

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
First Union National Bank of)
North Carolina; First Union)
Corp.)

MUR 399 (77)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on May 18, 1977, the Commission adopted the recommendation of the General Counsel that it finds no Reason to Believe that a violation of the Federal Election Campaign Act, as amended, had been committed in the above-captioned matter.

Accordingly, the files in this case has been closed.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL
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MAY 18 1977

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DATE AND TIME OF TRANSMITTAL: 5-17-77

REC'D: _____

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Referral from the Comptroller of the Currency

Respondent's Name: First Union National Bank of North Carolina; First Union Corp

Relevant Statute: 2 U.S.C. §441b

Internal Reports Checked: Commonwealth Associates "F" Fund

Federal Agencies Checked: Comptroller of the Currency (report attached)

SUMMARY OF ALLEGATION

The referral report from the Comptroller of the Currency outlines a pattern of salary increases commensurate with political contributions made by various employees of First Union to funds established by First Union during 1969 through 1973. The same individuals continued making such contributions during 1974 although the report indicates there is no evidence that the practice of involuntary contributions continued after 1973.

PRELIMINARY LEGAL ANALYSIS

Contributions made to a separate segregated fund are not voluntary within the meaning of §441b if the corporation is providing salary increases with the understanding that such funds are to be used for political contributions. However, prosecution of any violations from 1969 to 1973 would be barred by 2 U.S.C. §455. Attorneys in the Enforcement Division at the Comptroller of the Currency indicated that the evidence which they uncovered does not indicate any violations since 1973.

RECOMMENDATION

No reason to believe there were violations within our jurisdiction.

YCC#221



Comptroller of the Currency
Administrator of National Banks

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April 12, 1977

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Federal Elections Commission
Franklin Square Building
1325 K Street
Washington, D. C. 20463

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Re: First Union National Bank of North Carolina, Charlotte,
North Carolina; First Union Corp.

To The Honorable Commissioners:

Under cover of this letter, please find a memorandum prepared by our Enforcement and Compliance personnel from documents submitted by the subject entities as well as national bank examiners. We are submitting this information to you for evaluation in light of the requirements of the federal statutes administered by your agency. Inasmuch as the activities outlined in the enclosed memorandum may also constitute a misapplication of bank funds in violation of 18 U.S.C. §656, we have also referred them to the United States Attorney for the Western District of North Carolina for his consideration vis a vis Section 656.

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Should you have questions relative to this matter, your staff should contact Michael Patriarca, Attorney, Enforcement and Compliance Division (447-1983).

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Sincerely,

H. Joe Selby
First Deputy Comptroller for Operations

Enclosure

FEDERAL RESERVE BANK
WASHINGTON, D.C. 20541
APR 12 1977

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COPY
COUNSEL

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Mr. Robert B. Serino, Director, Enforcement and Compliance Division
Mr. Paul Homan, Associate Deputy Comptroller for Special Projects
Michael Patriarca, Attorney, Enforcement and Compliance Division

March 21, 1977

First Union National Bank of North Carolina, Charlotte,
North Carolina; First Union Corp.

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As you requested, I have reviewed the information submitted by National Bank Examiner Robert Hefner, through the Regional Office, relative to the subject bank and its parent holding company, First Union Corp. In addition, I have studied the confidential reports prepared by the bank's outside counsel (Covington and Burling), with the aid of in house personnel, relative to possibly illegal political contributions made by the bank and its parent in the 1968-1973 period. At the outset, I note that the bank has treated this Office in what I feel to be a rather cavalier fashion throughout the course of this matter. As you know, their cooperation with our inquiries has been tendered very begrudgingly, when provided at all. This attitude involves more than a lack of courtesy on the part of the First Union companies since, in my opinion, it has led them to ignore the provisions of 12 C.F.R. §7.5225 which requires an immediate notification of this Office when a set of facts is believed to suggest a federal criminal violation.

What follows is a synopsis of the facts gleaned from all [available materials] relative to the history of the bank's political contributions. I have attempted to break this history down transactionally, that is, by more or less independent analyses of the different manners in which political contributions were made.

The C. C. Brewer Special Account

On April 14, 1967, a "special bonus" was paid to the bank's Executive Vice-President, Mr. C. C. Brewer, in the amount of \$7,936.51 which, after withholding, netted out to \$5,000. The payment was ordered by Mr. C. C. Hope, and approved by H. Y. Kinard. The proceeds were deposited in a checking account at the bank entitled "C. C. Brewer Special Account"

Chron

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from which Brewer made disbursements for "elective political purposes" under the general supervision of Messrs. Hope and Cameron. Additional "special bonuses" to Brewer were paid in 1968 totaling \$34,068.83. Of this amount, net proceeds totaling \$19,500 for the year made their way into the special account from which political expenditures continued to be made. Net proceeds not deposited into the account were apparently used by Brewer to pay his personal income tax liability resulting from the "special bonuses."

In late 1968, during the course of an audit of the companies' 1967 federal income tax return, the IRS reviewed and disallowed as a deduction the initial "special bonus" to C. C. Brewer paid during 1967. Upon learning this, the bank set about to reverse all the 1968 bonuses similarly paid. This was accomplished through the proceeds of a \$50,000 personal loan (secured by holding company stock) which Mr. C. C. Cameron obtained from Citibank. Cameron wrote a check to Brewer for \$48,000 which the latter deposited in the "special account." Thereafter, Brewer wrote a check to the bank for \$36,933.75 reversing the "special bonuses" from the bank to Brewer.

The \$48,000 proceeds from Cameron's Citibank loan left the Brewer special account with roughly a \$10,000 balance after reversing the transactions just mentioned. The account continued to be used to make political contributions even after the infusion of the proceeds from Cameron's loan at Citibank.

All disbursements from the C. C. Brewer special account were made under the supervision of Messrs. Hope and Cameron. Brewer periodically furnished Hope full recapitulations of all transactions through the account.

Political contributions to a large assortment of local, state and national candidates and committees continued to diminish the Brewer Special Account until it was ultimately closed in July, 1971.

The \$50M principal of the Cameron loan from Citibank was repaid by the corporation's political action committee, Commonwealth Associates which is discussed further below. Interest on the loan, amounting to approximately \$7M, was paid by Mr. Cameron personally.

Commonwealth Associates and the Bancorp Payroll

After receiving the adverse ruling from the IRS which led to the termination of the "special bonuses" to Mr. Brewer, the First Union Companies (the bank, the holding company - Bancorp, and its mortgage subsidiary - Cameron Brown Company)

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FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535
JUL 1 1971
OFFICE OF GENERAL COUNSEL

established a "political action committee." Commonwealth Associates was organized after the advice of counsel had been secured relative to its legality. The theory behind its establishment was apparently that it would serve as a legitimate vehicle by which the employees of the First Union Companies could have a "political impact" without involving the corporations. Commonwealth Associates formally came into being when eight of the nine officers of the holding company executed articles of association on March 15, 1969.

According to the confidential report prepared by the bank's outside counsel,

"At about the same time as the decision was made to establish Commonwealth Associates, it was also decided to establish an initial payroll for Bancorp, which would include all officers of Bancorp."

The payroll was established March 20, 1969, five days after execution of the Commonwealth Associates articles of association. The payroll was made retroactive, however, to the beginning of 1969, resulting in the initial payment reflecting three months salary.

The questionable practice relative to the nearly contemporaneous establishment of the Bancorp payroll and Commonwealth Associates is characterized in the bank's report as follows:

[T]here was some degree of expectation that contributions would be made to Commonwealth Associates by recipients of the salary under the initial Bancorp payroll, in amounts reflecting the salary received under the payroll, net after withholdings, and contributions were in fact made which responded in varying degrees to that expectation.

It appears that the "expectation" was not entirely tacit, however, since legal advice was sought, from both inside and outside counsel, relative "to the expectation of contributions to Commonwealth Associates which attached to the initial payroll arrangement."

According to the bank's report, it is "reasonably certain" that the members of the Executive Committee of the holding company Board of Directors, which had authorized the establishment of the initial Bancorp payroll, were aware of the expectation that recipients of salary under the payroll would make contributions to Commonwealth Associates, as well as the legal advice that had been given on the subject.

In the first two years after the Bancorp payroll was established, there was a discernible pattern of contributions being made

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FEDERAL RESERVE COMMISSION
GENERAL INVESTIGATIVE
DIVISION
OFFICE OF GENERAL COUNSEL

to Commonwealth Associates in amounts, and at times, closely reflecting the salary payments, net of withholdings, received under that payroll. Similarly, there were occasions, notably in 1973, when the salaries of individual officers receiving payments under the initial Bancorp payroll were substantially reduced. The officers, specifically Messrs. W. J. Smith and C. C. Hope, both had discussions with Chairman Cameron to the effect that, in view of the reduced salary they would thereafter be receiving, it would be appropriate for them to consider reducing their contributions to Commonwealth Associates.

In addition to Commonwealth Associates, the First Union Companies organized, in 1972, the Commonwealth Associates "F" Fund. The latter organization shared the same characteristics as its companion, Commonwealth Associates, the difference being that the "F" Fund was established to make political contributions to candidates for federal offices. Both organizations received contributions from the initial Bancorp payroll recipients as well as from other employees of the First Union Companies above a certain salary level whose contributions were solicited.

The contributions from the initial Bancorp payroll to Commonwealth Associates apparently ended in 1973. The bank's report, however, lists a total of \$2M in contributions made by the recipients of the initial payroll to the "F" Fund during the year 1974. Whether this later amount was made under the original "expectations," or was purely voluntary is not clear.

Miscellaneous Political Activities - Provision of Equipment, Facilities and Personnel for Elective Political Purposes

In addition to the direct and indirect political contributions discussed above, the First Union Companies, through various of their officers and principals, contributed to various elective political activities in a variety of ways. Chief among the individuals participating in these activities was Mr. C. C. Hope who headed the now abolished Public Affairs Department for the First Union Companies.

Among the activities which now appear questionable is a portion of Mr. Hope's travel at company expense. It is not clear whether the travel in question, or other questionable items for that matter was at the expense of the bank, the holding company, or another of the corporate subsidiaries since Mr. Hope was an officer of the bank and the holding company at the same time. In any case, a portion of Mr. Hope's travel during the 1971-1973 period was attributable to

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OFFICE OF GENERAL COUNSEL

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In addition, there appears to be a full range of activities in which the First Union Companies engaged for the benefit of political parties, committees and candidates. Briefly stated, these included the payment of expenses for: entertainment, attendance by officers at the Democratic National Convention, and postage for political mailings. Bank facilities were donated for after-hours telephone canvassing by political campaign workers.

Further, company officials encouraged, or at least permitted, employees to do volunteer work at local campaign headquarters during normal working hours. During the Bowles campaign, the bank lent an automatic typewriter (and initially bank personnel to provide training relative to it) to the Bowles campaign headquarters for a period of two months. The Bowles campaign was also the recipient of copying, word processing and delivery services which the bank provided free of charge.

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COMMUNICATIONS SECTION
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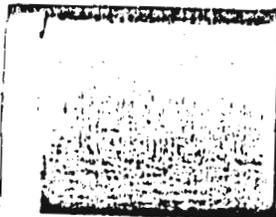


Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

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Federal Elections Commission
Franklin Square Building
1325 K Street
Washington, D. C. 20463



YCC#221



Comptroller of the Currency
Administrator of National Banks

APR 14 1977 P 2: 56

Washington, D. C. 20219

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April 12, 1977

Federal Elections Commission
Franklin Square Building
1325 K Street
Washington, D. C. 20463

Re: First Union National Bank of North Carolina, Charlotte,
North Carolina; First Union Corp.

To The Honorable Commissioners:

Under cover of this letter, please find a memorandum prepared by our Enforcement and Compliance personnel from documents submitted by the subject entities as well as national bank examiners. We are submitting this information to you for evaluation in light of the requirements of the federal statutes administered by your agency. Inasmuch as the activities outlined in the enclosed memorandum may also constitute a misapplication of bank funds in violation of 18 U.S.C. §656, we have also referred them to the United States Attorney for the Western District of North Carolina for his consideration vis a vis Section 656.

Should you have questions relative to this matter, your staff should contact Michael Patriarca, Attorney, Enforcement and Compliance Division (447-1983).

Sincerely,

H. Joe Selby
First Deputy Comptroller for Operations

Enclosure

APR 14 1977
U.S. DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY

Mr. Robert B. Serino, Director, Enforcement and Compliance Division
Mr. Paul Homan, Associate Deputy Comptroller for Special Projects
Michael Patriarca, Attorney, Enforcement and Compliance Division

March 21, 1977

First Union National Bank of North Carolina, Charlotte,
North Carolina; First Union Corp.

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FEDERAL BUREAU OF INVESTIGATION
COMMERCIAL BANK GROUP
OFFICE OF GENERAL COUNSEL

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DEPARTMENT OF THE TREASURY
OFFICE OF FEDERAL RESERVE

FEDERAL ELECTION COMMISSION

1. Memo to Steele from Emmons - 5/18-19/77

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- | | |
|---|--|
| _____ (1) Classified Information | _____ (6) Personal privacy |
| _____ (2) Internal rules and practices | _____ (7) Investigatory files |
| _____ (3) Exempted by other statute | _____ (8) Banking Information |
| _____ (4) Trade secrets and commercial or financial information | _____ (9) Well Information (geographic or geophysical) |
| _____ (5) Internal Documents | |

Signed Kurt Buhlert
date 9/27/77

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