



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4003

DATE FILMED 10/27/95 CAMERA NO. 2

CAMERAMAN ESS

95043692069

95043692060

June 8, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 20 10 23 AM '94

Lawrence Noble
General Counsel
FEC
999 E St. NW
Washington, D.C.

RE: Complaint for fraudulent use of campaign
funds by Dan Rostenkowski

While I lived in Chicago I contributed to
Dan Rostenkowski's re-election campaigns.
Now, everyday I hear on CNN, ABC, NBC, CBS
and NPR that he has spent hundreds of thousands
of campaign dollars on legal fees defending
himself and his staff from corruption and theft
charges. I may be naive, but I believe that
campaign funds should only be used to finance
campaigning, not criminal defense maneuvers.

I urge the FEC to investigate this breach of
public trust.

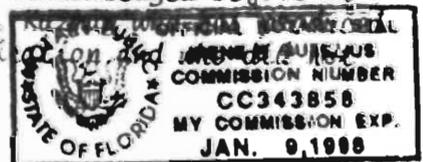
Robert Kuzman
Robert Kuzman
2017 Westley Ct.
Safety Harbor, Fla. 34695

"Complainant so states before me

State of Florida
County of Pinellas

The foregoing instrument was acknowledged before me
on June 13, 1994 by Robert L. [redacted]
VA DL [redacted] as identified by [redacted]
take an oath.

[Signature]





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 20, 1994

Robert Kuzman
2017 Westley Ct.
Safety Harbor, FL 34695

Dear Mr. Kuzman:

This is to acknowledge receipt on June 20, 1994, of your letter dated June 8, 1994. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ___ day of ___, 19__." A statement by the notary that the complaint was sworn to and subscribed before him/her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

Please note that you are being afforded a 15 day period to correct the defects in your complaint. This matter will remain confidential until the 15 day period has elapsed. If the complaint is corrected and refiled within that period, the respondents will be so informed and provided a copy of the corrected complaint, and will have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

95043692061

If you have any questions concerning this matter, please
contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Rostenkowski for Congress

95743692762

June 27, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF
GENERAL COUNSEL

JUL 5 10 01

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION

JUL 5 9 10 AM '94

Retha Dixon
Docket Chief
F.E.C.
Washington, D.C. 20463

MUR 4003

Complaint re: Dan Rostenkowski

For the past month now I have been hearing from NBC, CBS, CNN, ABC and PBS that Dan Rostenkowski has been using campaign funds to pay the legal fees for himself and his staff in answering criminal charges of theft, misappropriation of funds and phantom employees. These amounts have been reported to be in the hundreds of thousands of dollars.

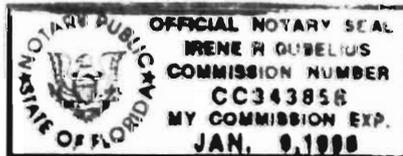
I may be naive, but when I contributed to his campaigns (when I lived in Illinois), I believed them to go to pay for direct campaign expenses; not to pay for criminal legal defense maneuvering. Would you please investigate this?

Rob Kuzman

Rob Kuzman
2017 Westley Ct.
Safety Harbor, Fla. 34695

State of Florida
County of Pinellas

The foregoing instrument was acknowledged before me on June 28, 1994 by Robert L. Kuzman who produced VA DL [REDACTED] and who did take an oath. Sworn to and subscribed before me June 28, 1994.



Irene R. Gubelius

95043692063



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1994

Robert Kuzman
2017 Westley Court
Safety Harbor, FL 34695

RE: MUR 4003

Dear Mr. Kuzman:

This letter acknowledges receipt on July 5, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4003. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

95043692064



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

July 15, 1994

Leo V. Magrini, Treasurer
Rostenkowski for Congress Committee
1349 North Noble Street
Chicago, IL 60622

RE: MUR 4003

Dear Mr. Magrini:

The Federal Election Commission received a complaint which indicates that the Rostenkowski for Congress Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4003. 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 this letter. If no response is received within 15 days, 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.

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Leo V. Magrini, Treasurer
Rostenkowski for Congress Committee
Page 2

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

95743692066



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 15, 1994

Representative Dan Rostenkowski, Treasurer
Dan Rostenkowski Campaign Fund
1372 West Evergreen Avenue
Chicago, IL 60622

RE: MUR 4003

Dear Mr. Rostenkowski:

The Federal Election Commission received a complaint which indicates that the Dan Rostenkowski Campaign Fund ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4003. 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 this letter. If no response is received within 15 days, 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.

95043692067

Representative Dan Rostenkowski, Treasurer
Dan Rostenkowski Campaign Fund
Page 2

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

95043692068



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1994

Representative Dan Rostenkowski
1372 West Evergreen Avenue
Chicago, IL 60622

RE: MUR 4003

Dear Mr. Rostenkowski:

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 complaint is enclosed. We have numbered this matter MUR 4003. 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 this letter. If no response is received within 15 days, 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.

95043692069

Representative Dan Rostenkowski
Page 2

To ensure timely notification, a copy of this letter has been sent to you at your Washington, D.C. office.

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

95043692070

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 27 12 02 PM '94

July 22, 1994

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

Re: MUR 4003
(Rostenkowski for Congress Committee,
Leo V. Magrini as Treasurer;
Dan Rostenkowski Campaign Fund,
Representative Dan Rostenkowski as Treasurer;
Representative Dan Rostenkowski)

Dear Mr. Noble:

I am writing to request an extension of time to respond to the above-referenced matter under review ("MUR"). Without such an extension, our response would be due on August 2, 1994. Additional time is necessary due to previously scheduled absences of persons who have material information on this matter, as well as several pending deadlines facing counsel. We are currently awaiting delivery of the "Designation of Counsel" form from the respondents. We expect to receive this form by July 26, 1994, and will forward it to you immediately.

For the reasons set forth above, we request an extension of 20 days, setting the new deadline on August 22, 1994. Thank you for your consideration.

Sincerely,


Lyn Utrecht

95043692071



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

August 4, 1994

Lyn Utrecht, Esq.
Oldaker, Ryan & Leonard
818 Connecticut Avenue, NW
Suite 1100
Washington, D.C. 20006

RE: MUR 4003
Rostenkowski for Congress Committee
and Leo V. Magrini, as treasurer
Dan Rostenkowski Campaign Fund
and Dan Rostenkowski, as treasurer
Representative Dan Rostenkowski

Dear Ms. Utrecht:

This is in response to your letter dated July 22, 1994, requesting an extension until August 22, 1994 to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on August 22, 1994.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

95043692072

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

August 8, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 10 9 20 AM '94

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

Re: MUR 4003
(Rostenkowski for Congress Committee,
Leo V. Magrini as Treasurer;
Dan Rostenkowski Campaign Fund,
Representative Dan Rostenkowski as Treasurer;
Representative Dan Rostenkowski)

Dear Mr. Noble:

Please accept the enclosed Designation of Counsel forms on behalf of the above named respondents. Thank you for your patience, we apologize for any inconvenience caused by the delay in our receipt of these documents. If you have any questions, please do not hesitate to call.

Sincerely,



Lyn Utrecht

95043692073

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 4003

NAME OF COUNSEL: Lyn Utrecht

ADDRESS: Oldaker Ryan & Leonard
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 728-1010

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 10 9 20 AM '94

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.

8-4-94
Date

Dan Rostenkowski
Signature

RESPONDENT'S NAME: Rostenkowski for Congress Committee
Leo V. Magrini as Treasurer;
Dan Rostenkowski Campaign Fund
Representative Dan Rostenkowski as Treasurer;
Representative Dan Rostenkowski

ADDRESS: 1349 North Noble
Chicago, Il. 60622

TELEPHONE: HOME:
BUSINESS (312) 276-6000

95043692074

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 4003

NAME OF COUNSEL: Lyn Utrecht

ADDRESS: Oldaker Ryan & Leonard
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 728-1010

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 10 9 20 AM '94

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.

8/3/94
Date

Leo V. Magrini
Signature

Date

Signature

RESPONDENT'S NAME: Rostenkowski for Congress Committee
Leo V. Magrini as Treasurer;
Dan Rostenkowski Campaign Fund
Representative Dan Rostenkowski as Treasurer;
Representative Dan Rostenkowski

ADDRESS: 1349 North Noble
Chicago, Il. 60622

TELEPHONE: HOME:
BUSINESS (312) 276-6000

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OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

August 22, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE SERVICES

AUG 22 1 06 PM '94

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 23 9 15 AM '94

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

RE: MUR 4003
Rostenkowski for Congress Committee, Leo V.
Magrini as Treasurer, Dan Rostenkowski
Campaign Fund, Representative Dan
Rostenkowski as Treasurer, Representative Dan
Rostenkowski

Dear Mr. Noble:

This letter is filed on behalf of the above-named Respondents in response to the July 15, 1994 notification from the Federal Election Commission (the "Commission" or "FEC") that a complaint was filed by Mr. Rob Kuzman asking the Commission to investigate the use of campaign funds to pay legal expenses related to the United States Attorney's investigation of the House Post Office. This complaint should be immediately dismissed because it does not comply with the requirements of a proper complaint in that it does not describe a violation of any statute or regulation, and because it is wholly without merit.

FEC regulations require that a complaint should contain "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction..." 11 C.F.R. § 111.4(d)(3). The complainant's letter does not meet this standard, is wholly without merit and should be dismissed. The complaint does not cite any provision of the Act or regulations nor does it provide any reason why the use of campaign funds for legal expenses is alleged to be a violation of the Act or regulations. The complaint merely recites that the complainant believed that his supposed contribution would be used for other purposes.¹ This is not sufficient to constitute a valid complaint, and should therefore, be dismissed.

Mr. Kuzman avers in his letter that he has previously contributed funds to the Rostenkowski for Congress Committee "in the past, before moving to Florida." A review of the

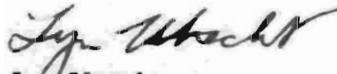
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Moreover, the use of campaign funds to pay legal expenses related to an investigation into a Member's official activities or the functioning of his congressional office is specifically permitted both under FEC rules and the rules of the House Committee on Standards of Official Conduct ("Committee on Standards"). The FEC has specifically held such use to be permissible in Advisory Opinions 1986-9, 2 Fed. Elec. Camp. Fin. Guide (CCH) Par. 5851 at 11,267, and 1977-39, 1 Fed. Elec. Camp. Fin. Guide (CCH) Par. 5264 at 10,211.

Similarly, the House Committee on Standards in its Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives, 102d Congress, 2d Session (1992) at 277-278 (copy attached) specifically sanctions such use as a valid use of campaign funds for political purposes. In addition, in June and August of 1992, Congressman Rostenkowski specifically requested advice from the Committee on Standards regarding the use of campaign funds to pay his own and his staff members' legal expenses incurred in this investigation. The Committee on Standards ruled that the use of campaign funds for this purpose is appropriate.²

For the foregoing reasons, this complaint is without merit and should be dismissed immediately. If you have any questions, please do not hesitate to contact me.

Sincerely,


Lyn Utrecht

Attachments

Committee's contribution records reveals no such contribution from Mr. Kuzman. The Committee's contributor records of both itemized and unitemized contributions were reviewed back to the formation of the Committee, and the Committee could not locate any contribution from a Rob Kuzman.

² We have attached copies of the letters from Chairman Stokes and Ranking Minority Member Hansen for the Commission's information.

95043692077

ONE HUNDRED SECOND CONGRESS
LOUIS STOKES, OHIO, CHAIRMAN
MATTHEW MEHLER, NEW YORK
BART ACKERMAN, NEW YORK
GEORGE (BUDDY) BARDEN, GEORGIA
BENJAMIN L. CARDIN, MARYLAND
RANCY PELOSI, CALIFORNIA
JIM McDERMOTT, WASHINGTON
OFFICE OF ADVICE AND EDUCATION
(202) 225-3787

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

SUITE HT-2, U.S. CAPITOL
WASHINGTON, DC 20515-8328
(202) 225-7103

June 11, 1992

JAMES V. HANSEN, UTAH
FRED GRANBY, IOWA
NANCY L. JOHNSON, CONNECTICUT
JIM BURRIS, KENTUCKY
JOH L. KYL, ARIZONA
PORTER J. GOSS, FLORIDA
DAVID L. HOBBS, OHIO

BERNARD RAINO, JR., CHIEF COUNSEL

AUG 23 9 15 AM '94

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

The Honorable Dan Rostenkowski
U.S. House of Representatives
2111 Rayburn House Office Building
Washington, D.C. 20515

Dear Colleague:

This responds to your letter of June 3, 1992, requesting guidance regarding use of your campaign funds for certain legal expenses.

You explain that you have received a subpoena from the office of the United States Attorney requesting certain records of your congressional office. You have complied with the subpoena and, additionally, have retained legal representation to assist you in whatever legal work needs to be done on the matter. You would like to pay these legal fees from the campaign, either directly or in the form of reimbursement of sums you have advanced for such fees. You request the Committee's guidance regarding application of House rules and Federal law to use of campaign funds in this manner.

Use of campaign funds by House Members is governed by House Rule XLIII, clause 6, which states:

A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. A Member shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable campaign expenditures and shall expend no funds from his campaign account not attributable to bona fide campaign or political purposes.

The intent of the rule is to confine use of campaign funds to politically related activities. In its *Final Report* to the 95th Congress, the House Select Committee on Ethics noted that Rule XLIII, clause 6, "should not be interpreted to limit the use of campaign funds strictly to a Member's re-election campaign." H. Rep. No. 95-1837, 95th Cong., 2d Sess. 15-16.

The determination as to whether an expense incurred is for a political purpose is a decision that primarily rests with the Member. *Id.* 16. When the official activities of a Member or the functioning of his office are the subject of an official inquiry, it is reasonable to conclude

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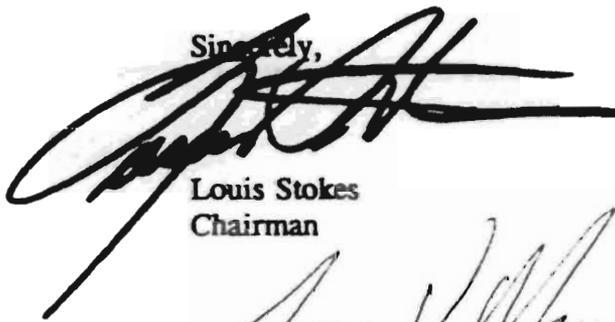
The Honorable Dan Rostenkowski
June 11, 1992
Page 2

that the need to raise a defense will affect both the Member's ability to function in Congress, as well as his campaign for re-election. The Committee on Standards of Official Conduct has held that a Member may determine that legal fees which arise from such a matter are for *bona fide* political purposes. Therefore, your use of campaign funds for the purposes described in your letter is appropriate under the rule.

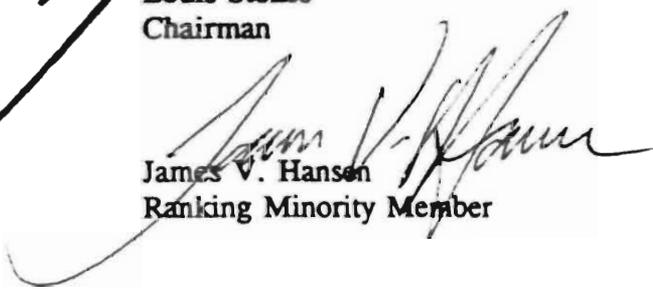
Donations to a Member's campaign committee are subject to the limits of the Federal Election Campaign Act and must be reported as required by the Federal Election Committee. House Rule XLV prohibits Members from paying for official activities with private sources. A similar limitation is included in Federal law at 5 U.S.C. § 59e(d). The Committee has never viewed either Rule XLV or the statute as applicable to the situation you have presented, since the legal fees in question are not normal operations of your congressional office.

If you have any further questions concerning this matter, please contact the Committee's Office of Advice and Education at extension 5-3787.

Sincerely,



Louis Stokes
Chairman



James V. Hansen
Ranking Minority Member

JS:MJD

95043692719

ONE HUNDRED NINETY SECOND CONGRESS
LEAH STOKES, OHIO, CHAIRMAN
MATTHEW HUGHES, NEW YORK
GARY ACKERMAN, NEW YORK
GEORGE (BUDDY) BARNES, GEORGIA
BENJAMIN L. CARDIN, MARYLAND
NANCY PELOSI, CALIFORNIA
JIM MCCORMACK, WASHINGTON
OFFICE OF ADVICE AND EDUCATION
(202) 225-3787

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

SUITE HT-2, THE CAPITOL
WASHINGTON, DC 20515-8328
(202) 225-7103

JAMES V. HANSEN, UTAH
FRED GRANDY, IOWA
NANCY L. JOHNSON, CONNECTICUT
JIM BURRIS, KENTUCKY
JON L. KYL, ARIZONA
PORTER J. COBB, FLORIDA
DAVID L. HOBBS, OHIO
BERNARD RAIMO, JR., CHIEF COUNSEL

August 13, 1992

The Honorable Dan Rostenkowski
U.S. House of Representatives
2111 Rayburn House Office Building
Washington, D.C. 20515

Dear Colleague:

This responds to your letter of August 11, 1992, requesting guidance regarding use of campaign funds for legal expenses incurred by your congressional staff.

You explain that certain staff in your congressional office have been subpoenaed to appear before a grand jury in connection with the United States Attorney's investigation of the House Post Office. To the best of your knowledge, the activities which are the subject of the inquiry relate exclusively to the operations of your congressional office. Your staff has retained counsel to assist them in whatever legal work needs to be done with respect to the investigation. You ask if you may pay your staff's legal fees from your campaign fund.

Use of campaign funds by House Members is governed by House Rule XLIII, clause 6, which states:

A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. A Member shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable campaign expenditures and shall expend no funds from his campaign account not attributable to bona fide campaign or political purposes.

The intent of the rule is to confine use of campaign funds to politically related activities. In its *Final Report* to the 95th Congress, the House Select Committee on Ethics noted that Rule XLIII, clause 6, "should not be interpreted to limit the use of campaign funds strictly to a Member's re-election campaign." H. Rep. No. 95-1837, 95th Cong., 2d Sess. 15-16.

The determination as to whether an expense incurred is for a political purpose is a decision that primarily rests with the Member. *Id.* 16. When the official activities of a Member or the functioning of his office are the subject of an official inquiry, it is reasonable to conclude that the need to raise a defense will affect both the Member's ability to function in Congress,

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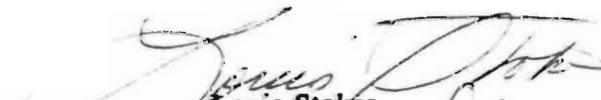
The Honorable Dan Rostenkowski
August 13, 1992
Page 2

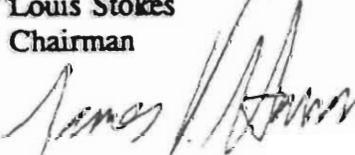
as well as his campaign for re-election. The Committee on Standards of Official Conduct has held that a Member may determine that legal fees which arise from such a matter are for *bona fide* political purposes. This is the case whether it is the Member's expenses or those of an employee in the Member's office. Therefore, your use of campaign funds for the purposes described in your letter is appropriate under the rule.

Donations to a Member's campaign committee are subject to the limits of the Federal Election Campaign Act and must be reported as required by the Federal Election Committee. House Rule XLV prohibits Members from paying for official activities with private sources. A similar limitation is included in Federal law at 5 U.S.C. § 59e(d), which is derived from the Rule and interpreted consistent with it. The Committee has never viewed either Rule XLV or the statute as prohibiting use of campaign funds for legal expenses under the situation you have presented.

If you have any further questions concerning this matter, please contact the Committee's Office of Advice and Education at extension 5-3787.

Sincerely,


Louis Stokes
Chairman


James V. Hansen
Ranking Minority Member

JS:MJD

05743692051

ETHICS MANUAL FOR MEMBERS,
OFFICERS, AND EMPLOYEES OF THE
U.S. HOUSE OF REPRESENTATIVES

THE COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

102d Congress, 2d Session



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON 1992

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therefore, private funds should not be used to print "official documents."²⁶

Testimonials and Fundraisers

The Rules of the House provide that any funds received from testimonial dinners or other fundraising events are to be treated as campaign contributions, subject to all the restrictions on campaign funds.²⁷ Thus, such proceeds may be used only for bona fide campaign or political purposes, rather than for personal or congressional office uses.

The Select Committee on Ethics found in an Advisory Opinion that a direct mail solicitation by a Member of the House or the spouse of a Member constitutes a "fund-raising event" for purposes of House Rule 43, clause 7. Thus the proceeds of such a solicitation must be treated as campaign contributions and may not be converted to personal use by the Member. The Select Committee noted that a major purpose of the revisions of the Code of Official Conduct was to prevent Members from cashing in on their official positions in the Congress.²⁸ That committee also found, in Advisory Opinion No. 11, that a Member may not accept for his unrestricted personal use the proceeds of a fundraiser conducted by a group that is independent from the Member.²⁹

Legal Defense Funds

The Committee on Standards has determined that Members may use campaign funds to defend legal actions arising out of their campaign, election, or the performance of their official duties. The Committee deems the protection of a Member's presumption of innocence to be a valid political purpose. These funds remain campaign contributions, however, subject to all the restrictions and prohibitions of other campaign contributions, including the reporting requirements, contribution limits, and prohibitions on corporate, labor union, and government contractor contributions. Such

²⁶ FINANCIAL ETHICS, H. DOC. NO. 95-73, *supra* note 19, at 19.

²⁷ House Rule 43, cl. 7.

²⁸ HOUSE SELECT COMM. ON ETHICS, ADVISORY OPINION NO. 4 (Apr. 6, 1977), reprinted in FINAL REPORT, H. REP. NO. 95-1837, *supra* note 8, app. at 61, and at the end of this chapter.

²⁹ HOUSE SELECT COMM. ON ETHICS, ADVISORY OPINION NO. 11 (May 11, 1977), reprinted in FINAL REPORT, H. REP. NO. 95-1837, *supra* note 8, app. at 76, and at the end of this chapter.

treatment accords with rulings of the Federal Election Commission.³⁰

In addition (or instead), a Member, officer, or employee may choose to set up a "legal defense fund" independent of any campaign fund. (Officers and employees obviously do not have the option of using campaign funds and would have to resort to separate legal defense funds for actions arising out of their official duties.) The Select Committee on Ethics established an exemption to Rule 43, clause 7, such that funds raised specifically for legal defense are not deemed to be campaign contributions.³¹ Such legal defense funds are, however, subject to the gift rule.³²

Redistricting Funds

The redistricting process arising out of the 1990 census has led to the creation of redistricting funds, set up to promote the interests of the constituents of individual districts. A Member may associate with and raise money for such a fund *provided* that it represents the views of a wide range of constituents and not solely those of the Member, and that the Federal Election Commission agrees that the fund is independent of the Member's campaign committee and not subject to the Federal Election Campaign Act. No official resources may be used in support of a redistricting fund. The amounts raised would not, under these circumstances, be treated as personal gifts, campaign contributions, or supplements to the official expenses allowance. Such a fund would not be subject to the jurisdiction of this Committee, and no contribution limits or reporting requirements would apply.

Excess Campaign Funds: Repeal of the "Grandfather" Clause

Campaign funds that are in excess of amounts needed to defray the cost of campaigning are subject to the same restrictions as campaign funds in general. The 96th Congress amended 2 U.S.C. §439a to prohibit the use of excess cam-

³⁰ See FEC Advisory Op. 1986-9, 2 Fed. Election Camp. Fin. Guide (CCH) ¶5851, at 11,267 (Apr. 22, 1989); FEC Advisory Op. 1977-39, 1 *id.* ¶5264, at 10,211 (Aug. 26, 1977).

³¹ See FINAL REPORT, H. REP. NO. 95-1837, *supra* note 8, at 15. See also FEC Advisory Op. 1983-37, 1 Fed. Election Camp. Fin. Guide (CCH) ¶5737, at 11,013 (Nov. 18, 1983); FEC Advisory Op. 1983-21, *id.* ¶5725, at 10,994 (Sept. 20, 1983); FEC Advisory Op. 1979-37, *id.* ¶5419, at 10,450 (July 19, 1979).

³² See Chapter 2 for discussion of additional restrictions on legal defense funds under the gift rule.

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FIRST GENERAL COUNSEL'S REPORT

Mar 8 3 30 PM '95

RE: MUR 3941
DATE COMPLAINT FILED: 3-3-94
DATE OF NOTIFICATION: 3-9-94
DATE ACTIVATED: 6-1-94
STAFF MEMBER: X. K. McDonnell

COMPLAINANT: James C. Currey

RESPONDENTS: Senator Kay Bailey Hutchison
Kay Bailey Hutchison for Senate Committee and
Kenneth W. Anderson, as treasurer

RE: MUR 4003
DATE COMPLAINT FILED: 7-5-94
DATE OF NOTIFICATION: 7-15-94
DATE ACTIVATED: 8-5-94
STAFF MEMBER: X. K. McDonnell

COMPLAINANT: Rob Kuzman

RESPONDENTS: Dan Rostenkowski
Rostenkowski for Congress Committee and
Leo V. Magrini, as treasurer,
Dan Rostenkowski Campaign Fund and
Leo V. Magrini, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(9)(A)
2 U.S.C. § 439a
11 C.F.R. § 113.1
11 C.F.R. § 113.2

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

MUR 3941 was generated by a complaint alleging that Senator Kay Bailey Hutchinson had violated the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") by using campaign funds for Ms. Hutchinson's personal use, specifically legal fees related to the criminal investigation of Ms. Hutchinson for activities alleged to have occurred while she was Treasurer of the

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state of Texas.¹ In addition to Ms. Hutchison, the Kay Bailey Hutchison for Senate Committee ("Senate campaign" or "Senate Committee") and Kenneth W. Anderson, as treasurer, were also notified of the complaint.

MUR 4003 was generated by a complaint filed by Rob Kuzman, alleging that former Congressman Dan Rostenkowski ("former Congressman") violated 2 U.S.C. § 439a by using campaign funds to pay legal fees for a criminal investigation by the U.S. Attorney's Office. In addition to Mr. Rostenkowski, the Rostenkowski for Congress Committee, the Dan Rostenkowski Campaign Fund, and Leo V. Magrini, as treasurer of both committees, were also notified of the complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. APPLICABLE LAW

Section 439a provides that campaign funds that are in excess of any amount necessary to defray expenditures may be used by a candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a Federal officeholder, may be contributed to certain specified tax exempt organizations, or may be used for any other lawful purpose including transfers without limitation to any national, state, or local committee of any political party.

2 U.S.C. § 439a. However, such excess campaign funds may not be converted by any person to any personal use, other than to defray

1. The complaint in MUR 3941 was filed by Senator Hutchison's opponent in the Republican Primary on March 8, 1994. Senator Hutchison won that election and the general election in November of 1994.

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any ordinary and necessary expenses incurred in connection with his or her duties as a Federal officeholder. Id. The regulations define "excess campaign funds" as amounts received by a candidate as contributions which he or she determines are in excess of the amount necessary to defray expenditures. 11 C.F.R. § 113.1(e).² Under the Act, an "expenditure" is defined to include "any purchase" or "payment," made by "any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).

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The Commission has given candidates wide discretion in making expenditures to influence their elections. See e.g., Advisory Opinions ("AO") 1993-1, 1992-4, 1992-1, 1991-2, 1987-1. However, the Commission has interpreted Section 439a so as to prohibit the use of campaign funds "to confer a direct or indirect financial benefit on such individual except in those situations where the financial benefit is in consideration of valuable services performed for the campaign." AO 1987-1; AO 1986-39. In situations in which expenses are part personal and part campaign-related, they must be allocated so that campaign funds are not used for the candidate's personal benefit. See AO's 1988-13, 1984-59, 1992-12.

Legal services donated to a campaign are, under certain prescribed circumstances, exempt from the definitions of

2. The activities at issue in both MUR 3941 and MUR 4003 occurred prior to the promulgation of the Commission's latest regulations on the subject of personal use of campaign funds.

"contributions" and "expenditures."³ However, funds donated to pay for such legal services are not exempt. See AO 1993-15. For purposes of the FECA, legal services might theoretically fall into one of four categories. First, there are legal services for proceedings undertaken for the purpose of influencing an election, including funds used to pay legal fees for matters which implicate the FECA and emanate out of an election. AO 1980-57 (funds raised to pay legal fees to force a candidate's opponent off the ballot are "contributions"); AO 1993-15 (Donations raised to defray legal expenses incurred in response to an investigation by the Department of Justice ("DOJ") which included indictments for violations of the Act as well as violations of other federal law, are "contributions"); AO 1990-17 (Legal fees related to a FECA complaint were "contributions"). The Commission has ruled that legal fees for such proceedings must be paid for with funds raised in accordance with the limitations and prohibitions of the Act.

Second, there are legal services that the Commission has opined may be paid for with campaign funds or legal defense funds, i.e., fees incurred challenging congressional reapportionment. See AO's 1981-58; 1982-37. In addition, the Commission has permitted certain legal fees to be paid for with legal defense

3. Legal services are exempt from the definition of contribution and expenditure under the Act if such services are rendered to or on behalf of any political committee and paid for by the regular employer of the attorney rendering those services, as long as the services are not attributable to activities which directly further the election of any designated candidate to Federal office. 2 U.S.C. § 431(9)(B)(vii)(I). Legal services are also exempt if they are rendered to or on behalf of a candidate or political committee and if they are solely for the purpose of ensuring compliance with the Act or chapters 95 or 96 of Title 26.

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funds, i.e., fees incurred challenging a law which would prohibit a state official from running for any other state or federal election during his last year in office, and legal fees challenging a party rule. See AO AO 1983-30; AO 1982-35.

Third, there are legal services that might qualify as ordinary and necessary expenses incurred by a member of Congress in connection with his or her duties as a federal officeholder. See 2 U.S.C. § 439a. The Commission has yet to address the question of what legal fees might be considered to be in connection with a federal officeholder's duties.⁴

In the fourth and final category are legal services that arise out of a matter that is personal to the candidate (or committee personnel or some other individual). These are expenses for a legal obligation that exists, or could exist, irrespective of whether the person receiving the legal services was a federal candidate or federal officeholder. Examples would include legal services for a family law matter, i.e., divorce, child custody. To use campaign funds for such legal services would be a violation of Section 439a.

B. MUR 3941: KAY BAILEY HUTCHISON

(i) Summary of Complaint and Response

The complaint alleges that Senator Hutchison violated the

4. Expenses incurred as a result of a candidate's election are "incidental" to that election, and are thus "ordinary and necessary." AO 1980-183. Examples include transition expenses, travel expenses and moving costs. Id. With respect to legal fees in particular, the Commission ruled that excess campaign funds could be used to pay legal fees in connection with investigations into "official conduct." AO 1977-39 and 1986-9. Yet those opinions relied on the fact that the requesters were exempt from the personal use ban.

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FECA by using campaign funds to pay "costs of a criminal defense" for a matter "not related in any way to her campaign for or service in the Senate." Complaint at page 1. The complaint cites a news article indicating that the Senate campaign paid \$93,833.15 to the Dallas law firm of McColl and McColloch ("law firm"). The Committee acknowledges that it hired the law firm on or about May 12, 1993, when it learned that a Travis County grand jury had subpoenaed former state Treasury employee David Criss seeking testimony and documents relating to Ms. Hutchison's Treasurer's office and U.S. Senate campaign. Attachment 1 at 6; Attachment 2. News articles provided by the campaign disclose that fourteen state Treasury employees and two Senate campaign officials were subpoenaed by the grand jury days after Ms. Hutchison's election to the Senate on June 5, 1993. Attachment 3 at 4. The campaign states that it paid the law firm the \$93,833.15 between July 19 and September 22, 1993. Attachment 1 at 7.

Although the complaint charges that the Hutchison Committee paid all the legal fees for the trial with campaign funds, it appears that only a portion of the legal fees for the investigation were paid with campaign funds. The Hutchison campaign states that once it became apparent that the charges were headed for indictment, it set up a legal defense trust created in accordance with the Senate Rules (Resolution 508). News accounts substantiate the Committee's claim, and indicate that Hutchison's legal defense fund paid approximately \$900,000 in legal fees for the trial. There is thus no evidence that any portion of the

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trial itself was paid for with campaign funds.⁵

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Respondents claim that the payments to the law firm were "proper campaign expenditures." Attachment 1 at 7. They point out that the investigation related to the Senate campaign in that the grand jury subpoenas sought copies of Hutchison "Senate campaign" documents and that Senate campaign officials were subpoenaed to testify. Moreover, the Committee claims, the criminal investigation was brought to damage Senator Hutchison's 1994 re-election bid and the payments to the law firm were a necessary defense to politically motivated criminal charges brought by the district attorney who was allegedly working with and under the direction of state Democratic leaders. They assert that the district attorney, a Democrat, was once considered for appointment to the same Senate seat. Attachment 1 at 2-4. They also point to possible improper communications between the district attorney's office and Hutchison's political opponents, etc. Attachment 1; See also infra Section III.

Respondents suggest that the fact that an attorney was necessary to protect Senator Hutchison's character and campaign merely reflects that the opposing party employed the criminal process for its attack. The Committee further asserts that the

5. Thus, campaign funds were only used to pay for legal services rendered in connection with the criminal investigation and prior to the indictments and trial. As for the trial, it ended abruptly on February 11, 1994. News accounts indicate that the district attorney had sought dismissal of the case when the judge refused to rule on the admissibility of the evidence prior to the start of the trial. Instead, the judge instructed the jury to find Senator Hutchison innocent on all counts in light of the district attorney's refusal to proceed with the trial. Attachment 3 at 9-11.

legal services were analogous to those of "political campaign consultants having other professional disciplines," who receive millions of dollars each year to "promote," "advertise," "enhance" or "mischaracterise" the personal character of a candidate.

Attachment 1 at 6 and 8. Finally, the Committee asserts that the funds were not used for a personal legal matter, such as preparation of a will, legal fees incurred in connection with an auto accident or the adoption of a child. Id. at 8.

(ii) Analysis in NUR 3941

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The issue is whether the use of campaign funds for legal services in connection with the state criminal investigation of Ms. Hutchison constituted a conversion to personal use, in violation of Section 439a. From the limited information at hand, it appears that the criminal investigation focused mainly on Ms. Hutchison's conduct as state Treasurer, specifically her alleged use of state resources for personal and political purposes, and her ordering state employees to alter or destroy documents related to an earlier investigation into some of those same activities.⁶ See Attachment 3 at 10. Thus, much of the criminal investigation involved conduct dating back to the time

6. In the earlier investigation, which occurred before the Senate seat at issue was even open, district attorney Ronnie Earle found that former state Treasury employee David Criss had engaged in political activities for Ms. Hutchison on state time using state resources. Criss resigned and reimbursed the state approximately \$550, apparently in June of 1992. When the investigation was closed in November of 1992, Earle reportedly indicated that there was no evidence that Ms. Hutchison knew or consented to Mr. Criss' use of state resources on state time. Attachment 3 at 10.

before Ms. Hutchison even entered the 1993 Senate campaign.⁷ To the extent that the legal services were provided to Ms. Hutchison in the interest of defending her conduct as a state official, the Senate campaign's payment for them appears to be in violation of Section 439a.

On the other hand, the criminal investigation appears to have focused on the Senate campaign as well. Two top Hutchison campaign officials, David Beckwith and Brian Berry, were subpoenaed to testify. Attachment 3 at 7.⁸ In addition, the grand jury subpoenaed documents related to the Senate Committee. See Attachment 2. Thus, the rights of the Senate campaign, and perhaps those of Ms. Hutchison as an agent of that campaign, appear to have been involved. Although it is unclear what activities by the Senate campaign were under investigation, to the extent that campaign funds were used for services provided in the interest of protecting the legal rights of the Senate campaign, there would not appear to be a violation of Section 439a.

The Committee's contention that it was permitted to pay all

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7. The activities alleged to have been undertaken on state time do not appear to be connected with Ms. Hutchison's Senate campaigns. The district attorney's 1992 investigation related to fundraising for Ms. Hutchison's "Treasurer's Trust," a state campaign account. The alleged political activities occurred prior to Ms. Hutchison's filing of her statement of candidacy on December 19, 1992 as well as President Clinton's announcement on December 10 that Senator Bentsen would be appointed U.S. Treasury Secretary. The 1993-1994 indictments state that the fundraising undertaken on state time was related to an "unspecified" public office sought by Hutchison. See Attachment 4 at 8.

8. Mr. Beckwith, who was Hutchison's campaign spokesman, was formerly press secretary to Vice President Dan Quayle. Mr. Berry, who was Hutchison's campaign manager, is identified in Who's Who In American Politics. There is no evidence that either of them was ever employed by the state Treasury.

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these legal fees with campaign funds is without merit. That a legal matter may have been initiated for political purposes or may contain an element of political motivation does not make it "campaign-related." Although the Commission has historically recognized that candidates and committees are to be given wide discretion in determining what expenses are campaign-related, the personal use ban would be eviscerated if candidates were permitted to use campaign funds for any expense which might arguably ensure or enhance their odds of election or decrease their odds of defeat.⁹ If the personal use ban is to have its intended force and effect, the nature of the allegations must be the determining factor, not the consequences of the underlying case. Accordingly, we recommend that the Commission find reason to believe that Senator Kay Bailey Hutchison, Hutchison for Senate Committee, and Kenneth W. Anderson, as treasurer, violated 2 U.S.C. § 439a.

As the legal services appear to have involved the rights of the Senate campaign as well as the rights of Ms. Hutchison in her capacity as a state official, allocation of the costs of such

9. With respect to legal fees, this could include any legal proceeding that might disclose potentially damaging information, i.e., divorce, child custody, harassment suits, even financial dealings. Moreover, if political motivation were the criteria, then all House or Senate investigations of their members would arguably be campaign-related and payment for such legal services would constitute "expenditures." Yet, as noted, the Commission has previously ruled that legal fees for such investigations and proceedings do not come within the purview of the Act. See AO 1983-21. We also note that in United States v. Gilmore, 372 U.S. 39 (1963), the Supreme Court rejected an argument similar to the one Respondents raise here, holding that whether legal expenses may be deducted as a business expense depends on whether the claim "arises in connection with" the taxpayer's business, not whether the "consequences of the law suit might impact" on or affect his or her income producing/business property. Id. at 48.

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services appears to have been necessary. See e.g. AO 1992-12. However, it is unclear what portion of the \$93,833 in legal services paid for by the Hutchison campaign pertained to its own legal rights. Moreover, the legal services at issue were rendered in the midst of a grand jury investigation. Such investigations are generally quite broad in scope, and the press reports indicate that this particular investigation covered a number of different persons and alleged activities. Accordingly, the legal services rendered by the law firm may not have been specifically targeted to either the Senate campaign or the state Treasury, or to Ms. Hutchison as Senate candidate versus Ms. Hutchison in her capacity as a state official.¹⁰ To the extent that the legal services overlapped, it would be difficult if not virtually impossible at this time to accurately allocate these legal fees.¹¹ In light of the foregoing, and that the Commission has recently promulgated regulations on this subject, and given that none of the approximately \$900,000 in legal fees for the trial itself were paid for with campaign funds, the General Counsel's Office recommends that the Commission exercise its prosecutorial discretion and take no further action against these respondents

10. In this matter the law firm's services apparently included conducting its own investigation of the claims, communicating with the district attorney's office to ascertain the nature and scope of the probe, reviewing and producing documents and preparing witnesses, including Senator Hutchison, for grand jury testimony. See Attachment 1 at 7.

11. Although documents that we might be able to now obtain related to the criminal case, i.e., the grand jury subpoenas, the transcripts of the grand jury testimony (which are now sealed), would disclose the subjects and targets of the investigation, they would not reflect what legal services were actually provided.

and close the file in MUR 3941.¹² This Office shall place an admonishment in its letter to these respondents.

C. MUR 4003: ROSTENKOWSKI

(i) Summary of Complaint and Response

The complaint in MUR 4003 suggests that former Congressman Dan Rostenkowski ("Congressman") and his committees violated the Act by using campaign funds for his legal defense to an investigation by the Department of Justice ("DOJ").

The Committee's response to MUR 4003 states that campaign funds were used to pay legal funds related to the "House Post Office." Attachment 5 at 1. It claims that the use of campaign funds for legal expenses related to an investigation into a member's official activities or the functioning of his congressional office is permitted under the FECA, resting that conclusion on AO 1986-9. However, the decision in AO 1986-9 was based upon the requester's status as a House member who was exempt from the personal use prohibition. See footnote 4. That exemption would not apply to Mr. Rostenkowski, who served in the 103d Congress. See 11 C.F.R. § 113.2(e).¹³

12. If the Commission were to instead choose to investigate this matter, this Office would recommend that our analysis assume that the legal services in question were provided to the state treasury and require that the Senate campaign make a showing to the contrary.

13. The Commission's regulations state that members of the 103d or later Congress may not convert excess campaign funds to personal use as of the first day of such service, January 3, 1993.

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The Committee also states that the payment was "specifically permitted" under the rules of the House Committee on Standards of Official Conduct. It has enclosed two letters from the Committee on Standards of Official Conduct that advise then Congressman Rostenkowski that he was permitted to use campaign funds to pay for legal services needed in responding to subpoenas for congressional documents and those issued to his congressional staff. Attachment 5 at 3-6. The letters from the House Committee state that, under the House rules, campaign funds may be used if the services are for campaign or "bona fide political purposes," a determination which "primarily rests" with the House Member. Id. at 3 and 5. The letters of advisement state the House Committee's view that the need to defend oneself against such investigations will affect a Member's ability to function in Congress as well as his campaign for re-election. The letter of advisement also states that this same conclusion applies to staff members. Id. at 5-6.¹⁴

On May 31, 1994, the former Congressman was indicted for 17 felony counts. See Attachments 6 and 7. One news article divides

14. The Committee also claims that the complaint does not meet the requirements of 11 C.F.R. § 111.4(d)(3) because it does not cite any provision of the Act or regulations. This asserted defense to the complaint lacks merit, however. The regulation upon which the Committee relies does not require a complainant to include a specific citation, but rather states that a complaint, "should," inter alia, "contain a clear and concise recitation of the facts which describe a violation." Id. The complaint meets that standard as it states that the campaign had reportedly used its funds for criminal charges, and that the complainant "believed" campaign contributions were for "direct campaign expenses; not to pay for criminal legal defense maneuvering."

the alleged crimes into four areas: (1) hiring ghost employees (those who did not perform services allegedly rendered); (2) Stationary Store Purchases (purchasing items for personal use or for gifts to friends); (3) Stamps for Cash (sham transactions that looked like stamp purchases); (4) Purchase of Vehicles (personal use-conversion of public and campaign funds).

Attachment 6 at 4-5. Most of the counts relate to the candidate's alleged conversion of public funds (\$688,000) and campaign funds (\$56,267) to personal use. Id. Two of the counts were for FECA-related violations of 18 U.S.C. § 1001.¹⁵ It thus appears that the investigation focused on conduct related to the former Congressman's handling of activities at his congressional office. However, it also involved an investigation of his handling of campaign funds.

(ii) Analysis in MUR 4003

We first discuss an issue not addressed in the complaint or the responses. The news reports indicate that some of the felony counts directly implicate the FECA. As previously noted, in AO

15. In the recent case of U.S. v. Rostenkowski, Nos. 94-3158 and 94-3160, 1995 WL 418070 (D.C. Cir. July 18, 1995), the validity of the Section 1001 indictments, including four counts involving filing false statements with Congress and two counts for filing false statement with the FEC, was called into question in light of the recent Supreme Court decision in Hubbard v. United States, 115 S.Ct. 1754 (1995) and the decision in FEC v. NRA Victory Fund, 6 F.3d 821, 823 (D.C. Cir. 1993). In Hubbard, the Court held that a false statement made to Congress is not within the ambit of 18 U.S.C. § 1001, which applies only to the executive branch. Hubbard, 115 S.Ct. at 1764. Rostenkowski was remanded to the district court for a determination on the Section 1001 issue, and was also affirmed in part and reversed in part on other issues. In any event, the Rostenkowski case did not address the issue raised here; whether legal fees could be used to defend these charges.

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1993-15, the Commission ruled that legal expenses incurred by a committee in connection with a DOJ investigation of its fundraising agent were "contributions" and "expenditures," and must be paid for with campaign funds. Thus, to the extent that the criminal investigation implicated noncompliance with the FECA and the activities investigated emanated out of an election, payments for such legal services were "expenditures" under the FECA. See AO 1993-15; AO 1990-17. As such, that portion of the legal services should have been paid for with campaign funds, as they appear to have been. In addition, as noted with respect to MUR 3941, we believe that a federal committee may use campaign funds to pay for legal services rendered to it in connection with the rights of that committee and its agents (including the candidate as agent of the committee).

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With respect to the remainder of the legal services at issue, however, they do not appear to address Mr. Rostenkowski's activities as a federal candidate. Despite the Committee's assertions, for purposes of Commission actions Section 439a is controlling, not the House Rules, and the Commission has not interpreted Section 439a so as to permit candidates to use campaign funds for any purpose he or she deems to be "political." Indeed, such an interpretation would eviscerate the personal use ban as a candidate could justify paying many of his or her personal expenses and legal fees, claiming such was necessary to ensure or enhance the odds of election or decrease the odds of defeat.

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We turn then to the question of whether the payment of the remaining legal services may be considered an ordinary and necessary expense incurred by former Congressman Rostenkowski in connection with his duties as a federal officeholder.¹⁶ As noted, the indictments charge Mr. Rostenkowski with, inter alia, embezzlement of public and campaign funds for his personal use and for gifts. It appears that Mr. Rostenkowski will argue that some of these underlying activities were related to his official duties. As the U.S. Court of Appeals for the D.C. Circuit recently stated in the underlying criminal case against the former Congressman: "the line between 'official work' and 'personal services' [is] particularly difficult to draw." U.S. v. Rostenkowski, Nos. 94-3158 and 94-3160, 1995 WL 418070, at *23 (D.C. Cir. July 18, 1995).

Although we do not draw any conclusions about the merits of the underlying criminal case or possible defenses, from our cursory review of the information at hand, it appears that Mr. Rostenkowski may be able to make a colorable claim that some, but not all, of the charges relate to his official work. For example, it appears even from the indictments that the "ghost" employees may have performed some "official" work. Id. at *20, n. 21. To the extent it can be claimed that these employees performed "official" work for the former Congressman, campaign

16. Unlike Senator Hutchison, former Congressman Rostenkowski was a federal officeholder at the time that the activities investigated are alleged to have occurred. Thus, unlike Senator Hutchison, the former Congressman was permitted to pay his legal fees with excess campaign funds if they were incurred in connection with his duties as a federal officeholder. 2 U.S.C. § 439a.

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funds could be used to pay the legal fees. On the other hand, one indictment charges that official funds were used to pay an employee who provided "bookkeeping" services to a private corporation owned by the candidate, and to purchase gifts prohibited by the House Rules. Similarly, the former Congressman is charged with pocketing cash obtained in exchange for postage stamps. Id. at *22.¹⁷ It does not appear that Mr. Rostenkowski could make a colorable claim that such activities were in furtherance of his official duties. Therefore, the payment of legal fees in defense of such charges would appear to be prohibited by Section 439a.¹⁸ Accordingly, based on the limited evidence at hand, this Office recommends that the Commission find reason to believe that former Representative Dan Rostenkowski violated 2 U.S.C. § 439a. We also recommend that the Commission find reason believe that the committee which appears to have paid for such legal services, the Rostenkowski for Congress Committee, and its treasurer Leo V. Magrini, violated 2 U.S.C. § 439a. With respect to the Dan Rostenkowski Campaign Fund, disclosure reports indicate that it has been inactive since 1988, which is prior to when the criminal investigation began, and there is no evidence or

17. One news report states that with respect to this charge the defense has considered arguing that exchanging stamps for cash was not explicitly outlawed by the House rules at the time in question, although the attorneys indicate that such a defense might be "a very risky strategy." Attachment 6 at 7-8.

18. As an alternative to the colorable claim approach, the Commission could await the outcome of the ongoing criminal case. We do not recommend such an approach, however, because the criminal case may go on for years and even its resolution may not ensure that the issue would be settled if, for instance, there was a plea bargain or if a jury was unable to render a verdict.

suggestion that any of the legal fees at issue were paid by that committee. Accordingly, this Office recommends that the Commission find no reason to believe that the Dan Rostenkowski Campaign Fund, and Leo V. Magrini, as treasurer of that committee, violated 2 U.S.C. § 439a.

As the issues in the ongoing criminal case appear to parallel those in this matter, conducting an investigation at this time could prove to be difficult. Moreover, given the aforementioned complexities related to allocating these legal services, and in light of the recent change in the applicable regulations, this Office recommends that the Commission not pursue this matter further but instead exercise its prosecutorial discretion and take no further action and close the file. This Office shall place an admonishment in its letter to the respondents in MUR 4003 against whom we have recommended that the Commission find a Section 439a violation.

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IV. RECOMMENDATIONS

1. Find reason to believe that Senator Kay Bailey Hutchison, the Hutchison for Senate Committee, and Kenneth W. Anderson, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
2. Find reason to believe that former Representative Dan Rostenkowski, the Rostenkowski for Congress Committee, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
3. Find no reason to believe that the Dan Rostenkowski Campaign Fund, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a.
- 4.

5. Approve the appropriate letters.
6. Close the files in MUR 3941 and MUR 4003.

Lawrence M. Noble
General Counsel

8/8/95
Date

BY: *Lois G. Lerner*
Lois G. Lerner
Associate General Counsel

Attachments

1. Response to MUR 3941
2. Subpoena related to the Texas criminal case
3. News Articles related to the Texas criminal case
4. Indictments against Senator Hutchison
5. Response to MUR 4003
6. News Stories related to Rostenkowski case
7. Summary of indictments against Rostenkowski
8. Transcripts of May 15, 1993 interview with Bowden
9. Transcripts of May 30, 1993 interview with Bowden

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS *Z.R.D.*
COMMISSION SECRETARY

DATE: AUGUST 10, 1995

SUBJECT: MURs 3941 & 4003 - FIRST GENERAL COUNSEL'S REPORT
DATED AUGUST 8, 1995.

The above-captioned document was circulated to the
Commission on WEDNESDAY, AUGUST 9, 1995 11:00 a.m.

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

Commissioner Aikens _____
Commissioner Elliott _____
Commissioner McDonald _____
Commissioner McGarry _____
Commissioner Potter XXX
Commissioner Thomas _____

This matter will be placed on the meeting agenda
for TUESDAY, AUGUST 15, 1995

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

95043692107

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3941
Senator Kay Bailey Hutchison;)
Kay Bailey Hutchison for)
Senate Committee and Kenneth)
W. Anderson, as treasurer;)
)
and)
)
Dan Rostenkowski;) MUR 4003
Rostenkowski for Congress)
Committee and Lee V. Magrini,)
as treasurer;)
Dan Rostenkowski Campaign Fund)
and Leo V. Magrini, as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 15, 1995, do hereby certify that the Commission decided by a vote of 6-0 to direct the Office of General Counsel to draft a Factual and Legal Analysis and circulate it for Commission approval along with the General Counsel's recommendations on MUR 3941 and MUR 4003.

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

Attest:

8-18-95
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Aug 23 10 43 AM '95

August 23, 1995

SENSITIVE

MEMORANDUM

TO: The Commission
From: Lawrence M. Noble *JMN (792)*
General Counsel
SUBJECT: Factual and Legal Analysis and Recommendations
for MUR 3941 and MUR 4003

I. BACKGROUND

At the Executive Session of August 15, 1995, the Commission directed this Office to draft a Factual and Legal Analysis for MUR 3941 and MUR 4003, and to circulate it along with the General Counsel's recommendations. Attached for the Commission's review and approval is a Factual and Legal Analysis for MURs 3941 and 4003 designed to address the concerns raised by the Commission on August 15. See Attachment. The recommendations in this memo are identical in substance to those set forth in the First General Counsel's Report, dated August 8, 1995.

II. RECOMMENDATIONS

1. Find reason to believe that Senator Kay Bailey Hutchison, the Hutchison for Senate Committee, and Kenneth W. Anderson, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
2. Find reason to believe that former Representative Dan Rostenkowski, the Rostenkowski for Congress Committee, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
3. Find no reason to believe that the Dan Rostenkowski Campaign Fund, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a.
- 4.

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MURs 3941/4003
Page 2

5. Approve the attached Factual and Legal Analysis and the appropriate letters.

6. Close the files in MUR 3941 and MUR 4003.

Attachment:
Factual and Legal Analysis

Staff Assigned: Xavier McDonnell

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EHRONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: AUGUST 28, 1995

SUBJECT: MURs 3941 & 4003 - FACTUAL AND LEGAL ANALYSIS &
RECOMMENDATIONS. MEMORANDUM
TO THE COMMISSION DTD 8/23/95.

The above-captioned document was circulated to the Commission on Wednesday, August 23, 1995 at 4:00.

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

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

This matter will be placed on the meeting agenda for Tuesday, September 12, 1995.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Senator Kay Bailey Hutchison;)
Kay Bailey Hutchison for Senate) MUR 3941
Committee and Kenneth W. Anderson,)
as treasurer.)
)
Dan Rostenkowski;)
Rostenkowski for Congress Committee)
and Leo V. Magrini, as treasurer;) MUR 4003
Dan Rostenkowski Campaign Fund and)
Leo V. Magrini, as treasurer.)

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 29, 1995, the Commission decided by a vote of 6-0 to take the following actions in NURs 3941 and 4003:

1. Find reason to believe that Senator Kay Bailey Hutchison, the Hutchison for Senate Committee and Kenneth W. Anderson, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
2. Find reason to believe that former Representative Dan Rostenkowski, the Rostenkowski for Congress Committee, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
3. Find no reason to believe that the Dan Rostenkowski Campaign Fund and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a.

(continued)

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Federal Election Commission
Certification for MURS 3941 and
4003
August 29, 1995

Page 2

- 4.
5. Approve the Factual and Legal Analysis and the appropriate letters, as recommended in the General Counsel's Memorandum dated August 23, 1995.
6. Close the files in MUR 3941 and MUR 4003.

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

Attest:

9-5-95

Date

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

Received in the Secretariat:	Wed., Aug. 23, 1995	10:43 a.m.
Circulated to the Commission:	Wed., Aug. 23, 1995	4:00 p.m.
Deadline for vote:	Mon., Aug. 28, 1995	4:00 p.m.
Received Objection:	Mon., Aug. 28, 1995	3:12 p.m.
Placed on the Agenda for:	Tues., Sep. 12, 1995	
Objection Withdrawn:	Tues., Aug. 29, 1995	4:00 p.m.
Withdrawn from Agenda		

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 5, 1995

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Rob Kuzman
2017 Westley Ct.
Safety Harbor, Fl 34695

RE: MUR 4003
Dan Rostenkowski,
Rostenkowski for Congress Committee,
Leo V. Magrini, as treasurer
Dan Rostenkowski Campaign Fund,
Leo V. Magrini, as treasurer

Dear Mr. Kuzman:

This is in reference to the complaint you filed with the Federal Election Commission on July 5, 1994, concerning certain expenditures for legal fees made by former Representative Dan Rostenkowski.

Based on that complaint, on August 29, 1995, the Commission found that there is reason to believe that former Representative Dan Rostenkowski, Rostenkowski for Congress Committee and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). By same date, the Commission found no reason to believe that the Dan Rostenkowski Campaign Fund, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a. After considering the circumstances in this matter, the Commission determined to take no further action and closed the file in this matter. This matter will become part of the public record within 30 days. 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).

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

Sincerely,

Xavier K. McDonnell
Xavier K. McDonnell
Attorney

Enclosure
Factual and Legal Analysis

25043692114



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 5, 1995

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4003
Representative Dan Rostenkowski,
Rostenkowski for Congress Committee,
Leo V. Magrini, as treasurer
Dan Rostenkowski Campaign Fund,
Leo V. Magrini, as treasurer

Dear Ms. Utrecht:

On August 29, 1995, the Federal Election Commission found reason to believe that former Representative Dan Rostenkowski, the Rostenkowski for Congress Committee and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). By same date, the Commission found no reason to believe that the Dan Rostenkowski Campaign Fund and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a. After considering the circumstances of this matter, the Commission determined to take no further action against any of your clients in MUR 4003, and closed the file. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

The Commission reminds your clients that 2 U.S.C. § 439a prohibits any person from using campaign funds for any personal use. Your clients should take immediate steps to insure 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

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Lyn Utrecht, Esquire
Page 2

before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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

Sincerely,



Scott E. Thomas
Commissioner

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RE: MUR 3941

RESPONDENTS: Senator Kay Bailey Hutchison
Kay Bailey Hutchison for Senate Committee and
Kenneth W. Anderson, as treasurer

RE: MUR 4003

RESPONDENTS: Dan Rostenkowski
Rostenkowski for Congress Committee and
Leo V. Margin, as treasurer

Dan Rostenkowski Campaign Fund, and
Leo V. Magrini, as treasurer

I. GENERATION OF MATTERS

MUR 3941 was generated by a complaint alleging that Senator Kay Bailey Hutchison violated the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") by using campaign funds for her personal use, specifically legal fees related to the criminal investigation of Ms. Hutchison for activities alleged to have occurred while she was Treasurer of the state of Texas. In addition to Ms. Hutchison, the Kay Bailey Hutchison for Senate Committee ("Senate campaign" or "Senate Committee") and Kenneth W. Anderson, as treasurer, were also notified of the complaint.

MUR 4003 was generated by a complaint filed by Rob Kuzman, alleging that former Congressman Dan Rostenkowski ("former Congressman") violated 2 U.S.C. § 439a by using campaign funds to pay legal fees for a criminal investigation by the Department of Justice. In addition to Mr. Rostenkowski, the Rostenkowski for Congress Committee and Leo V. Magrini, as treasurer, were notified of the complaint.

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II. APPLICABLE LAW

Section 439a provides that campaign funds that are in excess of any amount necessary to defray expenditures may be used by a candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a Federal officeholder, may be contributed to certain specified tax exempt organizations, or may be used for any other lawful purpose including transfers without limitation to any national, state, or local committee of any political party.

2 U.S.C. § 439a. However, such excess campaign funds may not be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a Federal officeholder. Id. The activities at issue in MUR 3941 and MUR 4003 occurred prior to the effective date of the Commission's latest regulations on the subject of the personal use of campaign funds. See 60 Fed. Reg. 7862 (February 9, 1995) (to be codified at 11 C.F.R. §§ 113.1(g) and 113.2).

III. SUMMARY OF COMPLAINTS AND RESPONSES

MUR 3941: Kay Bailey Hutchison

The complaint alleges that Senator Hutchison violated the FECA by using campaign funds to pay "costs of a criminal defense" for a matter "not related in any way to her campaign for or service in the Senate." The complaint cites a news article indicating that the Senate campaign paid \$93,833.15 to the Dallas law firm of McColl and McColloch ("law firm"). The Committee acknowledges that it hired the law firm on or about May 12, 1993,

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when it learned that a Travis County grand jury had subpoenaed former state Treasury employee David Criss seeking testimony and documents relating to Ms. Hutchison's Treasurer's office and U.S. Senate campaign. News articles provided by the campaign disclose that fourteen state Treasury employees and two Senate campaign officials were subpoenaed by the grand jury days after Ms. Hutchison's election to the Senate on June 5, 1993. The campaign states that it paid the law firm the \$93,833.15 between July 19 and September 22, 1993.

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Although the complaint charges that the Hutchison Committee paid all the legal fees for the trial with campaign funds, it appears that only a portion of the legal fees for the investigation were paid with campaign funds. The Hutchison campaign states that once it became apparent that the charges were headed for indictment, it set up a legal defense trust created in accordance with the Senate Rules (Resolution 508). News accounts substantiate the Committee's claim, and indicate that Hutchison's legal defense fund paid approximately \$900,000 in legal fees for the trial. There is thus no evidence that any portion of the trial itself was paid for with campaign funds.¹

Respondents in MUR 3941 claim that the payments to the law

1. Thus, campaign funds were only used to pay for legal services rendered in connection with the criminal investigation and prior to the indictments and trial. As for the trial, it ended abruptly on February 11, 1994. News accounts indicate that the district attorney had sought dismissal of the case when the judge refused to rule on the admissibility of the evidence prior to the start of the trial. Instead, the judge instructed the jury to find Senator Hutchison innocent on all counts in light of the district attorney's refusal to proceed with the trial.

firm were "proper campaign expenditures." They point out that the investigation related to the Senate campaign in that the grand jury subpoenas sought copies of Hutchison "Senate campaign" documents and that Senate campaign officials were subpoenaed to testify. The Committee claims that the criminal investigation was brought to damage Senator Hutchison's 1994 re-election bid and the payments to the law firm were a necessary defense to politically motivated criminal charges brought by the district attorney.

MUR 4003: Dan Rostenkowski

The complaint in MUR 4003 suggests that former Congressman Rostenkowski violated the Act by using campaign funds for his legal defense to an investigation by the Department of Justice. The Committee's response to MUR 4003 states that campaign funds were used to pay legal funds related to the "House Post Office."² The Committee also states that the payment was "specifically permitted" under the rules of the House Committee on Standards of Official Conduct.³

2. The Act and Commission regulations state that members of the 103d or later Congress may not convert excess campaign funds to personal use as of the first day of such service, January 3, 1993. Since Mr. Rostenkowski served in the 103d Congress, the personal use prohibition applied to him and the legal fees at issue. See 11 C.F.R. § 113.2(e)

3. The Committee also claims that the complaint does not meet the requirements of 11 C.F.R. § 111.4(d)(3) because it does not cite any provision of the Act or regulations. This asserted defense to the complaint lacks merit, however. The regulation upon which the Committee relies does not require a complainant to include a specific citation, but rather states that a complaint, "should," *inter alia*, "contain a clear and concise recitation of the facts which describe a violation." *Id.* The complaint meets that standard as it states that the campaign had reportedly used its funds for criminal charges, and that the complainant "believed" campaign contributions were for "direct campaign expenses; not to pay for criminal legal defense maneuvering."

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On May 31, 1994, the former Congressman was indicted for 17 felony counts. One news article divides the alleged crimes into four areas: (1) hiring ghost employees (those who did not perform services allegedly rendered); (2) Stationary Store Purchases (purchasing items for personal use or for gifts to friends); (3) Stamps for Cash (sham transactions that looked like stamp purchases); (4) Purchase of Vehicles (personal use-conversion of public and campaign funds). Most of the counts relate to the candidate's alleged conversion of public funds (\$688,000) and campaign funds (\$56,267) to personal use. Two of the counts were for FECA-related violations of 18 U.S.C. § 1001.

IV. ANALYSIS RE MUR 3941 and MUR 4003

MUR 3941 and MUR 4003 both contain credible allegations that campaign funds were used for legal services, at least some portion which were not incurred in connection with a campaign for federal office or in connection with the duties of a federal officeholder. However, since the filing of these complaints, the Commission has adopted new personal use regulations. See revised personal use regulations. 60 Fed. Reg. 7862 (February 9, 1995). Any investigation into the allegations of these complaints would necessarily involve determinations of personal use under the previous legal standard. The Commission believes that it would be a misuse of its scarce prosecutorial resources to open what would likely be complex and time consuming investigations into activities which occurred several years ago under a prior legal standard no longer applicable. Accordingly, although there is reason to believe that Senator Kay Bailey Hutchison, the Hutchison

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for Senate Committee, and Kenneth W. Anderson, as treasurer, violated 2 U.S.C. § 439a, and that former Representative Dan Rostenkowski, the Rostenkowski for Congress Committee, and Leo V. Magrini, as treasurer, violated 2 U.S.C. § 439a, the Commission has determined to take no further action and close the files in these matters. See Heckler v. Chaney, 470 U.S. 821 (1985).⁴

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4. With respect to the Dan Rostenkowski Campaign Fund, disclosure reports indicate that it has been inactive since 1988, which is prior to when the criminal investigation began, and there is no evidence or suggestion that any of the legal fees at issue were paid by that committee. Accordingly, there is no reason to believe that the Dan Rostenkowski Campaign Fund, and Leo V. Magrini, as treasurer of that committee, violated 2 U.S.C. § 439a.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Sept. 22, 1995

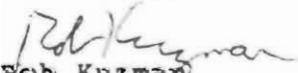
SEP 28 12 43 PM '95

Dear Mr. McDonnell:

I received your Sept. 5th letter stating that the FEC, while having found evidence that Dan Rostenkowski did indeed break the law by misusing campaign funds, is choosing not to prosecute. This is an outrageous insult to the American taxpayers, whose money was stolen by Rosty. I am sure every thief throughout the world would like to be treated so leniently and never called to account for their actions.

I now request a judicial review of the commission's dismissal of MUR 4003. Rostenkowski should not be allowed to have profited from his stealing of campaign funds. Furthermore, the FEC should be attempting to make an example of him so that future corrupt politicians might well think twice before pocketing money they aren't entitled to have. Please, don't shirk your responsibility and let-down the taxpayers whose money was so blatantly stolen by Rosty.

Sincerely,


Rob Kuzmar
P.O. Box 1053
Hiawassee, Ga. 30546

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4003

DATE FILMED 10/27/95 CAMERA NO. 2

CAMERAMAN EES

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