FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4068

DATE FILMED 3-29-95 CAMERA NO. 2

CAMERAMAN S.E.G

95043632068

DEM-NPL

NORTH DAKOTA DEMOCRATIC-NPL

1902 East Divide Avenue
Bismarck, North Dakota 58501
(701) 255-0460
FAX (701) 255-7823

August 30, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 8 11 53 AM '94

Larry Noble
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington DC 20463

Dear Mr. Noble:

Based upon a reading of 11 CFR, I believe that Gary Porter of Minot, North Dakota, and the Porter for Congress Committee have violated Federal Election Commission regulations by taking out and accepting an unsecured $100,000 loan.

Mr. Porter has loaned his campaign $100,000 from an unsecured line of credit. Additionally, Mr. Porter is a director of the bank from which the loan was made -- First Western Bank of Minot, North Dakota.

Mr. Porter responded "no" to the following items on schedule C-1 filed with the Federal Election Commission in May of this year:

C. Are other parties secondarily responsible for the debt incurred;

D. Are any of the following pledged as collateral for the loan: real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other traditional collateral; and,

E. Are any future contributions or future receipts pledged as collateral for the loan.

In responding to Item F, the Porter Campaign indicated that the loan was made on "the personal guarantee of Gary Porter".

CFR 100.7 (b) (11) states that a loan from a bank "is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is to be made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it ... is made on a basis which assures repayment ..."

25043320089

CFR 100.7 (b) (11) (i) further states "A loan, including a line of credit, shall be considered made on a basis which assures repayment if it is to be obtained using either of the sources of repayment described in paragraphs (b) (11) (i) (A) or (B) ..."

"(A) (1) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan ... and the political candidate or committee provides documentation to show that the lending institution has perfected security interest in the collateral."

" (B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts ..."

Mr. Porter's loan has been made on terms unavailable to everyday North Dakotans and appears to be the type of preferential treatment that the FEC has worked so hard to eliminate.

I am requesting a prompt investigation into this matter.

Sincerely,

George Gaukler
Chairman, North Dakota
Dem-NPL State Party

Signed this 6th (day), of September (month), of 1994.

Marlene Stanford Adams
Notary Public

My commission expires

MARLENE STANFORD ADAMS
Notary Public-North Dakota
Burleigh County
My Commission Expires April 23, 2000

25743632070

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 13, 1994

George Gaukler
Chairman, North Dakota Dem-NPL
State Party
1902 East Divide Avenue
Bismarck, North Dakota 58501

Dear Mr. Gaukler:

This is to acknowledge receipt on September 8, 1994, of your letter dated August 30, 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 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.

25043632071

Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then 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.

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

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Gary Porter
Porter for Congress Committee

25043632072

DEM-NPL
NORTH DAKOTA DEMOCRATIC-NPL

1902 East Divide Avenue
Bismarck, North Dakota 58501
(701) 255-0460
FAX (701) 255-7823

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

★★★★★

SEP 28 10 19 AM '94

September 22, 1994

MUR 4068

Larry Noble
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington DC 20463

Dear Mr. Noble:

Based upon a reading of 11 CFR, I believe that Gary Porter of Minot, North Dakota, and the Porter for Congress Committee have violated Federal Election Commission regulations by taking out and accepting an unsecured $100,000 loan.

Mr. Porter has loaned his campaign $100,000 from an unsecured line of credit. Additionally, Mr. Porter is a director of the bank from which the loan was made -- First Western Bank of Minot, North Dakota.

Mr. Porter responded "no" to the following items on schedule C-1 filed with the Federal Election Commission in May of this year:

C. Are other parties secondarily responsible for the debt incurred;

D. Are any of the following pledged as collateral for the loan: real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other traditional collateral; and,

E. Are any future contributions or future receipts pledged as collateral for the loan.

In responding to Item F, the Porter Campaign indicated that the loan was made on "the personal guarantee of Gary Porter".

CFR 100.7 (b) (11) states that a loan from a bank "is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is to be made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it ... is made on a basis which assures repayment ..."

25043632073

CFR 100.7 (b) (11) (i) further states "A loan, including a line of credit, shall be considered made on a basis which assures repayment if it is to be obtained using either of the sources of repayment described in paragraphs (b) (11) (i) (A) or (B) ..."

"(A) (1) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan ... and the political candidate or committee provides documentation to show that the lending institution has perfected security interest in the collateral."

" (B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts ..."

Mr. Porter's loan has been made on terms unavailable to everyday North Dakotans and appears to be the type of preferential treatment that the FEC has worked so hard to eliminate.

I am requesting a prompt investigation into this matter.

Sincerely,

George Gaukler
Chairman, North Dakota
Dem-NPL State Party

Subscribed and sworn to before me on this 26th day of September, 1994.

Notary Public

My commission expires

BARLENE STANFORD-ADAMS
Notary Public-North Dakota
Dames County
My Commission Expires April 28, 2000

95043632074

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 4, 1994

George Gaukler, Chairman
North Dakota Dem-NPL State Party
1902 East Divide Ave.
Bismark, ND 58501

RE: MUR 4068

Dear Mr. Gaukler:

This letter acknowledges receipt on September 28, 1994, of the complaint you filed on behalf of the North Dakota Dem-NPL State Party 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 4068. 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

2574363207 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 4, 1994

Gary Porter
2000 Ida Mae Court
Minot, ND 58701

RE: MUR 4068

Dear Mr. Porter:

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 4068. 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.

25043632076

If you have any questions, please contact Alva E. Smith 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

2504363207 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 4, 1994

Jules Feldman, Treasurer
Porter for Congress Committee
P.O. Box 754
Minot, ND 58702

RE: MUR 4068

Dear Mr. Feldman:

The Federal Election Commission received a complaint which indicates that the Porter 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 4068. 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.

25043632078

If you have any questions, please contact Alva E. Smith 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

2504363207 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 4, 1994

Richard A. Campbell, Senior Vice President
First Western Bank of Minot North Dakota
900 S. Broadway
Minot, ND 58701

RE: MUR 4068

Dear Mr. Campbell:

The Federal Election Commission received a complaint which indicates that the First Western Bank 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 4068. 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 First Western Bank 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.

95043632030

If you have any questions, please contact Alva E. Smith 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

95043632091

PORTER FOR CONGRESS
P.O. Box 380
MINOT, NORTH DAKOTA 58702

October 12, 1994

Ms. Mary Taksar, Attorney
Central Enforcement Docket
Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463
Fax - 202-219-3923

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 12 2 06 PM '94

Re: MUR 4068

Dear Ms. Taksar:

I am in receipt of your correspondence of October 4, 1994, regarding notification of complaint filed with the Federal Election Commission.

I request a twenty day extension of time in which to respond to the complaint filed by Mr. Gaukler. The campaign is in the midst of compiling its report of receipts and disbursements through September 30, 1994 and all financial personnel are currently heavily involved in that task.

A twenty day extension will provide adequate time to complete that report and prepare the necessary documentation to properly address the issue as to why we feel the complaint is without justification.

Thank you for your consideration in this matter. Please advise of your determination.

Very truly yours,

Jules Feldmann, Treasurer
Porter for Congress

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1994

Jules Feldmann, Treasurer
Porter for Congress Committee
P.O. Box 380
Minot, North Dakota 58702

RE: MUR 4068

Dear Mr. Feldmann:

This is in response to your letter dated October 12, 1994, requesting a twenty-day extension 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 October 27, 1994.

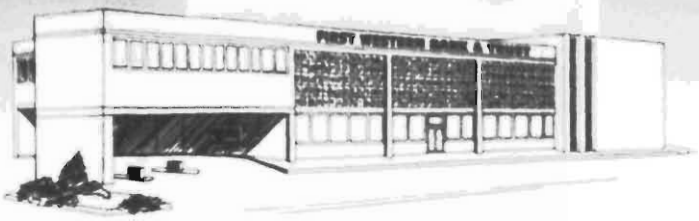
If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

95043632093



FIRST WESTERN BANK & TRUST

P.O. BOX 1090 • MINOT, NORTH DAKOTA • 58702

BANK TELEPHONE (701)852-3711
TRUST 857-7150

October 14, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 19 12 32 PM '94

Mary L. Taksar, Attorney
Central Enforcement Docket
Federal Election Commission
999 East Street NW
Washington, DC 20463

RE: MUR 4068

Dear Ms. Taksar:

In response to your letter of October 4, 1994, First Western Bank & Trust does not believe it has violated the Federal Election Campaign Act of 1971. According to the complaint lodged by George Gaukler, Chairman of the North Dakota Democratic-NPL Party, Gary Porter and the Porter for Congress Committee borrowed funds from our bank. That statement is not accurate. The Porter for Congress Committee has never borrowed funds from our bank.

Our banking experience with Mr. Porter goes back many years. Over the years, he has had numerous loans with our bank, all paid in a timely manner. In 1989, he was elected a director of our bank and became subject to the Federal Reserve Board's Regulation O requiring that all banking transactions be on the same terms and conditions as those available to "regular" customers. Each year, beginning in 1990, Mr. Porter has been required to submit a personal financial statement. A line of credit is then established and approved by our Board of Directors based on the strength of the personal financial statement and defined repayment sources. Mr. Porter has utilized the approved credit numerous times, with a high of $300,000 in 1992, and has always repaid his loans promptly. State and Federal bank regulators have examined our bank at least annually (most recently in September 1994) and found no violations of Regulation O. Mr. Gaukler's allegation that "Mr. Porter borrows on terms not available to everyday North Dakotans" simply is not true. He is subject to the more stringent rules of Regulation O.

Mr. Porter presently owes our bank $144,136. The strength of his personal financial statement and repayment sources not related to his political campaign support our loan. As with his previous loans, we anticipate repayment when due.

First Western Bank & Trust makes loans to individuals, businesses, farm operations etc. based on prudent credit underwriting, not political affiliations. We intend to continue to operate in this manner.

If you are in need of additional information or have any further questions, please feel free to contact me.

Sincerely,

FIRST WESTERN BANK & TRUST

Richard A. Campbell

Richard A. Campbell
Senior Vice President

RC/bkf

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

Oct 27 4 02 PM '94

PORTER FOR CONGRESS
P.O. BOX 380
MINOT, NORTH DAKOTA 58702

October 24, 1994

Oct 28 9 41 AM '94
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Mary L. Taksar, Attorney
Central Enforcement Docket
Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 4068

Dear Ms. Taksar

Your correspondence of October 4, 1994 indicated an initial response deadline of 15 days, which would have placed the deadline at October 19, 1994.

On October 12, 1994 I requested a twenty day extension in the response time, which would placed the extended deadline at November 8, 1994. Your correspondence of October 17, 1994 granted the twenty day extension. However, your letter indicated an extended deadline of October 27, 1994 rather than November 8, 1994. I presume that this was a clerical oversight and that the extended deadline is November 8, 1994.

Mr. Gaukler's compliant regarding the "loan arrangements" is without merit. Gary Porter has had a long-standing banking relationship with the First Western Bank wherein Mr. Porter has had an established line of credit based on his personal financial statements.

The loans in question, run directly from the bank to Mr. Porter. The Porter for Congress committee is not obligated to the bank either directly or indirectly.

CFR 100.7 (b) (11) states that a loan from a bank "is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is be made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: Bears the usual ...; is made on a basis which assures repayment; is evidenced ...; and is subject to a due date ..."

CFR 100.7 (b) (11) (i) also provides that a loan will "be considered made on a basis which assures repayment if" the loan is secured either by a "perfected security interest in

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collateral" or is secured by written agreement pledging future receipts. This provision does not indicate that the foregoing methods are the exclusive means of assuring repayment. I am sure that the lender, in looking after its self interests, has made the loan on a basis that it feels assures repayment. Mr Porters signature is vastly superior to any pledge of future contributions which is speculative and dependent on future events.

This correspondence is not intended to be the only response to the compliant. Additional information may be submitted over the signature of Marie Effertz, Campaign Manager or the signature of designated counsel.

Thank you for your consideration.

Very truly yours,

Jules Feldmann, Treasurer
Porter for Congress

cc: Gary Porter
Marie Effertz

25043632087

LAW OFFICES

HOLLAND & KNIGHT

WASHINGTON, D.C.
FORT LAUDERDALE
JACKSONVILLE
LAKELAND
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

2100 PENNSYLVANIA AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20037-3202
TELEPHONE (202) 955-3000
FAX (202) 955-5564

SPECIAL COUNSEL
SHAW, LICITRA, PARENTE, ESERNIO & SCHWARTZ, P.C.
GARDEN CITY, NY
NEW YORK, NY

RECEIVED FEDERAL ELECTION COMMISSION MAIL ROOM
Nov 4 4 17 PM '94

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
Nov 7 3 37 PM '94

November 4, 1994

Mary L. Taskar, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: M.U.R. #4068, Porter for Congress Committee

Dear Ms. Taskar:

I have today been retained in the above captioned matter to represent the Porter for Congress Committee before the Federal Election Commission relative to a complaint filed by the Chairman of the North Dakota Democratic-NPL Party on September 22, 1994. I am informed by my client that upon receipt of the complaint from your office, they requested and subsequently received an extension of the time for filing a response in this matter. I am informed that an extension was granted until November 8, 1994.

Because of the urgency of the pending general election, the Porter for Congress Committee was only recently able to begin the process of collecting the documentation which will substantiate their position that the loan to Mr. Gary Porter, which is at issue in the complaint, was executed in full compliance with the Federal Election Campaign Act, as amended, and the Regulations issued by the Commission. In as much as this documentation cannot be forward to me before the 9th of November and I will require a brief period of time to review these materials and prepare a formal response for the Committee, I must reluctantly ask that you extend the period of time in which a response will be filed until November 16, 1994.

I fully understand the Commission's reluctance to grant additional extensions in enforcement actions. However, my efforts on behalf of the Committee were only initiated today, and, a further limited extension in this matter will not adversely impact the outcome of the November 8th general election.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 7 9 34 AM '94

Thank you, in advance, for your understanding of these circumstances. As soon as it is received from the Committee, I will forward to you an executed "Designation of Counsel" form. Please be advised that because the Committee's Treasurer, the Respondent in this matter, is currently out of the country, the form will have to be signed by another Committee official in the absence of Mr. Jules Feldman.

Sincerely

HOLLAND & KNIGHT

William B. Canfield III

WAS-70255

95043632039

LAW OFFICES

HOLLAND & KNIGHT

WASHINGTON, D.C.
FORT LAUDERDALE
JACKSONVILLE
LAKELAND
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

2100 PENNSYLVANIA AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20037-3202
TELEPHONE (202) 955-3000
FAX (202) 955-5564

SPECIAL COUNSEL
SHAW, LICITRA, PARENTE, ESERNIO & SCHWARTZ, P.C.
GARDEN CITY, NY
NEW YORK, NY

November 7, 1994

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
NOV 7 2 35 PM '94

Mary L. Taksar, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: M.U.R. # 4068, Porter for Congress Committee

Dear Ms. Taksar:

As I indicated in my letter to you of November 4, 1994, I have been retained to represent the Porter Committee in the above captioned enforcement action.

Enclosed you will find an executed "Designation of Counsel" form for this matter. As I indicated previously, the Committee's Treasurer, Mr. Jules Feldman, is presently out of the country and will not return for some period of time. In his absence, the "Designation of Counsel" form has been executed by the Committee's senior official, Ms. Maria Effertz.

Thank you for your assistance with this designation. I now await the Commission's response to my extension request of November 4, 1994. In that regard, I spoke with officials of the First Western Bank and Trust Co. in Minot, North Dakota this morning. They are now forwarding the loan documents which will provide the foundation for our assertion that the loan which is at issue in this MUR meets all of the Commission's requirements for bank loans to federal candidates. Those materials should be in my possession by the latter part of this week.

Thank you again for your assistance in this matter.

Sincerely,

HOLLAND & KNIGHT

William B. Canfield III

Enclosure

WAS-70408

2504363201

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL

Nov 7 2 35 PM '94

MUR 4068

NAME OF COUNSEL: William B. Canfield III

ADDRESS: HOLLAND & KNIGHT
Suite 400, 2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202

TELEPHONE: (202) 955-3000/862-5960

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.

November 5, 1994
Date

Signature

RESPONDENT'S NAME: [illegible] - Campaign Manager

ADDRESS: c/o Porter for Congress
1 North Main Street
Minot, N.D. 58702

TELEPHONE:

BUSINESS (701) 838-1994

2504363209 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 14, 1994

William B. Canfield, III
Holland & Knight
2100 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20037-3202

RE: MUR 4068
Jules Feldmann, Treasurer
Porter for Congress Committee

Dear Mr. Canfield:

This is in response to your letter dated November 7, 1994, requesting an extension until November 16, 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 November 16, 1994.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

25043632093

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

NOV 16 2 40 PM '94

M.U.R. #4068

Porter for Congress Committee

William B. Canfield
Holland & Knight
November 15, 1994

7 5 0 4 3 6 3 2 0 0 9 4

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Exhibit 3	"House Incumbents Take Out Late Bank Loans ..." Roll Call, November 7, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 16 2 40 PM '94

LAW OFFICES

HOLLAND & KNIGHT

WASHINGTON, D.C.
FORT LAUDERDALE
JACKSONVILLE
LAKELAND
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

2100 PENNSYLVANIA AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20037-3202
TELEPHONE (202) 955-3000
FAX (202) 955-5564

SPECIAL COUNSEL
SHAW, LICITRA, PARENTE, ESERNIO & SCHWARTZ, P.C.
GARDEN CITY, NY
NEW YORK, NY

November 15, 1994

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

Re: M.U.R. #4068, Porter For Congress Committee

Dear Mr. Noble:

This letter will serve as the formal response of the Porter for Congress Committee ("the Committee") to the complaint filed on September 26, 1994 by the Chairman of the North Dakota Democrat-NPL State Party. For the reasons outlined below, the Porter for Congress Committee, through its Treasurer, Mr. Jules Feldmann, asks (1) that the Commission conclude that the Committee did not violate any provision of the Federal Election Campaign Act of 1971, amended ("the Act") nor any provision of the Regulations adopted by the Federal Election Commission to implement the Act, (2) that the Commission take no further action against the Porter for Congress Committee and (3) that the Commission close this "Matter Under Review."

The subject of the complaint filed by the North Dakota Democrat-NPL State Party is a personal loan made by the First Western Bank & Trust Company of Minot, North Dakota ("the Bank") to Mr. Gary Porter, a candidate for election to the United States Congress in the November 8, 1994 general election. The complaint alleges that this loan was an unsecured, $100,000 loan to the Porter for Congress Committee made on terms "unavailable to everyday North Dakotans" and that the loan represented a "type of preferential treatment" which was contrary to law and to the Regulations of the Commission. In fact, it is the position of the Committee that all of these assertions are untrue.

Mr. Porter has been, for many years, a customer of the First Western Bank & Trust Company of Minot, North Dakota (see Exhibit 1, letter of Richard A. Campbell, dated October 14, 1994). In 1989,

the bank elected Mr. Porter to its Board of Directors. As a Director, Mr. Porter was eligible to borrow money from the bank under the stringent lending conditions set forth in "Regulation O" of the Federal Reserve Board (see Exhibit 1). As you may know, "Regulation O" requires that all banking transactions conducted with bank officers and directors be undertaken on exactly the same terms and conditions as lending transactions undertaken by the bank with its regular customers. Thus, by operation of federal law and agency regulation, Mr. Porter's personal loan transactions, including the loan of August 1, 1994 with the First Western Bank & Trust Company, were undertaken utilizing the same terms and conditions as were applicable to the Bank's other regular customers (see Exhibit 2, letter of Richard A. Campbell, dated November, 14, 1994).

As a director of the Bank, Mr. Porter has, since 1990, utilized the loan proceeds of a personal line of credit established by the Bank. Each year, the Bank must review a personal financial statement submitted by Mr. Porter to justify the continuance of the line of credit (see Exhibit 1). Thereafter, the Board of Directors approves a line of credit based upon that financial statement and a review of Mr. Porter's "defined repayment sources" (see Exhibit 2). In the case of Mr. Porter's August 1, 1994 line of credit, the repayment sources relied upon by the Bank included assets totalling at least $1.5 million, debt of less than $50,000 and an established history of timely loan repayments to the Bank (see Exhibit 2).

In addition, the loan activities of the Bank are subject to a yearly examination by bank examiners from the State of North Dakota and the Federal Reserve Board. These annual examinations review all of the bank's loan transactions, including the lines of credit established by the Bank's Directors. These examinations, including the most recent review which was conducted two months ago, have not questioned the Bank's loan portfolio or loan practices with respect to Mr. Porter as a borrower (see Exhibit 1).

Bank loans to federal candidates are specifically addressed by the Act at 2 U.S.C. 431(8)(B)(vii). That provision exempts from the definition of the term "contribution" any loan of money by a State bank or a federally chartered depository institution made to a candidate "in the ordinary course of business", provided that such a loan meets several enumerated conditions. Those conditions, which are further explicated in the Regulations of the Commission, at 11 C.F.R. 100.7(b)(11), require that any such loan (a) bear the bank's usual and customary interest rate for the category of loan involved, (b) be evidenced by a written instrument, (c) be subject to a due date or amortization schedule, and (d) be made on a basis which insures repayment of the loan.

As you well know, the existence of bank loans to federal candidates is neither a new nor unrecognized phenomenon in contemporary electoral politics. In fact, the Commission's recent experience during the 1993-94 federal election cycle, suggests just how common a practice a candidate's utilization of such loans has become (see Exhibit 3, "House Incumbents Take Out Late Bank Loans; Gejdenson Uses Office Furniture as Collateral", Roll Call, November 7, 1994, page 23). Provided that such loans meet the tests established in the Act and Regulations and are publicly disclosed on a committee's FEC Schedule C, such loans are not violative, ipso facto, of the statute.

With respect to the line of credit which is at issue in this M.U.R., you will note from the enclosed letter submitted by the Bank (Exhibit 2) that the personal line of credit made available to Mr. Porter met each and every one of the four enumerated conditions established in the Act and Regulations. As you are aware, the existence of this loan to Mr. Porter was publicly disclosed by the Porter for Congress Committee on its FEC Schedule "C" ("Loans") in May, 1994.

The proceeds of the line of credit were used by Mr. Porter to further some of the election activities of the Porter for Congress Committee. The campaign-related use by a candidate of the proceeds of a bank loan obtained in a manner that is consistent with 11 C.F.R. 100.7(b)(11) is specifically addressed by the Regulations at 11 C.F.R. 110.10(a) and 110.10(b)(1)(i). In interpreting the Act and the Regulations on such a use by a candidate, the Commission has held that candidates may use their personal funds, in unlimited amounts, as personal contributions to their own campaigns (see specifically Advisory Opinions 1991-9, 1990-9, 1985-33 and 1984-60), provided that such personal funds are publicly disclosed on FEC Schedule C. In defining the term "personal funds" of a candidate, the Commission has held that such funds include "assets which the candidate has a legal right of access to or control over, and which he...has legal title to or an equitable interest in, at the time of the candidacy." The proceeds of the personal line of credit made available to Mr. Porter by the Bank in the normal course of its commercial business and consistent with federal banking regulations clearly meet this definition.

In making a line of credit available to Mr. Porter, the Bank exercised its best business judgement, employed due diligence, and observed all relevant federal and state banking regulations. In making a line of credit available to Mr. Porter in this way, the Bank also observed all relevant provisions of the Federal Election Campaign Act and the Regulations promulgated by the Commission regarding bank loans to candidates. Mr. Porter viewed these loan proceeds as his personal funds, consistent with the Commission's Regulations and expended these funds for campaign purposes. In

treating the loan proceeds as personal funds, Mr. Porter observed the limitations found at 11 C.F.R. 110.10(b)(1)(i) and publicly disclosed their utilization by the campaign on FEC Schedule C which was filed by the Committee in May, 1994.

For these reasons, the Committee asks that the Commission (1) conclude that the Committee did not violate the Act, (2) take no further action against the Committee and (3) close this "Matter Under Review." In accordance with 2 U.S.C. 437g(a)(4)(B) and 437g (a)(12)(A), the Committee asks that this matter remain confidential.

Sincerely,

HOLLAND & KNIGHT

William B. Canfield III

WAS-71378

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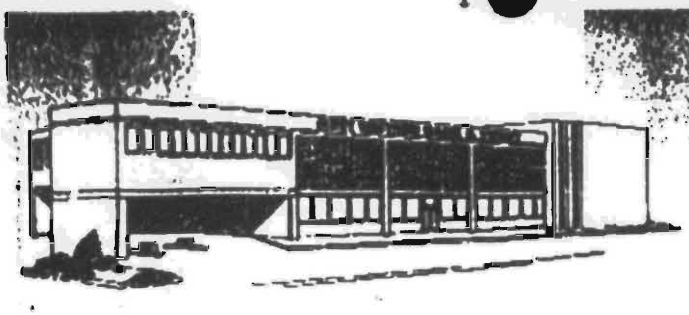


FIRST WESTERN BANK & TRUST
P.O. BOX 1090 • MINOT, NORTH DAKOTA • 58702
BANK TELEPHONE (701)852-3711
TRUST 857-7100

October 14, 1994

Mary L. Taksar, Attorney
Central Enforcement Docket
Federal Election Commission
999 East Street NW
Washington, DC 20463

RE: MUR 4068

Dear Ms. Taksar:

In response to your letter of October 4, 1994, First Western Bank & Trust does not believe it has violated the Federal Election Campaign Act of 1971. According to the complaint lodged by George Gaukler, Chairman of the North Dakota Democratic-NPL Party, Gary Porter and the Porter for Congress Committee borrowed funds from our bank. That statement is not accurate. The Porter for Congress Committee has never borrowed funds from our bank.

Our banking experience with Mr. Porter goes back many years. Over the years, he has had numerous loans with our bank, all paid in a timely manner. In 1989, he was elected a director of our bank and became subject to the Federal Reserve Board's Regulation O requiring that all banking transactions be on the same terms and conditions as those available to "regular" customers. Each year, beginning in 1990, Mr. Porter has been required to submit a personal financial statement. A line of credit is then established and approved by our Board of Directors based on the strength of the personal financial statement and defined repayment sources. Mr. Porter has utilized the approved credit numerous times, with a high of in 1992, and has always repaid his loans promptly. State and Federal bank regulators have examined our bank at least annually (most recently in September 1994) and found no violations of Regulation O. Mr. Gaukler's allegation that "Mr. Porter borrows on terms not available to everyday North Dakotans" simply is not true. He is subject to the more stringent rules of Regulation O.

Mr. Porter presently owes our bank The strength of his personal financial statement and repayment sources not related to his political campaign support our loan. As with his previous loans, we anticipate repayment when due.

95043632100

First Western Bank & Trust makes loans to individuals, businesses, farm operations etc. based on prudent credit underwriting, not political affiliations. We intend to continue to operate in this manner.

If you are in need of additional information or have any further questions, please feel free to contact me.

Sincerely,

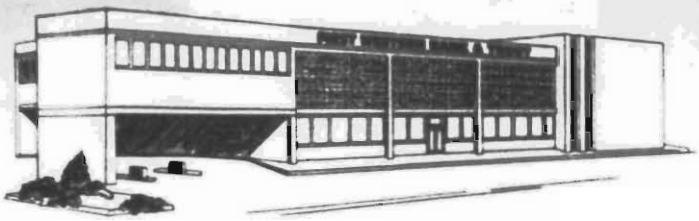
FIRST WESTERN BANK & TRUST

Richard A. Campbell

Richard A. Campbell
Senior Vice President

RC/bld

95043632101



FIRST WESTERN BANK & TRUST

P.O. BOX 1090 • MINOT, NORTH DAKOTA • 58702

BANK TELEPHONE (701)852-3711
TRUST 857-7150

2

NOVEMBER
~~October~~ 14, 1994

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

RE: MUR #4068

Dear Mr. Noble:

In response to the Federal Election Commission's inquiry regarding a loan Gary Porter obtained from First Western Bank & Trust, we are providing the following information.

Mr. Porter has been a customer of our bank for many years. Since 1990, we have annually established a line of credit for him to use for business, personal and investment purposes. Loans have always been repaid promptly. In January, 1994 our Board of Directors approved a $350,000 unsecured line of credit for Mr. Porter. This line of credit was similar to the previous year's approved line and was established prior to Mr. Porter's nomination as a candidate for elected office.

On August 1, 1994, Mr. Porter obtained a unsecured loan at 8.5% due on July 1, 1995. The interest rate of 8.5% was competitive with loans to other borrowers of similar financial strength. A written instrument, the note, was obtained. The loan has a specified due date of July 1, 1995. Based on past experience with Mr. Porter, we anticipate it will be paid on or before that date. Mr. Porter has a variety of repayment sources not related to campaign donations. A personal financial statement he prepared as of December 31, 1993 shows securities, real estate and business assets well in excess of with debt of less than

First Western Bank & Trust did not make a political contribution when we funded the loan to Mr. Porter. We make loans to individuals, businesses, farm operations, etc. based on prudent credit underwriting and expect to be repaid. We intend to continue operations in this manner.

If you are in need of additional information or have further questions, please feel free to contact me.

Sincerely,

FIRST WESTERN BANK & TRUST

Richard A. Campbell

Richard A. Campbell
Senior Vice President

RAC/bkf

2504363210 2

House Incumbents Take Out Late Bank Loans; Gejdenson Uses Office Furniture as Collateral

By Glenn R. Simpson

A handful of vulnerable House incumbents — all Democrats — have taken out bank loans or made personal loans to their campaigns in the final days of the campaign.

Freshman Rep. Don Johnson (D-Ga), who is rated by Roll Call as the most vulnerable incumbent in the nation, made a $50,000 loan to his campaign on Oct. 25. Johnson is in a fight to the finish with wealthy dentist Charles Norwood (R), who was outspending him by about $45,000 at the Oct. 19 mark. Norwood loaned his campaign $45,000 earlier this year.

Another endangered freshman, millionaire Rep. Herb Klein (D-NJ), obtained a $100,000 loan from the Valley National Bank of Wayne, N.J., on Oct. 31. Klein is up against attorney William Martini, a Passaic County freeholder who had nearly matched him in fundraising and has made this race a dead heat.

Rep. Sam Gejdenson (D-Conn), who like his mentor Speaker Tom Foley (D-Wash) is on the ropes, obtained a $70,000 line of credit from Eastern Savings & Loan of Norwich, Conn., on Oct. 12, pledging as collateral his campaign's office furniture and equipment. But he did not draw on the line until Oct. 21, when he took the entire amount.

Gejdenson, who ranks 8th on Roll Call's list of vulnerable incumbents, won by only 3,800 votes in 1992. A major late loan helped put him over the top that time against challenger Edward Munster. He faces a rematch this year with Munster, a former state Senator who is better funded this time. (Gejdenson nonetheless is killing him financially: He raised about $1.2 million to Munster's $358,000 as of Oct. 19.)

Overall House loans are up significantly in this cycle, to $18.34 million from $14.87 million at the same point in 1992.

House Democratic incumbents as a class had made $1.2 million in loans to their campaigns as of Oct. 19, the Federal Election Commission reported Friday. At the same point in the 1992 cycle, Democratic incumbents had made $960,000 in loans to their campaigns.

Republican incumbents had made only $431,000 in loans to their campaigns by Oct. 19 of this year. At the same point in the 1992 cycle, Republican incumbents had made $590,000 in loans to their campaigns.

Overall loans by House candidates are up significantly in this cycle, FEC statistics show. As of Oct. 19, candidates had loaned their campaigns $18.34 million, up from $14.87 million at the same point in 1992.

The new figures represent a nearly 100 percent increase from 1986, when candidates had loaned their campaigns $9.52 million by the pre-general filing. Challengers account for much of the increase, raising their loans from $7.02 million by the 1992 pre-general to $9.43 million by Oct. 19 of this year.

Loans and direct contributions by Senate candidates to their campaigns have skyrocketed in this election cycle, and the new FEC figures show the startling dimensions of the increase. By the pre-general filing of 1992, Senate candidate loans and contributions totaled just $7.25 million.

By the pre-general this year, candidate contributions and loans had ballooned to $41.96 million — a 208 percent increase. Even excluding the spending of multimillionaire Rep. Michael Huffington (R) in the California Senate race, such spending has doubled.

Looking at it another way, candidate contributions were just 1.8 percent of Senate candidates' total receipts by the pre-general in 1992, while candidate loans were just 2.77 percent of total receipts.

This year, by the pre-general, candidate loans represented 10 percent of total receipts, while candidate contributions were 7.82 percent of total receipts.

Other House incumbents who have partially self-funded their campaigns this year include multimillionaire Rep. Norm Sisisky (D-Va), who used $240,000 and faces a stiffer challenge than in previous years but is likely to be re-elected; Rep. Jay Kim (R-Calif), who used $150,000 in personal funds to get through a tough primary campaign early this year following revelations of potential campaign fraud in his 1992 race; and freshman Rep. Terry Everett (R-Ala), who has loaned his campaign $58,800. Everett used hundreds of thousands in personal funds to get elected in 1992. He is considered safe this year.

Another vulnerable freshman in Georgia, Rep. Nathan Deal (D), has taken out $56,800 in bank loans. Rep. Ken Calvert (R-Calif), who is in a tough re-election bid after being caught by police in a car with a prostitute, took out $49,500 in outside loans earlier this year.

Corrections

• We incorrectly reported in Thursday's Election Preview that Rep. Greg Laughlin (D-Texas) had not been endorsed by the National Rifle Association. In fact, Laughlin has received the group's backing, contrary to the claims of his opponent.

• Rep. Jay Inslee's (D-Wash) 1993 vote on the Clinton budget was reported incorrectly. Inslee opposed final passage of the budget.

• Rep. William Clinger (R-Pa) does not support the United We Stand America drive to delay a lame-duck session vote on GATT, as

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) Enforcement Priority

GENERAL COUNSEL'S MONTHLY REPORT

I. INTRODUCTION

This report is the General Counsel's Monthly Report to recommend that the Commission no longer pursue the identified lower priority and stale cases under the Enforcement Priority System.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

A critical component of the Priority System is identifying those pending cases that do not warrant the further expenditure of resources. Each incoming matter is evaluated using Commission-approved criteria and cases that, based on their rating, do not warrant pursuit relative to other pending cases are placed in this category. By closing such cases, the Commission is able to use its limited resources to focus on more important cases.

Having evaluated incoming matters, this Office has identified 22 cases which do not warrant further pursuit relative to the other pending cases.[1] A short description of

1. These matters are: PM 305; MUR 3976; MUR 4023; MUR 4026; MUR 4031; MUR 4032; MUR 4036; MUR 4050; MUR 4051; MUR 4052; MUR 4055; MUR 4056; MUR 4058; MUR 4063; MUR 4068; MUR 4072; MUR 4073; MUR 4075; MUR 4078; MUR 4081; MUR 4082; and MUR 4083.

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each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this report. See Attachments 1-22. For the Commission's convenience, the responses to the complaints for the externally-generated matters and the referral for the internally-generated matter are available in the Commission Secretary's office.

B. Stale Cases

Investigations are severely impeded and require relatively more resources when the activity and evidence are old. Consequently, the Office of General Counsel recommends that the Commission focus its efforts on cases involving more recent activity. Such efforts will also generate more impact on the current electoral process and are a more efficient allocation of our limited resources. To this end, this Office has identified 9 cases that have remained inactive and assigned to the Central Enforcement Docket for one year and which it believes do not warrant further investment of significant Commission resources.[2] Since the recommendation not to pursue the identified cases is based on staleness, this Office has not prepared separate narratives for these cases. However, for the Commission's convenience, the responses to the complaints for the externally-generated matters and the referrals for the internally-generated matters are also available in the

2. These matters are: MUR 3828; MUR 3829; RAD 93L-73; RAD 93L-75; RAD 93L-78; RAD 93L-83; RAD 93L-84; RAD 93L-88; and RAD 93L-91.

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Commission Secretary's office.

This Office recommends that the Commission exercise its prosecutorial discretion and no longer pursue the cases listed below effective February 21, 1995. By closing the cases effective February 21, 1995, CED and the Legal Review Team will respectively have the additional time necessary for preparing the closing letters and the case files for the public record for these cases.

III. RECOMMENDATIONS

A. Decline to open a MUR and close the file effective February 21, 1995 in the following matters:

1) RAD 93L-73
2) RAD 93L-75
3) RAD 93L-78
4) RAD 93L-83
5) RAD 93L-84
6) RAD 93L-88
7) RAD 93L-91

B. Decline to open a MUR, close the file effective February 21, 1995 and approve the appropriate letter in PM 305.

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C. Take no action, close the file effective February 21, 1995, and approve the appropriate letter in the following matters:

1) MUR 3828
2) MUR 3829
3) MUR 3976
4) MUR 4023
5) MUR 4026
6) MUR 4031
7) MUR 4032
8) MUR 4036
9) MUR 4050
10) MUR 4051
11) MUR 4052
12) MUR 4055
13) MUR 4056
14) MUR 4058
15) MUR 4063
16) MUR 4068
17) MUR 4072
18) MUR 4073
19) MUR 4075
20) MUR 4078
21) MUR 4081
22) MUR 4082
23) MUR 4083

2/13/95
Date

Lawrence M. Noble
General Counsel

95043632107

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Enforcement Priority	)	#X95-14

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 28, 1995, do hereby certify that the Commission took the following actions with respect to Agenda Document #X95-14:

1. Decided by votes of 6-0 to

   A. Decline to open a MUR and close the file effective February 28, 1995 in the following matters:

      1) RAD 93L-75
      2) RAD 93L-78
      3) RAD 93L-84

   B. Take no action, close the file effective February 28, 1995, and approve appropriate letters in the following matters:

      1) MUR 3828
      2) MUR 4026
      3) MUR 4031
      4) MUR 4032
      5) MUR 4056
      6) MUR 4058

(continued)

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7) MUR 4068
8) MUR 4083

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively on the decision with respect to each of these matters.

2. Decided by a vote of 5-1 to decline to open a MUR and close the file effective February 28, 1995 with respect to RAD #93L-91.

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

Attest:

3-2-95
Date

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

2504363210 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

William B. Canfield, III
Holland & Knight
2100 Pennsylvania Avenue, N.W.
Suite 4000
Washington, D.C. 20037-3202

RE: MUR 4068
Jules Feldmann, Treasurer
Porter for Congress Committee

Dear Mr. Canfield:

On October 4, 1994, the Federal Election Commission notified your clients, Jules Feldmann, as treasurer, and the Porter for Congress Committee, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar (HDS)

Mary L. Taksar
Attorney

Attachment
Narrative

25043632110

MUR 4068
PORTER FOR CONGRESS

The North Dakota Dem-NPL State Party filed a complaint alleging that Gary Porter and the Porter for Congress Committee sought and accepted an unsecured $100,000 loan from the First Western Bank and Trust Company of Minot, North Dakota in violation of Commission regulations. The complaint notes that Mr. Porter is a director of the bank.

In response to the complaint, the Porter Committee states that because Mr. Porter is a director of the bank he is subject to "Regulation O" which requires that all banking transactions be on the same terms and conditions as those available to the bank's regular customers. According to the Committee, since 1990, Mr. Porter has utilized loan proceeds as a personal line of credit established by the bank. The Committee states that as indicated in the November 14, 1994, letter to the Commission from the First Western Bank & Trust, the personal line of credit to Mr. Porter met each of the four requirements enumerated in the Act and regulations for a loan not to be considered a contribution.

In its response, the First Western Bank & Trust states that the Board of Directors approved the line of credit based on the strength of Mr. Porter's personal financial statement. According to the bank, Mr. Porter had utilized the approved credit numerous times, with a high of $300,000 in 1992, and had always paid his loans promptly. The bank states that because Mr. Porter is a director of the bank, all of his transactions with the bank are subject to Regulation O, which requires that his transactions be on the same terms and conditions as those available to regular customers.

This matter is less significant relative to other matters pending before the Commission and there is no indication of any intent to violate FECA.

95043632111

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

Richard A. Campbell, Senior Vice President
First Western Bank of Minot North Dakota
900 South Broadway
Minot, ND 58701

RE: MUR 4068
First Western Bank of Minot North Dakota

Dear Mr. Campbell:

On October 4, 1994, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the First Western Bank of Minot North Dakota. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar (AES)

Mary L. Taksar
Attorney

Attachment
Narrative

2504363211 2

MUR 4068
PORTER FOR CONGRESS

The North Dakota Dem-NPL State Party filed a complaint alleging that Gary Porter and the Porter for Congress Committee sought and accepted an unsecured $100,000 loan from the First Western Bank and Trust Company of Minot, North Dakota in violation of Commission regulations. The complaint notes that Mr. Porter is a director of the bank.

In response to the complaint, the Porter Committee states that because Mr. Porter is a director of the bank he is subject to "Regulation O" which requires that all banking transactions be on the same terms and conditions as those available to the bank's regular customers. According to the Committee, since 1990, Mr. Porter has utilized loan proceeds as a personal line of credit established by the bank. The Committee states that as indicated in the November 14, 1994, letter to the Commission from the First Western Bank & Trust, the personal line of credit to Mr. Porter met each of the four requirements enumerated in the Act and regulations for a loan not to be considered a contribution.

In its response, the First Western Bank & Trust states that the Board of Directors approved the line of credit based on the strength of Mr. Porter's personal financial statement. According to the bank, Mr. Porter had utilized the approved credit numerous times, with a high of $300,000 in 1992, and had always paid his loans promptly. The bank states that because Mr. Porter is a director of the bank, all of his transactions with the bank are subject to Regulation O, which requires that his transactions be on the same terms and conditions as those available to regular customers.

This matter is less significant relative to other matters pending before the Commission and there is no indication of any intent to violate FECA.

95043632113

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

Gary Porter
2000 Ida Mae Court
Minot, ND 58701

RE: MUR 4068

Dear Mr. Porter:

On October 4, 1994, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar (AES)

Mary L. Taksar
Attorney

Attachment
Narrative

2543632114

MUR 4068
PORTER FOR CONGRESS

The North Dakota Dem-NPL State Party filed a complaint alleging that Gary Porter and the Porter for Congress Committee sought and accepted an unsecured $100,000 loan from the First Western Bank and Trust Company of Minot, North Dakota in violation of Commission regulations. The complaint notes that Mr. Porter is a director of the bank.

In response to the complaint, the Porter Committee states that because Mr. Porter is a director of the bank he is subject to "Regulation O" which requires that all banking transactions be on the same terms and conditions as those available to the bank's regular customers. According to the Committee, since 1990, Mr. Porter has utilized loan proceeds as a personal line of credit established by the bank. The Committee states that as indicated in the November 14, 1994, letter to the Commission from the First Western Bank & Trust, the personal line of credit to Mr. Porter met each of the four requirements enumerated in the Act and regulations for a loan not to be considered a contribution.

In its response, the First Western Bank & Trust states that the Board of Directors approved the line of credit based on the strength of Mr. Porter's personal financial statement. According to the bank, Mr. Porter had utilized the approved credit numerous times, with a high of $300,000 in 1992, and had always paid his loans promptly. The bank states that because Mr. Porter is a director of the bank, all of his transactions with the bank are subject to Regulation O, which requires that his transactions be on the same terms and conditions as those available to regular customers.

This matter is less significant relative to other matters pending before the Commission and there is no indication of any intent to violate FECA.

25043632115

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 6, 1995

George Gaukler, Chairman
North Dakota Dem-NPL State Party
1902 East Divide Avenue
Bismark, ND 58501

RE: MUR 4068

Dear Mr. Gaukler:

On September 28, 1994, the Federal Election Commission received your complaint filed on behalf of the North Dakota Dem-NPL State Party alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on February 28, 1995. 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).

Sincerely,

Mary L. Taksar (HBS)

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 4068
PORTER FOR CONGRESS

The North Dakota Dem-NPL State Party filed a complaint alleging that Gary Porter and the Porter for Congress Committee sought and accepted an unsecured $100,000 loan from the First Western Bank and Trust Company of Minot, North Dakota in violation of Commission regulations. The complaint notes that Mr. Porter is a director of the bank.

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March 13, 1995

WILLIAM B. CANFIELD, III
202-862-5960

Honorable Danny Lee McDonald
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4068 - Porter for Congress Committee

Dear Mr. Chairman:

The Porter for Congress Committee is in receipt of the Commission's letter of March 6, 1995 informing the Committee that after an initial staff review of the complaint filed by the North Dakota Dem-NPL State Party, which was designated as Matter Under Review 4068, the Commission had found that there was no indication of any intent by the Porter Committee to violate the Federal Election Campaign Act ("the Act"). Your letter further explained that, as a result, the Commission had decided to exercise its administrative discretion, take no action against the Porter for Congress Committee and close its file in this matter.

The Committee appreciates the effort of the Commission to resolve this complaint in a manner fully consistent with the Committee's public position that the complaint was without legal or factual merit. The Committee understands that the Commission found no intent to violate the Act and thus no actual violation of the Act, as alleged by the complainant. In reaching the conclusion that there was no intent to violate the Act, we understand that the Commission staff found insufficient justification to move forward to plenary review and consideration by the full Commission.

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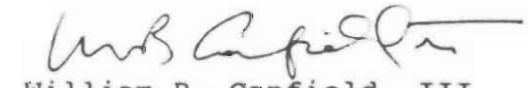
COMMISSION
SECRETARIAT
MAR 20 9 05 AM '95

Thank you for your timely consideration of the Committee's formal response to the complaint and for your determination to close your file in this matter.

With best wishes,

Sincerely,

HOLLAND & KNIGHT



William B. Canfield, III

cc: Mr. Gary Porter

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 4068

DATE FILMED 3-29-95 CAMERA NO. 2

CAMERAMAN S.E.G

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