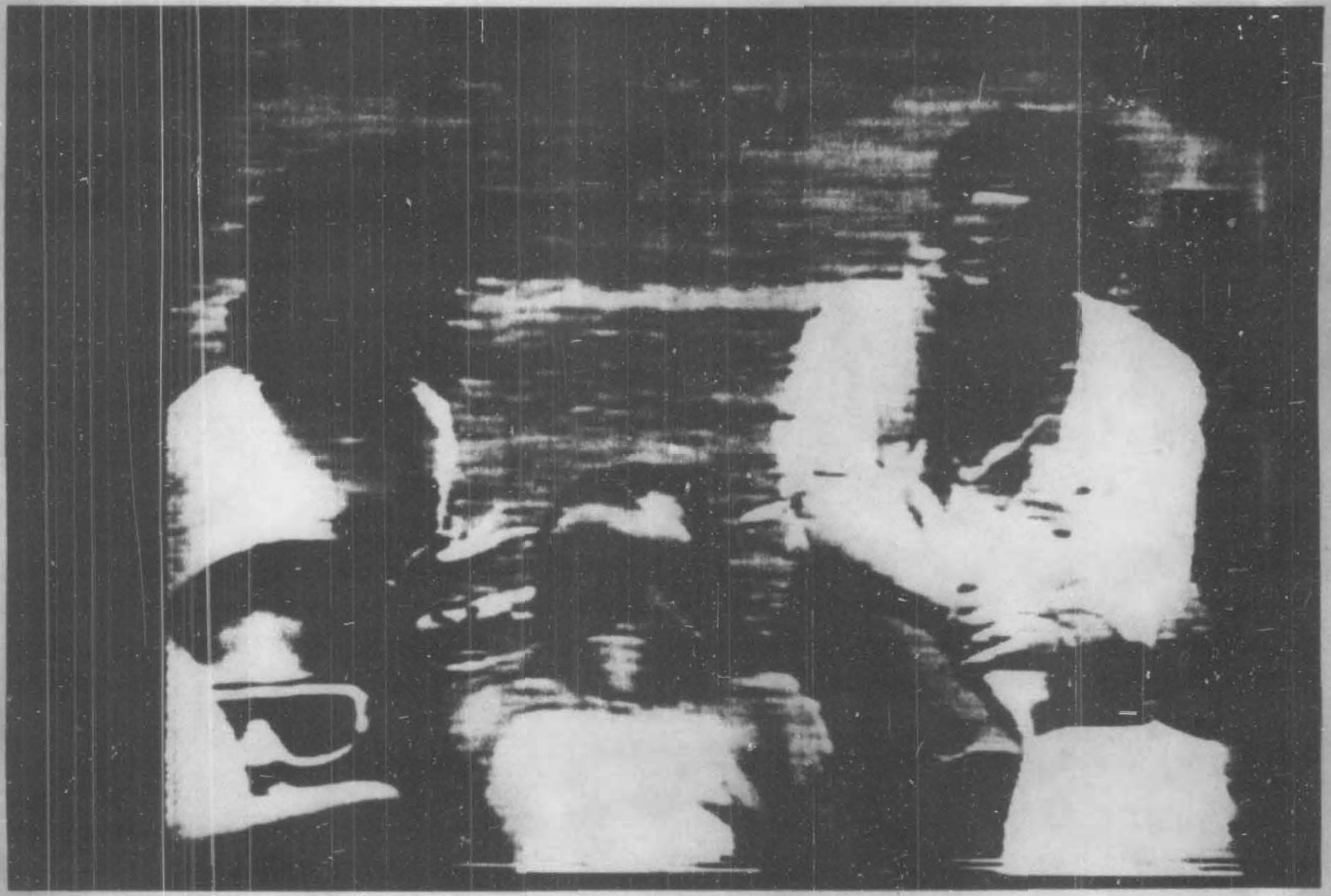

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1992

Mr. Mark Eves, Esq.
Eves & Wade
Suite 200
3236 S.W. Kelly Avenue
Portland, OR 97201-4679

RE: MUR 3588

Dear Mr. Eves:

This letter acknowledges receipt on August 21, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, Realtors Political Action Committee and Thomas Jefferson, III, as treasurer and the Honorable Les AuCoin. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3588. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Teresa A. Hennessy

Teresa A. Hennessy
Assistant General Counsel

Enclosure
Procedures

cc: Oregon Republican Party
Mr. Bert Farrish, Treasurer

93040950012

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1992

Les AuCoin for Senate Committee
Mr. Clinton W. Cook, Treasurer
14950 S.E. Bluff Road
Sandy, OR 97055

RE: MUR 3588

Dear Mr. Cook:

The Federal Election Commission received a complaint which indicates that Les AuCoin for Senate Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the written complaint is enclosed. The complainant also submitted a video tape. These materials are currently being duplicated and will be provided to you as soon as possible. We have numbered this matter MUR 3588. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

93040950013

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Teresa A. Hennessy

Teresa A. Hennessy
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc:The Honorable Les AuCoin

93040950014

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1992

Realtors Political Action Committee
Mr. Thomas Jefferson, III, Treasurer
430 North Michigan Avenue
Chicago, IL 60611

RE: MUR 3588

Dear Mr. Jefferson:

The Federal Election Commission received a complaint which indicates that the Realtors Political Action Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the written complaint is enclosed. The complainant also submitted a video tape. These materials are currently being duplicated and will be provided to you as soon as possible. We have numbered this matter MUR 3588. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

93040950015

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Teresa A. Hennessy

Teresa A. Hennessy
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

93040950016

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1992

The Honorable Les AuCoin
Les AuCoin for Senate
14950 S.E. Bluff Road
Sandy, OR 97055

RE: MUR 3588

Dear Mr. AuCoin:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the written complaint is enclosed. The complainant also submitted a video tape. These materials are currently being duplicated and will be provided to you as soon as possible. We have numbered this matter MUR 3588. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

93040950017

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Teresa A. Hennessy

Teresa A. Hennessy
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

93040950018

MUR 3588

RECEIVED FEDERAL ELECTION COMMISSION MAIL ROOM

AUG 24 9 01 AM '92

AuCoin
SENATE

August 18, 1992

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL

92 AUG 25 AM 11:25

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

Re: August 3, 1992 Letter of the Oregon Republican Party

Dear Mr. Noble:

I am writing to respond to the unfounded allegations contained in the above-referenced letter sent to you by Mark W. Eves on behalf of the Oregon Republican Party (the "ORP"). The ORP's claim that the expenditures of the Realtors Political Action Committee ("Realtors") were not "independent expenditures" is clearly frivolous, and has been made purely for political purposes. As no violation of Federal Elections Campaign Act has occurred, the ORP's complaint, when and if it is properly filed, should be dismissed.

The factual allegations purportedly supporting the ORP's claim are absolutely unfounded. The expenditures by the Realtors were made without the cooperation or prior consent of the AuCoin for Senate Committee (the "AuCoin Committee") or any of its agents. Nor did the Realtors consult with the AuCoin Committee or any of its agents about these expenditures before it made these expenditures. The ORP has made no contrary allegation that is supported either by personal knowledge or by any other credible means.

The ORP claims that the Realtors' expenditures were not "independent" within the meaning of 11 C.F.R. part 109 because 1) the Realtors have supported Representative AuCoin in the past, 2) the Realtors used "posed" photographs of Representative AuCoin, 3) the Realtors expenditures addressed themes which the AuCoin Committee also addressed, and 4) the AuCoin was in a close election and lacked financial resources. None of these facts provides any basis to support a finding that the Realtors' expenditures were not independent.

The fact that the Realtors have judged the work of Representative AuCoin to have been worthy of their support in the past has no bearing on the issue of whether the AuCoin Committee cooperated with the Realtors' efforts.

The Realtors' use of "posed" photographs also does not provided any evidence of cooperation between the AuCoin Committee and the Realtors. Representative AuCoin, being a respected

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printed on recycled paper

Paid for by the Les AuCoin for Senate Committee, P.O. Box 641, Beaverton, OR 97075. Clint Cook, Treasurer.

Congressman, is a public figure who poses for photographs on virtually a daily basis. These photographs are in the public domain, and Representative AuCoin has no control over their use. In fact, Representative AuCoin's past and current opponents have often used such photographs in conducting negative campaigns against him. The fact that the Realtors also had access to these photographs does not lend any credence to the ORP's allegations. Neither Representative AuCoin nor the AuCoin Committee posed for or provided these photographs for the Realtors' use in making these expenditures.

The ORP's claim that the Realtors' use of the facts that Representative AuCoin is a courageous and proven advocate for Oregon, who has and will create and preserve Oregon jobs, also does not support the ORP's allegations that the Realtors' expenditures were not independent. The AuCoin Committee does not have a trademark on these facts. Nor did it consent or encourage the Realtors' use of these facts in their expenditures.

Finally, the fact that Representative AuCoin was participating in a close election and lacked the financial resources of his opponent obviously does not support an allegation that expenditures made in support of his candidacy were made with the cooperation of his campaign committee. Nearly all independent expenditures are made under these circumstances.

The ORP has made these unfounded allegations against the AuCoin Committee because of the strong challenge to their candidate which Representative AuCoin presents, and because of the ORP's desire to focus attention from their own internal disarray. The FEC should not encourage the use of its authority to make such partisan attacks on legitimate candidates for elected office. Accordingly, the ORP's complaint, when and if it is filed, should be dismissed.

Sincerely,

Mary Beth Cahill
Director
AuCoin for Senate Committee
(503) 238-1992

cc: Mark W. Eves
Realtors PAC

93040950020

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 10, 1992

Realtors Political Action Committee
Mr. Thomas Jefferson, III, Treasurer
430 North Michigan Avenue
Chicago, IL 60611

RE: MUR 3588

Dear Mr. Jefferson:

On August 28, 1992, the Realtors Political Action Committee and you, as treasurer, were notified that the Federal Election Commission received a complaint indicating that the Realtors Political Action Committee and you, as treasurer, violated the Federal Election Campaign Act of 1971, as amended. Enclosed with the notification letter was a copy of the written complaint. The notification letter also advised that the complainant had submitted additional materials in support of the complaint, and that such materials would be provided as soon as possible after duplication.

Enclosed is a copy of the material submitted by the complainant. Your response to the complaint's allegations must be submitted to the General Counsel's Office within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

Sincerely,

Joi L. Roberson

Joi L. Roberson
Law Clerk

Enclosure

93040950021

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 10, 1992

The Honorable Les AuCoin
Les AuCoin for Senate
14950 S.E. Bluff Road
Sandy, OR 97055

RE: MUR 3588

Dear Mr. AuCoin:

On August 28, 1992, you were notified that the Federal Election Commission received a complaint indicating that you violated the Federal Election Campaign Act of 1971, as amended. Enclosed with the notification letter was a copy of the written complaint. The notification letter also advised that the complainant had submitted additional materials in support of the complaint, and that such materials would be provided as soon as possible after duplication.

Enclosed is a copy of the material submitted by the complainant. Your response to the complaint's allegations must be submitted to the General Counsel's Office within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

Sincerely,

Joi L. Roberson

Joi L. Roberson
Law Clerk

Enclosure

93040950022

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 10, 1992

Les AuCoin for Senate Committee
Mr. Clinton W. Cook, Treasurer
14950 S.E. Bluff Road
Sandy, OR 97055

RE: MUR 3588

Dear Mr. Cook:

On August 28, 1992, the Les AuCoin for Senate Committee and you, as treasurer, were notified that the Federal Election Commission received a complaint indicating that the Les AuCoin for Senate Committee and you, as treasurer, violated the Federal Election Campaign Act of 1971, as amended. Enclosed with the notification letter was a copy of the written complaint. The notification letter also advised that the complainant had submitted additional materials in support of the complaint, and that such materials would be provided as soon as possible after duplication.

Enclosed is a copy of the material submitted by the complainant. Your response to the complaint's allegations must be submitted to the General Counsel's Office within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

Sincerely,

Joi L. Roberson

Joi L. Roberson
Law Clerk

Enclosure

93040995023

NATIONAL ASSOCIATION OF REALTORS®
REALTOR®
The Voice for Real Estate®

OGC6673
NATIONAL ASSOCIATION OF REALTORS®
430 N. Michigan Avenue
Chicago, Illinois 60611-4087

Legal Affairs Department
Telephone 312 329 8270

Fax 312 329 8576

TO CALL WRITER DIRECT:
312 329-8375

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 SEP 29 PM 3:35

September 28, 1992

Ms. Teresa A. Hennessy
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 3588
REALTORS® Political Action Committee and
Thomas Jefferson III, Treasurer

Dear Ms. Hennessy:

This letter is the response of the REALTORS® Political Action Committee (RPAC) and Mr. Thomas Jefferson III, Treasurer, to the above-referenced MUR. As indicated in the enclosed Designation of Counsel, the undersigned has been designated counsel for the Respondents in this matter. For the reasons set forth below, the Respondents vigorously reject the wholly unsubstantiated allegations set forth in the complaint and the assertion that Respondents violated any provision of the Federal Election Campaign Act. Accordingly, the Respondents urge the Commission to take no action in response to the complaint and to close the file in this matter designated MUR 3588.

The complaint alleges generally that certain independent expenditure communications distributed by RPAC in support of Representative Les AuCoin's campaign for the Democratic nomination for the Senate from Oregon were not, in fact, conducted truly independent from Representative AuCoin and his campaign personnel, and thus violated the contribution limitations of 2 USC §441a(a) since the amount of those expenditures exceeded $5,000. Revealingly, the complaint sets forth little factual basis for Complainant's bald assertion that Respondent's actions violated the Act. Of the few facts advanced in the complaint, all are either wholly consistent with lawful independent expenditure activity, or are completely false, as explained in further detail below.

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REALTORS® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

EQUAL HOUSING OPPORTUNITY

1. The complaint claims that Representative AuCoin has had a "close relationship" with Respondents for years, and has received contributions to his campaign from Respondents in 1989, 1990 and 1991. In fact, the NATIONAL ASSOCIATION OF REALTORS®, RPAC's connected organization, has communicated with Mr. AuCoin in prior years on legislative matters, just as NAR communicates with virtually every member of Congress on issues of legislative concern to NAR and its membership. RPAC has also made certain contributions to Mr. AuCoin's prior election campaigns. These actions, however, prove nothing of consequence with respect to RPAC's independent expenditure in support of Mr. AuCoin. Each is itself entirely lawful, each is unrelated to Mr. AuCoin's primary election campaign for the Senate, and none of these activities are probative of, indicate, infer or in any way suggest the type of cooperation, consultation or coordination which is inconsistent with making independent expenditures. As indicated in the Affidavit of Lisa Friday Scott, attached hereto, neither NAR nor RPAC, or any member or employee thereof, had any contact or communication with Mr. AuCoin prior to and related to the Oregon Senate primary election.

2. Complainant states its unsubstantiated "belief" that Respondent's independent expenditures were made in coordination with, and at the request or suggestion of, Representative AuCoin or agents of his campaign. Complainant's failure to advance any factual basis for this belief, however, is not unsurprising, since it is unequivocally false. As indicated above and in the Affidavit of Lisa Friday Scott, no such coordination took place.

3. Complainant further alleges its belief that the products of a survey conducted at Respondent's request and paid for by Respondent "have been shared with, and provided to, Representative AuCoin or agents of his campaign." As indicated in the Scott Affidavit, this belief is also false, and is similarly made without any factual foundation or corroboration whatsoever.

4. Complainant next hypothesizes, without a shred of evidentiary support, that the photographs included in the RPAC independent television advertisement "could (not) have been obtained without the assistance of Representative AuCoin or his campaign staff."

As indicated in the attached Affidavit of Peter Fenn, this allegation is untrue. The photographs were obtained by the political consultant retained to produce and disseminate the independent expenditure communication on behalf of Respondents from a free-lance photographer, and not from or with the cooperation of Mr. AuCoin and his campaign personnel.

5. Complainant further theorizes that the themes addressed in RPAC's television advertisement were "regularly utilized and addressed in the Les AuCoin campaign for United States Senate." As indicated in the Affidavits of Peter Fenn and Lisa Friday Scott, Mr.

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Fenn's consulting firm suggested the concepts included in the independent expenditure communication, and prepared a proposed script for the television advertisement which was approved by Ms. Scott. Neither party, nor any other person associated with Respondent's process of making an independent expenditure in support of Mr. AuCoin, had any contact or communication with Mr. AuCoin.

6. Finally, Complainant asserts generally that the election between Mr. AuCoin and Mr. Lonsdale was expected to be close. That the election was expected to be close was generally recognized by many observers, and, indeed, was one reason why RPAC chose to support Mr. AuCoin with an independent expenditure. Complainant goes on to speculate that Mr. AuCoin sought the assistance of Respondents because he had spent virtually all of his available funds and feared losing the election. As explained herein, this allegation is also without merit since no communication occurred between Respondents and Mr. AuCoin and his campaign.

In sum, Complainant's assertion that RPAC's independent expenditure in support of Mr. AuCoin was unlawfully coordinated with the campaign is simply untrue. Complainant does not identify any events or circumstances at which the cooperation or coordination which it hypothesizes may have occurred. The reason Complainant fails to do so, however, is because there was no such cooperation, coordination or any other interaction between Respondents and Mr. AuCoin, as demonstrated by the Affidavits hereby provided by Respondent. Thus, this matter is not one whereby the respective characterization of events by Respondent and Complainant conflict, and the credibility of those making these characterizations is at issue. Complainant has advanced no events, facts or circumstances the credibility of which must be judged, but only its "belief" that Respondents acted unlawfully. Respondents, on the other hand, have presented herein verified, credible, consistent testimony affirming that no unlawful activity occurred.

Accordingly, Respondents respectfully request that the Commission find no reason to believe that the complaint sets forth a possible violation of the Act and that the Commission close the file in this matter.

Very truly yours,

Ralph W. Holmen

Ralph W. Holmen

RWH/jbh

9304095 0026

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of REALTORS® Political Action Committee and Thomas Jefferson III, Treasurer	)	MUR 3588

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 SEP 29 PM 3: 35

93040950027

AFFIDAVIT OF LISA FRIDAY SCOTT

Lisa Friday Scott hereby deposes and states the following:

1. The facts set forth on this affidavit are true to the best of my knowledge, and if called and sworn as a witness I could competently testify to them.

2. I am employed by the NATIONAL ASSOCIATION OF REALTORS® (NAR), 430 N. Michigan Avenue, Chicago, Illinois 60611, and work in the Washington Office of NAR, 777 14th Street, N.W., Washington, D.C. 20005. My title is Director, Political Programs.

3. A part of my job responsibilities at NAR is to advise and administer the affairs of the NAR Independent Expenditures Committee.

4. The Independent Expenditures Committee of NAR consists of 17 members of NAR who meet to review forthcoming elections for Federal office and select candidates most appropriate for independent expenditure support by NAR's separate segregated fund, the REALTORS® Political Action Committee (RPAC).

5. In considering and implementing independent expenditures to be conducted by RPAC, one of the procedures routinely followed is to ask each member of the Independent Expenditures Committee, and each member of the NAR staff who is in any manner involved directly or indirectly with the independent expenditure process, to indicate whether they have had any contact or communications with the candidate concerning the candidate's campaign plans, projects, needs or strategies, and to sign a statement to that effect. In the case of the independent expenditure or support of Mr. AuCoin, no Committee member or staff member reported any such communication, and each such person signed a statement to that effect.

6. One member of the Committee reported to me that she had had occasional contact with Mr. AuCoin, on legislative matters only, several years ago when she resided in his Congressional District. She also reported three very brief social exchanges with Mr. AuCoin since November, 1991, but that such exchanges did not involve any discussion whatsoever involving or relating to any aspect of Mr. AuCoin's primary election campaign.

7. I had primary and virtually sole responsibility for implementation of the decision of the Independent Expenditures Committee in support of Mr. AuCoin. I performed this responsibility by utilizing the services of a political consulting firm, Fenn & King Communications, and a political polling firm, Greenberg-Lake Analysis Group.

8. In April, 1992, at my request, Greenberg-Lake surveyed Oregon voters and provided me a report describing the voters perception of the merits of the candidates in the Oregon Democratic Senate primary election, Les AuCoin and Harry Lonsdale, and those of incumbent Republican Senator Robert Packwood.

9. Based on the information obtained from the survey done by Greenberg-Lake, Fenn & King Communications provided a proposed script and issued images to be included in a television advertisement supporting Mr. AuCoin, which I reviewed and approved. That proposal incorporated a "theme" and voter message developed by Fenn & King, to be delivered in the independent expenditure communication supporting Mr. AuCoin.

10. The survey information compiled by Greenberg-Lake was provided to me personally, and neither I, nor to the best of my knowledge and belief, any other NAR employee, provided any portion of that information in any form whatsoever to Mr. AuCoin, his campaign committee, or any agent or employee thereof.

11. Prior to using the services of Fenn & King Communications and Greenberg-Lake in connection with the RPAC independent expenditure in support of Mr. AuCoin, I asked both firms if they had been employed or engaged by, or otherwise provided any services to Mr. AuCoin or any authorized campaign committee of Mr. AuCoin's, or any agent of either. In both cases I was advised that they had not had such contact or communications.

12. I had no contact, communication or other interaction with Mr. AuCoin, his committee, or any agent or employee thereof.

Further affiant sayeth not.

Lisa Friday Scott

Lisa Friday Scott

Subscribed and sworn to before me, a Notary Public in and for the County and State indicated, this 29 day of September, 1992.

Jean M. Wusson

My Commission Expires September 30, 1996

9304095002 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
REALTORS® Political Action Committee	)	
and	)	MUR 3588
Thomas Jefferson III, Treasurer	)	
	)	
	)	
	)	

AFFIDAVIT OF PETER FENN

Peter Fenn hereby deposes and states the following:

1. The facts set forth on this affidavit are true to the best of my knowledge, and if called and sworn as a witness I could competently testify to them.

2. I am a partner and principal in the political consulting firm of Fenn & King Communications, 1043 Cecil Place, N.W., Washington, D.C. 20007.

3. My firm was retained by the REALTORS® Political Action Committee (RPAC) to provide services in connection with the independent expenditure campaign conducted by RPAC in support of the primary election campaign of Les AuCoin for the Democratic nomination for Senate in Oregon.

4. At no time prior to or during the Oregon primary election on May 19, 1992 did I or any member or employee of my firm meet with, communicate with or otherwise come into contact with Les AuCoin, anyone associated with his campaign committee, or any employee or agent thereof.

5. The services my firm provided to RPAC in this connection consisted of writing a 30-second television advertisement and seeing to all aspects of production and broadcasting of that advertisement on television stations in Oregon.

6. I developed themes, ideas and concepts included in the television advertisement based on survey research about the Oregon Democratic Senate primary election provided to me by RPAC. The concepts, scripts and visuals which I developed for this advertisement were approved by Lisa Friday Scott on behalf of RPAC.

7. I obtained the photographs used in the advertisement from Bruce Forster, a free-lance photogrpaher in Portland, Oregon. At no time did I discuss with Mr. Forster where he had obtained such photographs, although it was and is my understanding, that he

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took those photographs a number of years prior to 1992 and maintained them as part of his inventory of "stock" photographs for use at appropriate times. At no time did I discuss with Mr. Forster any matters relating to the Democratic Senate primary campaign of Les AuCoin or the independent expenditure of RPAC in support of Mr. AuCoin's candidacy. Neither I, nor to the best of my information and belief, Mr. Forster, communicated with Mr. AuCoin or his campaign personnel or agents or employees in any manner related to the creation or use of those photographs.

Further affiant sayeth not.

Peter Fenn

Subscribed and sworn to before me, a Notary Public in and for the County and State indicated, this 21 day of September, 1992.

Jean M. Wusson

My Commission Expires September 30, 1993

93040950030

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3588

NAME OF COUNSEL: RALPH W. HOLMEN

ADDRESS: NATIONAL ASSOCIATION OF REALTORS®
430 N. Michigan Avenue
Chicago, IL 60611-4087

TELEPHONE: 312 329-8375

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 SEP 29 PM 3:35

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, IN THE MATTER NUMBERED MUR 3588 ONLY.

9-4-92
Date

Thomas Jefferson III
Signature TREASURER

RESPONDENT'S NAME: Thomas Jefferson III
and
REALTORS® POLITICAL ACTION COMMITTEE
430 N. Michigan Avenue
Chicago, IL 60611-4087

HOME PHONE: ----------

BUSINESS PHONE: 312 329-8233

93040950031

MUR 3588

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 8, 1992

Ms. Mary Beth Cahill
AuCoin for Senate Committee
14950 S. E. Bluff Road
Sandy, OR 97055

Dear Ms. Cahill:

Pursuant to our conversation of October 2, 1992, my understanding is that you have not received a copy of the video submitted by the complainants. Thus, enclosed please find a second copy of the materials submitted by the complainants.

Your response to the complainant's allegations must be submitted to the General Counsel's Office within 15 days. If no response is received within 15 days, the Commission may take further action based on the available information.

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

Sincerely,

Joi L. Roberson

Joi L. Roberson
Law Clerk

Enclosure

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AuCoin
SENATE

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

OCT 20 9 02 PM '92

October 16, 1992

Office of the General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463
Attn: Joi L. Roberson

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 OCT 20 AM 11:45

Re: MUR 3588

Dear Ms. Roberson:

I am writing to request that the complaint filed in the above reference matter be dismissed, as there is no reason to believe that a violation of the Federal Elections Campaign Act of 1971, as amended (the "Act") has occurred.

The allegations contained in the complaint filed by Mark W. Eves on behalf of the Oregon Republican Party (the "ORP") are completely unfounded. The ORP's claim that the expenditures of the National Association of Realtors Political Action Committee ("Realtors") were not "independent expenditures" is clearly frivolous, and has been made purely for political purposes.

The expenditures by the Realtors were made without the cooperation or prior consent of the Les AuCoin for Senate Committee (the "AuCoin Committee"). Nor did the Realtors consult with the AuCoin Committee about these expenditures before making the expenditures. The ORP has made no contrary allegation that is supported either by personal knowledge or by any other credible means.

The ORP claims that the Realtors' expenditures were not "independent" within the meaning of 11 C.F.R. part 109 because 1) the Realtors have supported Representative AuCoin in the past, 2) the Realtors used "posed" photographs of Representative AuCoin, 3) the Realtors expenditures addressed themes which the AuCoin Committee also addressed, and 4) AuCoin was in a close election and lacked financial resources. None of these facts provides any basis to support a finding that the Realtors' expenditures were not independent.

The fact that the Realtors have judged the work of Representative AuCoin to have been worthy of their support in the past has no bearing on the issue of whether the AuCoin Committee cooperated with the Realtors' efforts.

The Realtors' use of "posed" photographs also does not provide any evidence of cooperation between the AuCoin Committee and the

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printed on recycled paper

Paid for by the Les AuCoin for Senate Committee, P.O. Box 641, Beaverton, OR 97075. Clint Cook, Treasurer.

Realtors. Representative AuCoin, being a respected Congressman, is a public figure who poses for photographs on virtually a daily basis. These photographs are in the public domain, and Representative AuCoin has no control over their use. In fact, Representative AuCoin's past and current opponents have often used such photographs in conducting negative campaigns against him. The fact that the Realtors also had access to these photographs does not lend any credence to the ORP's allegations. The AuCoin Committee did not provide these photographs to the Realtors for their use in making these expenditures. Affidavit of Mary Beth Cahill, Paragraph 1 (Attached as Exhibit A). Congressperson AuCoin did not pose for these photographs for the Realtors' use in making these expenditures. Affidavit of Mary Beth Cahill, Paragraph 2.

The Realtors' use of the facts that Representative AuCoin is a courageous and proven advocate for Oregon, who has and will create and preserve Oregon jobs, also does not support the ORP's allegations that the Realtors' expenditures were not independent. The AuCoin Committee does not have a trademark on these facts. Nor did it consent or encourage the Realtors' use of these facts in their expenditures. Affidavit of Mary Beth Cahill, Paragraph 3.

Finally, the fact that Representative AuCoin was participating in a close election and lacked the financial resources of his opponent obviously does not support an allegation that expenditures made in support of his candidacy were made with the cooperation of his campaign committee. Many independent expenditures are made under these circumstances.

The ORP has also alleged that the Realtors provided the AuCoin Committee with the results of a survey that the Realtors produced. This allegation is also false. Affidavit of Mary Beth Cahill, Paragraph 4.

The ORP has made these unfounded allegations against the AuCoin Committee because of the strong challenge to their candidate which Representative AuCoin presents, and because of the ORP's desire to focus attention from their own internal disarray. The FEC should not encourage the use of its authority to make such partisan attacks on legitimate candidates for elected office. Accordingly, the ORP's complaint should be dismissed.

Sincerely,

Mary Beth Cahill
Director
AuCoin for Senate Committee
(503) 238-1992

cc: Mark W. Eves, Esq.

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DECLARATION

In support of the Les AuCoin for Senate Committee's request to dismiss Matter Under Review 3588, I, Mary Beth Cahill, Director of the Les AuCoin for Senate Committee, state to the best of my information and belief that:

1) The Les AuCoin for Senate Committee did not provide photographs to the National Association of Realtors Political Action Committee for use in the television advertisements referred to in the complaint of the Oregon Republican Party;

2) Congressman Les AuCoin did not pose for photographs for use in the television advertisements referred to in the complaint of the Oregon Republican Party;

3) The Les AuCoin for Senate Committee did not encourage the National Association of Realtors Political Action Committee to state that Congressman AuCoin is a proven leader who will courageously fight for Oregon jobs in the television advertisements referred to in the complaint of the Oregon Republican Party;

4) The Les AuCoin for Senate Committee has not been provided with any of the results of the survey produced by the National Association of Realtors Political Action Committee and referred to in the complaint of the Oregon Republican Party.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 1992.

Mary Beth Cahill

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RECEIVED
F.E.C.
SECRETARIAT
93 JUN -1 AM 11:56

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR #3588(E)
DATE COMPLAINT RECEIVED BY OGC August 21, 1992
DATE OF NOTIFICATION TO RESPONDENTS August 28, 1992
STAFF MEMBER Joi L. Roberson

COMPLAINANTS: Oregon Republican Party

RESPONDENTS: Les AuCoin For Senate Committee
and Mr. Clinton W. Cook, as treasurer
Realtors Political Action Committee
and Dale Colby, as treasurer
Les AuCoin

RELEVANT STATUTES: 2 U.S.C. § 431
2 U.S.C. § 434(a)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
11 C.F.R. § 109.1

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: none

I. GENERATION OF MATTER

On August 21, 1992, the Commission received a complaint from the Oregon Republican Party alleging that the Realtors Political Action Committee and its treasurer ("RPAC"), made expenditures in coordination with the Les AuCoin for Senate Committee ("the Committee"). According to the allegations, these expenditures violated the contribution limitations of

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2 U.S.C. § 441a(a), and the Committee failed to report them in violation of 2 U.S.C. § 434(b). These challenged activities occurred before the 1992 Oregon primary.

The Realtors Political Action Committee and its treasurer, the Les AuCoin for Senate Committee and its treasurer, and Les AuCoin were notified of the complaint on August 28, 1992. The Les AuCoin Committee and the Realtors Political Action Committee responded on October 16, 1992 and September 28, 1992, respectively.[1/]

II. FACTUAL AND LEGAL ANALYSIS

A. The Act and Regulations

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines "multicandidate political committee" as a political committee which has been registered with the Commission for a period of not less than 6 months, has received contributions from more than 50 persons, and has made contributions to 5 or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). The term "contribution" includes anything of value from any person for the purpose of influencing any election for Federal office. A multicandidate political committee is prohibited from making contributions to a candidate and his authorized political committees which, in the aggregate,

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1/ On August 18, 1992, the Les AuCoin Committee submitted a preliminary response prior to the filing of the complaint. This Office did not receive a response from the candidate. However, because the responses in this matter addressed the candidate's activities, this Office was able to evaluate the allegations made against the candidate.

exceed $5,000 per election. 2 U.S.C. § 441a(a)(2). A candidate or his authorized committees are prohibited from knowingly accepting any contribution in violation of section 441a. 2 U.S.C. § 441a(f).

The Act defines "expenditure" to include anything of value for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9). An "independent expenditure" is an expenditure for a communication expressly advocating the election or defeat of a clearly identifiable candidate which is made without the cooperation, prior consent of, or in consultation with, or at request or suggestion of, a candidate or his authorized committees. 11 C.F.R. § 109.1(a). The Commission has defined further this term to refer to expenditures that do not involve any coordination with a candidate or his authorized committees prior to the making of the communication. 11 C.F.R. § 109.1(b)(4)(i). Any other expenditure on behalf of a candidate is an in-kind contribution to the candidate and an expenditure by the candidate. 11 C.F.R. § 109.1(c). As such, the expenditure would be subject to the contribution limitations of 2 U.S.C. § 441a(a).

Pursuant to 2 U.S.C § 434(a), each treasurer of a political committee shall file reports of receipts and disbursements. Each report shall disclose the total amount of

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contributions from other political committees. 2 U.S.C. § 434(b)(2). Each report shall also identify each political committee which makes a contribution, together with the date and amount of the contribution. 2 U.S.C. § 434(b)(3). Moreover, each report shall disclose all disbursements for independent expenditures. 2 U.S.C. § 434(b)(4). Additionally, each report for any political committee other than an authorized committee should disclose the name and address of each political committee to which it made a contribution, together with the date and amount of the contribution. 2 U.S.C. § 434(b)(6)(B)(i). Pursuant to 2 U.S.C. § 434(b)(7), a committee shall disclose the total of contributions, the total less offsets, and the total of operating expenditures, together with the total less offsets.

B. Factual Information

The complainant alleged that RPAC made an $118,000 expenditure in direct support of the Committee's efforts prior to the May 1992 primary and reported the expenditure as independent. This expenditure included $17,500 for a polling survey and $98,510 for the production and airing of a television advertisement. The complainant further alleged that coordination between RPAC and the Committee occurred in connection with this expenditure. Thus, the expenditure allegedly did not meet the requirements for an independent

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expenditure and instead was an in-kind contribution to the Committee. This contribution allegedly also exceeded RPAC's contribution limitation set forth in 2 U.S.C. § 441a(a)(2) and was not properly reported by the Committee in violation of 2 U.S.C. § 434(b).

As support for its allegations, the complainant referred to several factors. First, the complainant maintained that the products of the survey had been provided to the Committee. Second, the complainant stated:

> the television advertisement...includes four photographs of Representative AuCoin which appear to have been posed and professionally prepared.... It appears that none of the photographs could have been obtained without the assistance of Representative AuCoin or his campaign staff.

Third, the television advertisement addressed themes "which [were] regularly utilized and addressed in the Les AuCoin campaign for United States Senate." Fourth, the complainant stated, "a history of contributions and cooperation exists between Representative AuCoin and Realtors." Lastly, the complainant contended that the Committee financially needed RPAC's assistance because it "lacked sufficient funds to produce and air additional advertising." See Attachment 1, p. 4.

The Committee submitted two responses, one on August 18, 1992 and another on October 16, 1992. The October 16, 1992 response included a declaration from the Committee Director,

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Mary Beth Cahill. The Committee denied that RPAC's expenditure was made with its cooperation, consultation, or prior consent. See Attachment 2, p. 1.

Specifically, the Committee denied that it provided the photographs of Les AuCoin used in the challenged advertisement. The Committee further denied that the candidate posed for the photographs for RPAC's use in making the expenditures. See Attachment 4, p. 3. According to the Committee, the "photographs are in the public domain, and Representative AuCoin has no control over their use." See Attachment 4, p. 2. The Committee also denied that it encouraged RPAC to use certain campaign themes in the challenged advertisements. The Committee stated: "The AuCoin Committee does not have a trademark on these facts. Nor did it consent or encourage the Realtors' use of these facts in their expenditures." See Attachment 2, p. 2.

Additionally, the Committee contended that RPAC's past support of the candidate did not establish that the expenditures by RPAC now at issue were coordinated with the Committee. See Attachment 4, p. 1. Moreover, the Committee asserted that the facts of a close primary election and the Committee's lack of financial resources did not support the complainant's allegation. See Attachment 2, p. 2. Finally, the Committee asserted that RPAC did not provide it with the results of the survey. See Attachment 4, p. 3.

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In its response, RPAC denied that its expenditures were coordinated with the Committee. It included affidavits from Peter Fenn of Fenn and King, a political consulting firm retained by RPAC, and Lisa Friday Scott, Director of Political Programs for the National Association of Realtors, the connected organization for RPAC. According to RPAC's response, neither RPAC nor the National Association of Realtors, nor any agent of either, had any contact or communications with the candidate or his authorized committee prior to and related to the primary election. See Attachment 3, pp. 2-3. In her affidavit, Ms. Scott stated:

> Prior to using the services of Fenn & King Communications and Greenberg-Lake in connection with the RPAC independent expenditure in support of Mr. AuCoin, I asked both firms if they had been employed, or engaged by, or otherwise provided any services to Mr. AuCoin or any authorized campaign committee of Mr. AuCoin's, or any agent of either. In both cases I was advised that they had not had such contact or communications.

See Attachment 3, p. 5.

Further, Mr. Fenn stated in his affidavit that no person associated with his firm met with, communicated with, or otherwise had contact with the Committee or the candidate before or during the 1992 primary. See Attachment 2, p. 6. RPAC also observed that the complainant failed to advance any facts supporting its contention that RPAC's expenditure was not independent. See Attachment 3, p. 2.

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Specifically, RPAC denied that the photographs of the candidate were obtained from the Committee. According to the Fenn affidavit, Fenn & King obtained the photographs from Bruce Forster, a free-lance photographer. Mr. Fenn stated:

> At no time did I discuss with Mr. Forster where he had obtained such photographs, although it was and is my understanding, that he took those photographs a number of years prior to 1992 and maintained them as part of his inventory of "stock" photographs for use at appropriate times....Neither I, nor to the best of my information and belief, Mr. Forster, communicated with Mr. AuCoin or his campaign personnel or agents or employees in any manner related to the creation or use of those photographs.

See Attachment 3, pp. 6-7.

RPAC also contended that Fenn & King suggested the concepts, or campaign themes, included in the challenged television advertisement. Mr. Fenn affirmed that he developed themes, ideas, and concepts for the advertisement and that Ms. Scott approved the concepts, script, and visuals. See Attachment 3, p. 6. Additionally, Ms. Scott averred that RPAC did not share the results of the survey compiled by Greenberg-Lake with the candidate or the Committee. See Attachment 3, p. 5.

C. Analysis

The responses by RPAC and the Committee address each allegation raised by the complaint. The Complainant failed to provide evidence of any arrangement, coordination, or direction of the Committee concerning the advertisements made by RPAC.

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Both the Committee and RPAC denied any coordination with each other in connection with the challenged expenditure. The Committee submitted a declaration under penalty of perjury from its director, Mary Beth Cahill, denying the existence of coordination. RPAC's response included affidavits from the consulting firm retained by RPAC and the Director of Political Programs for the National Association of Realtors denying the existence of coordination. RPAC denied sharing the survey with the Committee and the Committee denied receiving the survey. Thus, a review of the complaint and the responses does not indicate evidence of any arrangement, coordination, or direction between the Committee or the candidate and RPAC.

Further, a review of the Committee's reports revealed that the Committee and RPAC did not share common vendors. Specifically, the Committee did not use Greenberg-Lake or Fenn & King, the consulting firms employed by RPAC. A review of the Committee's reports did reveal that the Committee received $5,000 in direct contributions from RPAC. However, without further evidence of coordination, direct contributions alone are not enough to find the existence of coordination. In the present case, there is no evidence of meetings, discussions, or communication between RPAC and the Committee concerning the expenditures at issue.

It appears, from the available information, that RPAC made the expenditures at issue without the cooperation, prior consent of, or in consultation with, or at the request or suggestion of Les AuCoin or the Les AuCoin for Senate Committee. Accordingly,

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the expenditures made by RPAC are independent expenditures, and not in-kind contributions under 11 C.F.R. § 109.1(c). Thus, RPAC has not exceeded the contribution limitation for multi-candidate committees, nor has the Les AuCoin Committee accepted an excessive contribution.

In light of the foregoing, this Office recommends that the Commission find no reason to believe that Les AuCoin for Senate and Clinton W. Cook, as treasurer violated 2 U.S.C. §§ 434(b) and 441a(f). This Office also recommends that the Commission find no reason to believe that Les AuCoin violated 2 U.S.C. § 441a(f). Finally, this Office recommends that the Commission find no reason to believe that the Realtors Political Action Committee and Dale Colby, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2) and close the file in this matter.

III. RECOMMENDATIONS

1. Find no reason to believe that the Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).

2. Find no reason to believe that Les AuCoin violated 2 U.S.C. § 441a(f).

3. Find no reason to believe that the Realtors Political Action Committee and Dale Colby, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2).

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4. Approve the appropriate letters.

5. Close the file.

Lawrence M. Noble
General Counsel

6/1/93
Date

BY: LG Lerner
Lois G. Lerner
Associate General Counsel

Attachments
1. Complaint dated August 17, 1992 from the Oregon Republican Party
2. Response dated August 18, 1992 from the Les AuCoin for Senate Committee
3. Response dated September 28, 1992 from the National Association of Realtors
4. Response dated October 16, 1992 from the Les AuCoin for Senate Committee

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Les AuCoin For Senate Committee and Mr. Clinton W. Cook, as treasurer; Realtors Political Action Committee and Dale Colby, as treasurer; Les AuCoin.	)	MUR 3588

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 4, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 3588:

1. Find no reason to believe that the Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).

2. Find no reason to believe that Les AuCoin violated 2 U.S.C. § 441a(f).

3. Find no reason to believe that the Realtors Political Action Committee and Dale Colby, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2).

(Continued)

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4. Approve the appropriate letters, as recommended in the General Counsel's Report dated June 1, 1993.

5. Close the file.

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

Attest:

6-4-93
Date

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

Received in the Secretariat:	Tues., June 1, 1993 11:56 a.m.
Circulated to the Commission	Tues., June 1, 1993 4:00 p.m.
Deadline for vote:	Fri., June 4, 1993 4:00 p.m.

dr

93040950048

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUNE 11, 1993

Mark Eves, Esquire
Eves & Wade
Suite 200
3236 S.W. Kelly Avenue
Portland, OR 97201-4679

RE: MUR 3588

Dear Mr. Eves:

On June 4, 1993, the Federal Election Commission reviewed the allegations of your client's complaint dated August 17, 1992, and found that on the basis of the information provided in your complaint, and information provided by the Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, and the Realtors Political Action Committee and Dale Colby, as treasurer, there is no reason to believe the Les Aucoin for Senate Committee and Dale Colby, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f). The Commission also found there is no reason to believe Les AuCoin violated 2 U.S.C. § 441a(f). Finally, the Commission found there is no reason to believe the Realtors Political Action Committee and Dale Colby, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2). Accordingly, on June 4, 1993, the Commission closed the file in this matter.

The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
First General Counsel's Report

93040950049

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 15, 1993

Mr. Les AuCoin
14950 S.E. Bluff Road
Sandy, OR 97055

RE: MUR 3588
Les AuCoin

On August 28, 1992, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 4, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, and the Realtors Political Action Committee, and Thomas Jefferson, III, as treasurer, that there is no reason to believe you violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its 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 in the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
First General Counsel Report

93040950050

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 15, 1993

Clinton W. Cook, Treasurer
Les AuCoin for Senate Committee
14950 S.E. Bluff Road
Sandy, OR 97055

RE: MUR 3588
Les AuCoin for Senate Committee
and Clinton W. Cook, as
treasurer

Dear Mr. Cook:

On August 28, 1992, the Federal Election Commission notified the Les AuCoin for Senate Committee ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 4, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, and the Realtors Political Action Committee, and Thomas Jefferson, III, as treasurer, that there is no reason to believe the Les AuCoin for Senate Committee and you, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f). Accordingly, the Commission closed its 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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
First General Counsel Report

93040950051

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 15, 1993

Dale Colby, Treasurer
Realtors Political Action Committee
430 North Michigan Avenue
Chicago, IL 60611

RE: MUR 3588
Realtors Political Action Committee and Dale Colby, as treasurer

Dear Mr. Colby:

On August 28, 1992, the Federal Election Commission notified the Realtors Political Action Committee ("Committee") and Thomas Jefferson, III, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 4, 1993, the Commission found, on the basis of the information in the complaint, and information provided by Les AuCoin for Senate Committee and Clinton W. Cook, as treasurer, and the Realtors Political Action Committee, and Thomas Jefferson, III, as treasurer, that there is no reason to believe the Realtors Political Action Committee and Dale Colby, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(a)(2). Accordingly, the Commission closed its 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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3588

DATE FILMED 6/23/93 CAMERA NO. 4

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