FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3805

DATE FILMED 9-14-93 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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August 20, 1992

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MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL AUDIT REPORT ON WORLEY FOR CONGRESS 1990
("the Committee")

Attached for your review and analysis is the subject audit report. In addition, a copy of the Committee's response to the interim audit report has been included at Attachment I.

Included at Exhibit A, Apparent Excessive Contribution in the Form of a Loan from an Individual, Exhibit B, Misstatement of Financial Activity, Exhibit C, Failure to Itemize Contributions from Political Committees, Exhibit D, Reporting of Disbursements, and Exhibit E, Debts and Obligations, are matters addressed in the interim audit report which the Audit staff recommends, based on the Commission's approved Materiality Thresholds, be referred to your Office.

In addition, with respect to Finding II.B., Contributions Subject to 48 Hour Disclosure, the Audit staff is of the opinion that Commission resources should not be expended to pursue this matter in view of the circumstances and the relatively insignificant nature of this matter. Therefore, no further action has been recommended.

Should you have any questions, please contact Jim Miller or Alex Boniewicz at 219-3720.

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Attachments:

Report of the Audit Division on Worley for Congress 1990

Exhibit A - Apparent Excessive Contribution in the Form of a Loan from an Individual

Exhibit B - Misstatement of Financial Activity

Exhibit C - Failure to Itemize Contributions from Political Committees

Exhibit D - Reporting of Disbursements

Exhibit E - Debts and Obligations

Attachment I - Committee Response received June 18, 1992

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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REPORT OF THE AUDIT DIVISION ON WORLEY FOR CONGRESS 1990

I. Background

A. Overview

This report is based on an audit of Worley For Congress 1990 ("the Committee") undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the Clerk of the House of Representatives on February 5, 1990, as the principal campaign committee for David James Worley ("the Candidate"). The Committee maintains its headquarters in Morrow, Georgia.

The audit covered the period from September 11, 1989, the date of the Committee's first recorded transaction, through December 31, 1990, the closing date for the latest report which should have been filed at the time of the audit.*/ The Committee

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*/ Subsequent to the completion of fieldwork, the Committee filed the 1990 January 31 Year End Report (See Finding II.A.).

reported a beginning cash balance of $-0-; total receipts of $303,265.43; total disbursements of $295,580.86;*/ and an ending cash balance on November 26, 1990 of $9,180.47.**/

This report is based on documents and workpapers supporting each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to the Commissioners and appropriate staff for review.

B. Key Personnel

During the period covered by the audit, the Committee's Treasurer was Kevin Bruce Getzendanner. The current Treasurer is Gregg C. Brasher.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations

A. Failure to File Disclosure Report

Sections 434(a)(1) and (2)(A)(iii) of Title 2 of the United States Code state, in relevant part, that the treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of the Act. If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election, a report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year.

The Committee did not file a disclosure report for the period November 27, 1990 through December 31, 1990 (Year End Report due to be filed on January 31, 1991). Based on bank

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*/ Total receipts and total disbursements were calculated by summing the current period totals for each reporting period. This differs from the figures for total receipts and total disbursements ($311,062.48 and $295,580.96, respectively) calculated by summing the amounts reported as calendar year-to-date for 1989 and 1990.

**/ The totals do not foot due to discrepancies in the reported cash balances.

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statements and other Committee records, the Audit staff determined that receipt activity totaling $6,243.84 and disbursement activity totaling $8,423.83 should have been reported for the period.

At the exit conference, the Candidate indicated he was aware that the report had not been filed and expressed a willingness to file the disclosure report for the period noted above.

On July 15, 1991, the Committee filed the Year End Report for 1990 with the Federal Election Commission.

Recommendation #1

The Audit staff recommends no further action on this matter.

B. Contributions Subject to 48 Hour Disclosure Notices

Section 434(a)(6) of Title 2 of the United States Code requires that each Treasurer of the principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

Section 431(8)(A) of Title 2 of the United States Code states that 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 for Federal office.

The Audit staff reviewed all Committee deposits made between two and twenty days of the general election (11/06/90) to identify and schedule all contributions greater than or equal to $1,000. The auditors identified 14 such contributions, including two receipts in the form of loan proceeds, totaling $32,500. Of these, it appears the Committee did not file the required notices for 6 contributions, totaling $18,500, including contributions in the form of loan proceeds ($11,500).

At the exit conference, the Candidate was provided with a photocopy of a schedule detailing these items. The Candidate could provide no explanation and indicated the matter would be further researched.

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In the interim audit report the Audit staff recommended that the Committee, within 30 calendar days of service of that report, provide an explanation, including an account of any mitigating circumstances, as to why these notices were not filed. The Audit staff also noted that further recommendations may be forthcoming.

The Committee's response, received June 18, 1992, provided explanations for each of the six contributions noted above. In addition, the response noted that procedures would be corrected to address loans which could require such notices.

Recommendation #2

The Audit staff recommends no further action with respect to this matter.

C. Matters Referred to the Office of General Counsel

Certain matters noted during the audit have been referred to the Commission's Office of General Counsel.

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Apparent Excessive Contribution in the Form of a Loan from an Individual

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 431(8)(A) of Title 2 of the United States Code states that 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 for Federal office.

The Audit staff noted that on October 23, 1990, the Candidate and his spouse obtained a $10,000 loan from Trust Company Bank ("the Bank"). The loan documentation indicated that the proceeds were to be used for personal expenses. This single payment note stated an annual percentage of 11.0 percent and required one payment of $10,321.23 (including finance charges) on January 21, 1991. The note was cosigned by the Candidate and his spouse, Bernadette Drankoski. According to the single payment note, there does not appear to be any collateral pledged as security, and there were no guarantors or endorsers.

On July 15, 1991, subsequent to the completion of audit fieldwork, the Committee furnished the Audit staff additional information for review regarding the $10,000 note from Trust Company Bank. The Audit staff reviewed a personal financial statement of David J. Worley and Bernadette Drankoski which was used by the bank to grant the loan.

The loan proceeds were transferred into the couple's joint personal checking account ("the joint account") on October 23, 1990. On that same date, this account was debited $10,000 for a wire transfer of funds to Influence International, Inc. for payment of direct mail fundraising services provided to the Committee. According to the Candidate, funds were subsequently refunded as an overpayment from Influence International, Inc. and deposited into the Committee's checking account on November 1, 1990. On July 15, 1991, the Committee provided, for the Audit

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staff's review, a copy of the validated deposit slip for November 1, 1990 and a copy of the cashier's check ($10,000) returned from Influence International, Inc.

With respect to Influence International, Inc., the moneys returned to the Committee consisted of a cashier's check, purchased by the Committee on October 26, 1990 utilizing an $8,500 check from the Committee's account and a $1,500 loan from the Candidate, and not the moneys forwarded from the joint account as described above. The Audit staff is unable to explain the apparent conflict between the information provided to the auditors during fieldwork and the documentation submitted after the exit conference with respect to the $10,000 refund.

On its 1990 30 Day Post-General Election report, the Committee disclosed the $10,000 loan and its terms on Schedule C as a debt owed to the Bank with the parenthetical notation "(Candidate intermediary)" endorsed or guaranteed by the Candidate and his spouse.

On December 3, 1990, the Committee issued check number 575 to David J. Worley in the amount of $5,000; the purpose was noted as "Loan Repayment-1/2". The Committee's Year End 1990 report discloses this on Schedule B as a payment to the Candidate for loan repayment. On Schedule C of this report, the Committee notes the $5,000 payment as a reduction to the debt owed to the bank. The Audit staff presumes that this check was deposited into the joint account, since that account was subsequently debited $5,000 on December 7, 1990 for principal reduction on note. On January 18, 1991, the joint account was debited $5,250.21 for payoff of the note. The Audit staff reviewed available 1991 bank statements and did not note any activity to indicate that the Committee repaid the loan balance to the Candidate.

On August 1, 1991, the Committee filed its 1991 Mid-Year Report which disclosed the following transactions with respect to the loan. The Committee reported a $1,500 payment to Trust Company Bank on January 14, 1991. The Committee's bank statement shows a debit for check #588 in the amount of $1,500 on January 15, 1991, for which the payee is undeterminable from the statement alone.

However, given that the Candidate's joint account was debited on January 18, 1991 for $5,250.21 in payment of loan balance, it is assumed the payment of $1,500 was payable to the Candidate, not to Trust Company Bank.

The Committee also disclosed a loan payment to the bank on Schedule B in the amount of $3,750.21 ($10,250.21 - 5,000 - 1,500) and receipt of a loan from the Candidate on Schedule A in the amount of $3,750.21, both on January 18, 1991. The Audit staff was unable to trace either transaction to debit/credit

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entries on available Committee bank statements. Therefore, it appears these transactions are in-kind entries apparently made to correctly identify the source of the loan. Subsequent to the in-kind entries, the Committee reported four separate payments to the Candidate totaling $2,450.21 and an outstanding loan balance to the Candidate on Schedule C of $1,300.

The personal financial statement reviewed shows that only Bernadette Drankoski had annual income which would allow for repayment of the loan. It therefore appears that the loan was granted on the basis of her financial position. Should this have been the basis for granting the loan, the Candidate's spouse, Bernadette Drankoski, made an excessive contribution of $9,000 ($10,000 loan less $1,000 allowable contribution).

In the interim audit report, the Audit staff recommended that the Committee, within 30 calendar days of service of that report, demonstrate that this loan is not an excessive contribution from the candidate's spouse in the amount of $9,000 by providing any additional documentation not already submitted (such as a copy of the loan application on file at the bank and copies of any security related documents, if any) and an explanation from the bank clarifying the circumstances related to the granting of this loan. In addition, it was recommended that the Committee provide an explanation of all reported transactions relative to the receipt and extinguishment of the loan and, if necessary, amend its reports. The Audit staff also noted that further recommendations may be forthcoming.

In its response, the Committee addresses the circumstances under which the loan was obtained by stating that "[i]n late October 1990, it appeared that the campaign would experience a temporary cash shortfall" and that "contributions would not be received in time for certain expenditures. "The candidate decided to obtain a short term loan on behalf of the campaign to cover this shortfall. A home equity loan based on the candidate's portion of the equity in his home (1/2 of 50,000 = 25,000) was considered, but because of the paper work that would be required....could not be completed prior to the election, it was decided to obtain a short term loan, which could be refinanced by a home equity loan should that be ncessary, although at all times it was anticipated that the Committee would have the funds to repay the loan." The Committee goes on to say that in discussions with the bank "it was at all times clear that the funds were to be used by the campaign and would be the responsibility of the campaign and the candidate, not the candidate's spouse." The Committee noted that the candidate's spouse participated as a matter of convenience since she works in the same building as the bank's headquarters and given the hectic schedule in the last two weeks of the campaign.

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"The fact that the candidate had no income in the year prior to the campaign is irrelevant, because the candidate had assets sufficient to repay the note when it became due, should that have been necessary. The candidate, a long time customer in excellent standing with the bank, was granted a loan in the ordinary course of business, intended for the use of the campaign."

"[H]ad the candidate obtained a home equity loan in October of 1990, using his home as collateral, his spouse would not have been considered a contributor, even though she cosigned the loan, because the value of the candidate's share of the equity in the home exceeded the amount of the loan....To penalize the Committee by concluding the loan was an excessive contribution merely because it obtained a short term loan to save time would be incorrect and unfair." The Committee stated that it has requested an explanation from the bank relating to the circumstances of the granting of the loan, which will be provided to the Audit staff as soon as it is received. As of August 4, 1992, such documentation has not been received by the Audit staff.

In addition, the Committee provided some clarification of reported transactions relative to the receipt and extinguishment of the loan.

Based upon the Committee's response and the absence of a statement from the bank clarifying the circumstances under which this loan was granted, the Audit staff's position remains unchanged with respect to the excessive nature of this loan. Further, contrary to the Committee's position, the Audit staff feels the candidate's lack of income is important when assesing the ability to repay an unsecured loan. The Committee itself acknowledges, and the Audit staff agrees, that the situation would be different if it had been a home equity loan secured by the jointly owned house. Finally, the Committee's argument that the candidate had assets sufficient to repay the note should it have become necessary is without merit and does not take into consideration the other debts owed by the candidate.

Recommendation

Based upon the Commission approved Materiality Thresholds, the Audit staff recommends this matter be referred to the Office of General Counsel.

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Misstatement of Financial Activity

Sections 434(b)(2) and (4) of Title 2 of the United States Code state, in part, that each report shall disclose, for the reporting period and calendar year, the total amount of all receipts and the total amount of all disbursements.

The Audit staff performed a reconciliation of bank activity to the disclosure reports filed by the Committee from January 1, 1990 through November 26, 1990 which revealed the following misstatements:

Receipts

Reported receipts were understated by a net amount of $12,222.26 ($11,750 + $254.24 - $300 + $518.02). The understatement was a result of the following:

- The Committee failed to report contributions totaling $10,750 from political committees (See Exhibit C) and a $1,000 contribution from an individual.
- The Committee failed to report refunds/rebates from vendors totaling $254.24;
- The Committee reported a contribution twice totaling $300; and,
- An unexplained difference of $518.02.*/

Disbursements

Reported disbursements were understated by a net amount of $16,523.85 ($21,581.87 - $4,654 - $350 - $151 + $96.44 + $.54). The understatement was a result of the following:

- The Committee failed to report disbursements totaling $21,581.87 (See Exhibit D);
- The Committee reported five checks, totaling $4,654, which were later voided and made no adjustments;
- The Committee reported a $350 disbursement twice;

*/ It should be noted that in the absence of Committee workpapers which detail the preparation of its disclosure reports, the Audit staff was unable to determine the composition of certain reconciling items.

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- The Committee itemized all disbursements on their disclosure reports. The reported amount on Line 17 of the Detail Summary Page for two reporting periods did not agree with the total of the attached Schedules B, resulting in a net, over-reporting of $151;

- The Committee incorrectly reported the amounts of various disbursements, resulting in a net understatement of $96.44; and,

- an unexplained difference of $.54.

Ending Cash Balance

Reported ending cash balance was understated by a net amount of $5,570.99 ($226.50 + $12,222.26 - $16,523.85 - $1,495.90). The understatement was a result of the following:

- Math errors in reporting disbursements during 1989 and carried forward to 1990 totaling $226.50;

- The Committee understated receipts as noted above totaling $12,222.26;

- The Committee understated disbursements as noted above totaling $16,523.85; and

- Errors in carrying forward cash balances between reports during 1990 totaling $1,495.90.

Based on the above, the Audit staff determined the correct reportable ending cash balance at November 26, 1990 to be $3,609.48.

The Candidate was provided a schedule, at the exit conference, detailing the above reconciling items; and agreed to file appropriate amendments.

In the interim audit report, the Audit staff recommended that the Committee, within 30 calendar days of service of that report, file a comprehensive amendment correcting the misstatement of financial activity described above.

The Committee's response, received June 18, 1992, stated it "agrees to file amendments correcting previous errors in reporting. Such amendments are now being prepared and the Committee expects to file them by June 23."

As of August 4, 1992, no amendments have been filed.

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Recommendation

Based upon the Commission approved Materiality Thresholds, the Audit staff recommends this matter be referred to the Office of General Counsel.

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Failure to Itemize Contributions from Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each political committee which made a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13)(B) of Title 2 of the United States Code states that the term "identification" means in the case of any other person, the full name and address of such person.

The Audit staff reviewed all Committee receipt records with respect to contributions received from political committees. The auditors noted 12 contributions from political committees totaling $10,750 which were not itemized as required by the Committee.

At the exit conference, the Candidate was furnished a photocopy of a schedule which detailed the contributions from political committees not itemized. The Candidate indicated he would file amendments to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee, within 30 calendar days of service of that report, file amended Schedules A as part of a comprehensive amendment to correctly itemize the above contributions from political committees.

The Committee's response, received June 18, 1992, stated it "agrees to file amended Schedules A to correct previous errors in reporting. Such amendments are now being prepared and the Committee expects to file them by June 23."

As of August 4, 1992, no amendments have been filed.

Recommendation

Based upon the Commission approved Materiality Thresholds, the Audit staff recommends this matter be referred to the Office of General Counsel.

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Reporting of Disbursements

Sections 434(b)(4)(A) and (5)(A) of Title 2 of the United States Code state, in part, that each report shall disclose, for the reporting period and calendar year, the total amount of all disbursements. In addition, each report shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made, together with the date, amount and purpose of such operating expenditure.

While performing the bank reconciliation of the Committee's reported activity, the Audit staff noted disbursements totaling $21,581.87 that were not reported, which included 14 disbursements, totaling $21,229, requiring itemization.

In addition, our review of the 1990 30 Day Post-General Election Report revealed the Committee omitted payee addresses for 58 disbursements which totaled $63,192.27. The Audit staff determined that the Committee disclosed addresses of payees for 49 of these disbursements, totaling $59,692.87, on previous reports.

At the exit conference, the Candidate agreed to file amended reports to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee, within 30 calendar days of service of that report, file amended Schedules B (Itemized Disbursements), as part of a comprehensive amendment to disclose the disbursements not itemized ($21,229) and the omitted addresses ($63,192.27) as noted above.

The Committee's response, received June 18, 1992, stated it "agrees to file amended Schedules B to correct previous errors in reporting. Such amendments are now being prepared and the Committee expects to file them by June 23."

As of August 4, 1992, no amendments have been filed.

Recommendation

Based upon the Commission approved Materiality Thresholds, the Audit staff recommends this matter be referred to the Office of General Counsel.

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Debts and Obligations

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant parts, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished and shall be reported on separate schedules together with a statement explaining the circumstances under which each debt and obligation was incurred; and debts of $500 or less must be disclosed on the first report filed after the debt has been outstanding 60 days and debts over $500 must be disclosed on the report covering the reporting period during which the debt was incurred.

The Audit staff reviewed available disbursement documentation (invoices, contracts, canceled checks, etc.) and noted that the Committee failed to report and disclose on Schedule D debts and obligations owed to some vendors. In addition, the Audit staff noted discrepancies between amounts owed to other vendors per disbursement documentation and amounts disclosed as owed on Schedule D. As a result of these discrepancies, the Committee's disclosure reports understated the amounts owed to vendors. On July 15, 1991, subsequent to completion of the fieldwork, the Committee filed the 1990 Year End Report, which adopts the Audit staff's determination and discloses debts and obligations of $49,350.59.

A recap of reportable debts and obligations outstanding at the close of the specified reporting period is as follows:

Report Period Ending	Amount Reported (Schedule D)	Amount*/ Requiring Disclosure
03/31/90	-0-	$ 2,870.00
06/27/90	$10,000.00	23,717.75
09/30/90	15,000.00	35,668.30
10/17/90	15,000.00	40,346.28
11/26/90	30,508.44	57,130.59

At the exit conference, the Candidate was provided with a photocopy of a schedule which detailed the debts and obligations not disclosed. The Candidate indicated his willingness to file amendments to correct the public record.

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*/ The amounts represent the total of debts and obligations which require disclosure at the close of each reporting period. Therefore, some obligations may be included within the totals of more than one reporting period.

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However, the Candidate asserted that two debts included by the Audit staff have been paid in full, and stated that he would provide documentation to support this contention.

In the interim audit report, the Audit staff recommended that the Committee, within 30 calendar days of service of that report, as part of a comprehensive amendment, file amended Schedules D by reporting period to correctly disclose debts and obligations as noted above.

In its response, the Committee agreed to file amended Schedules D to correct previous errors in reporting and expects to file them by June 23, 1992. The Committee also noted that a considerable portion of the debt the Audit staff indicated should be reported (Squier-Eskew Communications, $22,500) was in fact not owed to the vendor as indicated in a statement attached to the Committee's latest disclosure report (1991 Year End). The Audit staff notes that Schedule D of the Committee's 1991 Year-End report reflects this adjustment and discloses that no debt is owed to the vendor.

The statement from the vendor noted that it became evident that the Committee would not be in a position to undertake the extensive advertising schedule contracted for. The vendor reached an understanding with the Committee that no further work would be done and no payments would be required. The vendor stated "we have not and do not consider these additional sums [$22,500] as being owed to us."

As of August 4, 1992, no amendments have been filed.

Recommendation

Based upon the Commission approved Materiality Thresholds, the Audit staff recommends this matter be referred to the Office of General Counsel.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 15, 1993

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL AUDIT REPORT ON WORLEY FOR CONGRESS 1990 ("the Committee)

On August 20, 1992 the subject report was forwarded to your Office for analysis. On December 23, 1992, the Audit staff received additional documentation and amendments from the Committee. Based on our review of these documents the following information is presented for your consideration during preparation of the First General Counsel Report.

With respect to Finding II.B., Contributions Subject to 48 Hour Disclosure, the Committee submitted a letter from one of the contributors, Williams & Henry, stating the $1000 contribution was intended to be split between Philip Henry and Ben Williams. The letter was signed only by Philip Henry. Further, the Committee submitted the original facsimile sent to the FEC with respect to two other 48 hour contributors. The document appears to have been altered. In any event, the Audit staff believes, as stated in our 8-20-92 memorandum, that this matter should not be pursued.

With respect to Exhibit A, Apparent Excessive Contribution in the Form of a Loan from an Individual, the Committee submitted a copy of canceled check #558 ($1,500), addressed at page 4, paragraphs 5 & 6 of this Exhibit, which confirms this disbursement as a payment to the Candidate, designated as a loan repayment.

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With respect to Exhibit C, Failure to Itemize Contributions from Political Committees, the Committee has filed amendments itemizing all of the noted contributions. Therefore, the Audit staff is of the opinion that resources should not be expended to pursue this matter, notwithstanding the lateness of the response.

With respect to Exhibit D, Reporting of Disbursements, the Committee has filed amendments correcting the itemization and disclosure matters addressed in this Exhibit. Therefore, the Audit staff is of the opinion that resources should not be expended to pursue this matter, notwithstanding the lateness of the response.

The Committee's response notes that further amendments were to be filed by December 31, 1992. To date, no additional amendments have been filed. During a telephone conversation with the Candidate on 1-14-93, he indicated that the amendments had indeed not been filed and they expect to file them soon.

Should you have questions with respect to any of these matters, or wish to review the documentation or amendments submitted, please contact Alex Boniewicz or Jim Miller at 219-3720.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 9, 1993

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 FEB 12 AM 11:54

93040954946

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL AUDIT REPORT ON WORLEY FOR CONGRESS 1990
("the Committee)

On August 20, 1992, the subject report was forwarded to your Office for analysis. On December 23, 1992, the Audit staff received additional documentation and amendments from the Committee. Your office was advised of the results of our review of these documents by memorandum dated January 15, 1993.

On January 25, 1993, the Audit staff again received additional amendments and a cover letter from the Committee. Based on our review of these documents, the following information is presented for your consideration during preparation of the First General Counsel's Report.

With respect to Exhibit B, Misstatement of Financial Activity, the Committee has filed a comprehensive amendment correcting the noted misstatements.

With respect to Exhibit E, Debts and Obligations, the Committee has filed amendments materially disclosing the debts and obligations addressed in this Exhibit.

With respect to Exhibit A, The Committee's response also notes that the "Committee expects to receive a statement next week from the Trust Company Bank clarifying the loan discussed in Section II.A. of your [interim audit] report." The response states that this will be forwarded immediately. To date, no further documents have been received.

Should you have questions with respect to any of these matters, or wish to review the documentation or amendments submitted, please contact Alex Boniewicz or Jim Miller at 219-3720.

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

FIRST GENERAL COUNSEL'S REPORT

LRA # 377
STAFF MEMBER: Delanie DeWitt Painter

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Worley for Congress 1990, and
Gregg C. Brasher, as Treasurer
Bernadette Drankowski

RELEVANT STATUTES:

2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 434(b)(2) and (4)
2 U.S.C. § 434(b)(2)(H)
2 U.S.C. § 434(b)(3)(B)
2 U.S.C. § 434(b)(4)(A)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.7(a)(1)(i)
11 C.F.R. § 100.7(a)(1)(i)(D)
11 C.F.R. § 104.11(a) and (b)
11 C.F.R. § 110.10

INTERNAL REPORTS CHECKED:

Audit Referrals

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter was generated by an audit of Worley for Congress 1990 ("the Committee") and Gregg C. Brasher, as Treasurer, undertaken in accordance with 2 U.S.C. § 438(b).

The Committee was the principal campaign committee of David James Worley, a Democratic congressional candidate for

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the Sixth District of Georgia who lost the 1990 general election with 49.69% of the vote.

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contribution in the Form of a Loan

The Federal Election Campaign Act of 1971, as amended ("the Act") limits the amount that an individual may contribute to any candidate to $1,000 with respect to any election. 2 U.S.C. § 441a(a)(1)(A). A loan is considered a contribution, and a loan which exceeds the contribution limitations is unlawful whether or not it is repaid. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.7(a)(1)(i). Moreover, no candidate or political committee shall knowingly accept any contribution which exceeds the contribution limitations. 2 U.S.C. § 441a(f).

A candidate may obtain a loan which requires the signature of the candidate's spouse if jointly owned assets are used as collateral, and the spouse will not be considered a contributor to the campaign if the candidate's share of the property equals the amount of the loan. 11 C.F.R. § 100.7(a)(1)(i)(D). In circumstances where a loan is not collateralized or secured, but both the candidate and the spouse are signatories for the loan and both are equally and fully responsible for repayment, the spousal exemption does not apply, and at least one half the amount of the loan would be considered a contribution from the spouse. See MUR 2292 (Commission found probable cause to believe that candidate's spouse made an excessive contribution by cosigning an

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unsecured loan); MUR 1890; MUR 2522. A candidate may make unlimited expenditures from personal funds, including a portion of assets jointly held with his spouse. 11 C.F.R. § 110.10. However, a spouse may not contribute more than the $1,000 individual limitation.

The candidate and his spouse, Bernadette Drankowski, obtained a $10,000 loan from Trust Company Bank ("the Bank") on October 23, 1990. The documentation for the loan indicates that the proceeds were to be used for personal expenses. The note stated an annual percentage rate of 11% and required one payment of $10,321.23, including finance charges, to be paid on January 21, 1991. The note was cosigned by the candidate and Bernadette Drankowski. It does not appear that any collateral was pledged as security, nor were there any guarantors or endorsers. The candidate and his spouse submitted a personal financial statement to the Bank as part of the loan application.

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On October 23, 1990, the day that the loan was obtained from the Bank, the proceeds were transferred into the couple's joint checking account, and the account was debited $10,000 for a wire transfer of funds to Influence International, Inc. for payment of direct mail fundraising services provided to the Committee. The Committee reported the $10,000 loan on its 1990 30 Day Post Election Report as a debt owed to the Bank, endorsed by the candidate and his spouse.

The Committee repaid $5,000 of the loan to the candidate by a check dated December 3, 1990. On December 7, 1990, the candidate and his spouse made a payment of $5,000 to the Bank, and repaid the remaining loan balance of $5,250.21 on January 18, 1991. The Committee paid $1,500 to the candidate on January 14, 1991, which reduced the outstanding balance owed to the candidate to $3,750.21.1/ Finally, the Committee reported four payments to the candidate totaling $2,450.21, and an outstanding loan balance to the candidate of $1,300. However, the Audit staff was unable to find evidence from

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1/ The Committee reported a payment of $1,500 to the Bank on January 14, 1991; however, the check for this amount was made payable to the candidate. The Committee further reported a loan payment to the Bank of $3,750.21 and receipt of a loan of that amount from the candidate on January 18, 1991. It appears that these entries may have been made to identify the candidate as the source of the loan. It does not appear that the Committee actually made payments to the Bank, as it reported. This Office does not recommend pursuing any reporting violations related to the loan because of the relatively small amounts involved.

1991 bank statements that the Committee repaid the loan to the candidate.

In response to the Interim Audit Report, the Committee stated that in late October, 1990, the campaign anticipated a temporary cash shortfall, and the candidate decided to obtain a short term loan on behalf of the Committee to cover the shortfall. The candidate considered a home equity loan based on his portion of the equity in his home, but because the required paperwork could not be completed before the election, he decided to get a short term loan which could be re-financed by home equity if necessary. It was anticipated that the Committee would have the funds to repay the loan. Moreover, the Committee states that in discussions with the Bank it was clear at all times that the funds were to be used by the campaign and would be the responsibility of the campaign and the candidate, not the candidate's spouse. According to the Committee, Bernadette Drankowski participated as a matter of convenience given the hectic schedule in the last two weeks of the campaign since she works in the same building as the Bank's headquarters. The Committee contends that the fact that the candidate had no income was irrelevant because he had assets sufficient to repay the note when it became due, and he was a long time customer in excellent standing with the Bank.

Moreover, the Committee argues that if the candidate had obtained a home equity loan using the house as collateral, his spouse would not have been considered a contributor

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because the value of the candidate's share of the house exceeded the amount of the loan. Thus, the Committee contends, it is incorrect and unfair to penalize the Committee by concluding that the loan was excessive merely because it obtained a short-term loan to save time. Finally, although the Committee stated that it had requested an explanation from the Bank concerning the circumstances surrounding the granting of the loan, no additional documentation has been provided.

Based on the available evidence and the lack of any statement from the Bank clarifying the facts surrounding this transaction, it appears that the loan may have been an excessive contribution from Bernadette Drankowski. The Committee provided no additional documentation to support its contention that the loan was based upon the financial status of the candidate rather than solely on his spouse's income and assets. For example, while the Committee contends that the candidate is a long time customer in excellent standing with the Bank, it has not provided any evidence from the Bank confirming that this was considered a factor in granting the loan. While the loan may have been acceptable if it were a home equity loan, the fact is that the loan was not a home equity loan, nor was it collateralized by any jointly held assets of the candidate and his spouse.

Moreover, it does not appear that the candidate's assets were sufficient to repay the loan. The candidate had no income and substantial debts. There is no evidence to

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suggest that the Bank would have approved an unsecured loan based on his financial situation. Since the candidate and his spouse did not use jointly held assets as collateral or security for the loan and Bernadette Drankowski signed the loan, at least half of the loan was a contribution from her. 11 C.F.R. § 100.7(a)(1)(i)(D). Therefore, we recommend that the Commission find reason to believe that Bernadette Drankowski made a contribution in excess of her individual contribution limitation in violation of 2 U.S.C. § 441a(a)(1)(A). Moreover, we recommend that the Commission find reason to believe that Worley for Congress 1990 and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 441a(f) by accepting the excessive contribution.

B. Misstatement of Financial Activity

The Act provides that each report shall disclose the total amount of all receipts and the total amount of all disbursements for the reporting period and the calendar year. 2 U.S.C. § 434(b)(2) and (4).

The Audit staff's reconciliation of bank activity to disclosure reports filed between January 1, 1990 and November 26, 1990 revealed that the Committee's reported receipts were understated by $12,222.26; reported disbursements were understated by $16,523.85; and the ending cash balance was understated by $5,570.99. The Interim Audit Report recommended that the Committee file amendments to correct these errors. Although the Committee did not file an amendment in a timely fashion, the Committee filed a

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comprehensive amendment correcting the misstatements on January 25, 1993. Therefore, this Office recommends that the Commission find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 434(b)(2) and (4).

C. Failure to Itemize Contributions from Political Committees

The Act requires that each report disclose the identification of each political committee which made a contribution to the reporting committee during the reporting period, together with the date and amount of the contribution. 2 U.S.C. § 434(b)(3)(B).

The Committee failed to itemize 12 contributions totaling $10,750 from political committees. The Committee did not file amendments itemizing these contributions in response to the Interim Audit Report, but subsequently filed amendments itemizing all of the contributions on December 23, 1992.

This Office recommends that the Commission find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 434(b)(3)(B).

D. Reporting of Disbursements

The Act requires that each report shall disclose, for the reporting period and the calendar year, the total amount of all disbursements. 2 U.S.C. § 434(b)(4)(A). Moreover, the report must disclose the name and address of each person to whom an expenditure in an aggregate amount in excess of

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$200 is made, as well as the date, amount, and purpose of the expenditure. 2 U.S.C. § 434(b)(5)(A).

The Audit staff's review of disbursements revealed disbursements totaling $21,581.87 that were not reported, including 14 disbursements totaling $21,229 that require itemization. In addition, the Committee omitted payee addresses for 58 disbursements totaling $63,192.27 on its 1990 30 Day Post-General Election Report. Of these, the Audit staff determined that the Committee had disclosed addresses for 49 disbursements totaling $59,692.87 on previous reports. The Interim Audit Report, issued on April 29, 1992 recommended that the Committee amend its reports to correct the errors; however, the Committee did not file an amendment in response to the Interim Audit Report. Subsequently, on December 23, 1992, the Committee filed amendments correcting the errors. This Office recommends that the Commission find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. §§ 434(b)(4)(A) and (5)(A).

E. Debts and Obligations

The Act requires that each report shall disclose all receipts including all loans for the reporting period and the calendar year. 2 U.S.C. § 434(b)(2)(H). The Commission's regulations provide that debts and obligations which remain outstanding shall be continuously reported until extinguished and shall be reported on separate schedules together with a

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statement explaining the circumstances under which each debt was incurred. 11 C.F.R. § 104.11(a) and (b).

The Audit staff's review of disbursement documentation revealed that the Committee failed to report and disclose on Schedule D debts and obligations owed to some vendors. Moreover, the Committee understated the amounts owed to other vendors. In addition, there were discrepancies between amounts actually owed to vendors on disbursement documentation and the amounts disclosed in the Committee's reports, resulting in an understatement of the amounts owed to vendors. A summary of reportable debts and obligations outstanding at the close of each reporting period is as follows:

Report Period Ending	Amount Reported (Schedule D)	Amount Requiring Disclosure2/
3/31/90	-0-	$ 2,870.00
6/27/90	$10,000.00	$23,717.75
9/30/90	$15,000.00	$35,668.30
10/17/90	$15,000.00	$40,346.28
11/26/90	$30,508.44	$57,130.59

The Interim Audit Report recommended that the Committee amend its reports to correctly disclose its debts and obligations. In its response, the Committee agreed to file the amendments, but did not file the amendments in a timely manner. The Committee also noted that one debt totaling $22,500 to Squier-Eskew Communications was not owed to the

2/ Some obligations may be included in the totals of more than one reporting period because the amounts are the total of debts and obligations which require disclosure at the close of each reporting period.

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vendor. A statement from that vendor attached to the Committee's 1991 Year-End report explains that the vendor reached an understanding with the Committee that no further work would be done and no additional payments would be due after it became evident that the Committee would not be in a position to undertake the substantial advertising campaign it had planned. On January 25, 1993, the Committee filed amendments materially disclosing the debts and obligations.

This Office recommends that the Commission find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 434(b)(2)(H).

III. RECOMMENDATION ON FURTHER ACTION

While this Office concludes that there is reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer, and Bernadette Drankowski violated several sections of the Act, we recommend that the Commission take no further action with regard to this matter and close the file.

When the Audit staff contacted the Committee about its failure to correct its reports, the Committee filed amendments and additional documentation on December 23, 1992 and January 25, 1993. The Audit Division analyzed the materials provided by the Committee in two memoranda, dated January 15, 1993 and February 9, 1993. Attachments 2 and 3. The January 15, 1993 memorandum states

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that with regard to the Committee's failure to itemize contributions from political committees and failure to report disbursements, the Committee had filed amendments correcting the problems and the Audit staff believes "that resources should not be expended to pursue [these matters], notwithstanding the lateness of the response." Attachment 2, page 2. The February 9, 1993 memorandum states that the Committee had filed a comprehensive amendment correcting the misstatements of financial activity and had filed amendments materially disclosing its debts and obligations.

This Office believes that pursuit of these matters in the enforcement context would not be a prudent use of the Commission's limited resources.

Moreover, the excessive contribution from the candidate's spouse involves a close issue and a relatively small amount of money. Therefore, we recommend that the Commission find reason to believe but take no further action regarding these violations.

IV. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that Bernadette Drankowski made a contribution in excess of her individual contribution limitation in violation of 2 U.S.C. § 441a(a)(1)(A), but take no further action.

3. Find reason to believe that Worley for Congress 1990 and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 441a(f), but take no further action.

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4. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 434(b)(2) and (4), but take no further action.

5. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 434(b)(3)(B), but take no further action.

6. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. §§ 434(b)(4)(A) and (5)(A), but take no further action.

7. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as Treasurer violated 2 U.S.C. § 434(b)(2)(H), but take no further action.

8. Approve the appropriate letters.

9. Close the file.

Lawrence M. Noble
General Counsel

8/17/93
Date

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachments
1. Referral Materials
2. Memorandum from Robert J. Costa dated January 15, 1993
3. Memorandum from Robert J. Costa dated February 9, 1993

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Worley for Congress 1990 and	)	(LRA #377) (MUR 3805)
Gregg C. Brasher, as treasurer;	)	
Bernadette Drankowski.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 23, 1993, the Commission decided by a vote of 6-0 to take the following actions in the above-captioned matter:

1. Open a MUR.

2. Find reason to believe that Bernadette Drankowski made a contribution in excess of her individual contribution limitation in violation of 2 U.S.C. § 441a(a)(1)(A), but take no further action.

3. Find reason to believe that Worley for Congress 1990 and Gregg C. Brasher, as treasurer, violated 2 U.S.C. § 441a(f), but take no further action.

4. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as treasurer, violated 2 U.S.C. § 434(b)(2) and (4), but take no further action.

5. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as treasurer, violated 2 U.S.C. § 434(b)(3)(B), but take no further action.

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6. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as treasurer, violated 2 U.S.C. §§ 434(b)(4)(A) and (5)(A), but take no further action.

7. Find reason to believe that Worley for Congress 1990, and Gregg C. Brasher, as treasurer, violated 2 U.S.C. § 434(b)(2)(H), but take no further action.

8. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 17, 1993.

9. Close the file.

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

Attest:

8/23/93
Date

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

Received in the Secretariat: Tues., August 17, 1993 4:51 p.m.
Circulated to the Commission: Wed., August 18, 1993 11:00 a.m.
Deadline for vote: Mon., August 23, 1993 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 2, 1993

Bernadette Drankowski
1846 Coventry Way
Jonesboro, GA 30236

RE: MUR 3805

Dear Ms. Drankowski:

On August 23, 1993, the Federal Election Commission found 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."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that making a contribution in excess of $1,000 by cosigning a loan is a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

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 Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Scott E. Thomas
Chairman

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 2, 1993

Gregg C. Brasher
Treasurer
Worley for Congress 1990
P.O. Box 870888
Morrow, GA 30287

RE: MUR 3805

Dear Mr. Brasher:

On August 23, 1993, the Federal Election Commission found reason to believe that Worley for Congress 1990 and you, as Treasurer violated 2 U.S.C. §§ 441a(f); 434(b)(2) and (4); 434(b)(3)(B); 434(b)(4)(A) and (5)(A); and 434(b)(2)(H), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that accepting excessive contributions in the form of loans is a violation of 2 U.S.C. § 441a(f); misstatement of receipts and disbursements on disclosure reports is a violation of 2 U.S.C. § 434(b)(2) and (4); failure to itemize contributions from political committees is a violation of 2 U.S.C. § 434(b)(3)(B); failure to properly disclose disbursements and payee addresses is a violation of 2 U.S.C § 434(b)(4)(A) and (5)(A); and failure to properly disclose debts and obligations is a violation of 2 U.S.C § 434(b)(2)(H). You should take steps to ensure that this activity does not occur in the future.

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.

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If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Scott E. Thomas
Chairman

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3805

DATE FILMED 9-14-93 CAMERA NO. 4

CAMERAMAN JMH

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