FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4112

DATE FILMED 8-29-85 CAMERA NO. 1

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 31 4 40 PM '94

October 31, 1994

MUR 4112

Lawrence Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Mr. Noble:

Introduction

The Democratic Senatorial Campaign Committee ("DSCC") today files this Complaint alleging a "personal use" of campaign funds by Senator James Jeffords in violation of the "personal use" prohibition of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431, 439a. Mr. Jeffords' reports to the Federal Election Commission show that he has used substantial sums of contributors' money to buy clothing for himself and possibly others.

Moreover, Mr. Jeffords and his campaign continue to file reports disclosing credit card charges but failing to show, in the itemized detail required by law, how these charges were actually spent. For this reason, Jeffords denies the Commission and the voting public full and meaningful disclosure of the candidate's management and disclosure of his campaign spending. Already once, this chronically incomplete reporting has served to conceal from public view Mr. Jeffords' use of campaign funds for personal purposes.

Mr. Jeffords' Personal Clothing Needs

The Senator's mid-year report in 1993 showed certain charges on a Visa card of Chittenden Bank. One such charge on 2/16/93 showed a disbursement of nearly $3,000 -- precisely, $2,755.30 -- for a purpose described as "travel/clothing expenses." This reporting was incomplete, failing to provide the itemization of any charges exceeding $200 as clearly required by law. Still, it was still not altogether clear how much and what type of "clothing" Mr. Jeffords had bought with contributor monies.

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Later upon demand of the Commission, See Exhibit A, the Jeffords Committee broke down these charges and showed the precise amounts paid for clothing and also where those sums were paid. See Exhibit B. The breakdown belatedly filed by the Jeffords campaign showed payments for clothing on June 16, 1993 to 1) Jos. A. Bank Clothiers in Arlington, Virginia, in the amount of $1,568.06; and 2) Nordstrom, also in Arlington, Virginia, in the amount of $323.90. The combined total of monies paid on that day for clothing to both Jos. A. Bank and to Nordstrom comes to $1,891.96.

Section 439 of the Federal Election Campaign Act prohibits the use of campaign funds for "personal" purposes.* At one time, the statute "grandfathered" those Members who held office on January 8, 1980. Congress, however, enacted a repeal of this "grandfather" clause in the Ethics Reform Act of 1989, and this repeal became effective for all Members sworn into the 103rd Congress. Mr. Jeffords and all other candidates must observe the requirement that campaign funds be devoted to campaign purposes -- not diverted to "personal" use.

(1) The law prohibits Mr. Jeffords' use of campaign funds to purchase personal clothing.

The purchases of clothing reflected on the Jeffords report violate the personal use prohibition of federal law. The Commission has repeatedly held that campaign funds may not pay expenses which an individual would have incurred irrespective of candidacy. Thus, the Commission has stated that:

> with respect to living expenses . . . . those expenses would exist whether [the Senator] was elected to federal office or not, and accordingly are not 'incidental' to his election to federal office. Payments from excess campaign funds for these

---

* The rules of the United States Senate also prohibit the personal use of campaign funds. Rule 48 of the Senate rules provides that: "No contribution (citation omitted) shall be converted to the personal use of any Member or any former Member."

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> living expenses would therefore be a 'personal use' of such funds prohibited by the Act . . . .

Advisory Opinion 1980-138, Fed. Election Campaign Fin. Guide (CCH) ¶ 5581 (Dec. 22, 1980); See also Advisory Opinion 1981-1, Fed. Election Campaign Fin. Guide (CCH) ¶ 5591 (Feb. 9, 1981) ("expenses which would exist regardless of an individual's election to federal office are not 'incidental' and may not be paid from campaign funds.") The Commission once approved a purchase of clothing with campaign funds, but then only because the Member (who sought to buy a tuxedo) was protected by the "grandfather" clause which no longer exists. AO 1985-22, Fed. Election Campaign Fin. Guide (CCH) ¶ 5822 (Aug. 9, 1985).

Ordinary citizens, candidates or not candidates, need clothing and must pay for it. United States Senators do not have any special requirement for clothing. Nor are they in some fashion authorized by virtue of the position that they hold to use the monies of others to pay for it.

The Jeffords campaign now reveals that the Senator has made use of contributor funds to purchase items other Americans have to pay with their own dollars. Mr. Jeffords' own explanation is simple: "My staff was bugging me to buy some new clothes." "Jeffords donations go to suits," The Burlington Free Press, October 28, 1994, at A-1. The Free Press notes also that this is not the first time that Mr. Jeffords has drawn on campaign funds to finance personal needs. The paper reported last year that he had used contributor monies to buy airline tickets for his family and contact lens for himself.

(2) The Commission has made this prohibition clear in recent proceedings.

The Commission has recently made clear its intention to act aggressively to enforce this "personal use" prohibition. It has promulgated a rulemaking now in its final stages to make absolutely clear to candidates what uses of campaign funds will be considered personal and, thus, prohibited under Section 439a. The prohibited uses include purchases of clothing. Thus, for example, in the version of the rulemaking published August 30,1993, the Commission presented for public comment a new rule to read as follows:

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> (g) Personal use means any use of funds in a campaign account . . . . to fulfill a commitment, obligation or expenses of any person that would exist irrespective of the candidate's campaign or responsibilities as a federal officeholder.
>
> (1) *Personal use* includes . . . .
>
> (iii) the purchase of clothing.

See 58 Fed Reg 45463, 45466 (11 C.F.R. § 113.1(g)(1)(iii)(proposed)).

The Commission has since revised these proposed regulations, streamlining them in certain respects, but the clear inclusion of clothing purchases within the personal use prohibition still stands. See 59 Fed. Reg. 42184, 42185 (August 17, 1994) ("Examples of personal use include the use of funds for . . . clothing"). The reason simply is that the standards under which the Committee is proceeding is one long reflected in its Advisory Opinions: that candidates may not use campaign funds to pay expenses which would exist irrespective of candidacy.

Mr. Jeffords' Reports Display a Continued Disregard for Statutory Disclosure Requirements

The Act and Commission regulations leave no doubt that credit card charges may not be used to mask the precise use made of campaign funds. In the matter of his personal clothing, Mr. Jeffords made the necessary disclosure only after an admonitory letter from the Commission seeking the reporting detail that he had avoided. It now appears from his most recently filed third-quarter report that his campaign continues to file reports of credit card spending without the detailed accounting of individual charges exceeding $200. See Exhibit C. See Federal Election Commission, Campaign Guide for Congressional Candidates and Their Committees, April, 1994 at 29, Chapter 12 at 29.

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Conclusion

Accordingly, Mr. Jeffords' use of campaign funds to pay his clothing expenses clearly violates the Act. The Commission must act to enforce the law with respect to this violation. The Commission must also initiative all necessary enforcement action to ensure that Mr. Jeffords and his campaign provide the full disclosure required by law for all credit card spending.

Respectfully submitted,

Robert F. Bauer
General Counsel for
Democratic Senatorial
Campaign Committee

District of Columbia) ss.

SUBSCRIBED AND SWORN to before me this 31st day of October, 1994.

Donna M. Lenhart
Notary Public
My Commission Expires: 2/28/98

Donna M. Lenhart
Notary Public, District of Columbia
My Commission Expires Feb. 28, 1998

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EXHIBIT A

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VT

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

RQ-2

HAND DELIVERED

James Johnston, Treasurer
Jeffords for Vermont
P.O. Box 246 River Street
Montpelier, VT 05602

SEP 6 1994

Identification Number: C00018362

Reference: Amended Mid-Year Report (1/1/93-6/30/93) dated 1/20/94

Dear Mr. Johnston:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Columns A and B, Line 6(a) of the Summary Page should equal Columns A and B, Line 11(a) of the Detailed Summary Page.

-Expenditures to Visa totalling $7,479.99 have been disclosed. When itemizing payments made to credit card companies you must list the name and address of the original vendor from which you purchased an item or a service. You should also show the date, the amount, and the purpose of the payment if you have paid in excess of $200 this current year to the vendor. (11 CFR §104.9)

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 219-3580.

Sincerely,

Pat Sheppard

Pat Sheppard
Senior Reports Analyst
Reports Analysis Division

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EXHIBIT B

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SCHEDULE B ITEMIZED DISBURSEMENTS Page 21 of 21
Operating Expenditures For line number: 17

Any info. copied from such Reports or Statements may not be sold or used by any person for the purpose of soliciting contrib. or for commercial purpose other than using name & addr. of a political comm. to solicit from the comm

Full Name of Committee: Jeffords for Vermont Committee C00015362

A. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
Jos a Bank Clothiers Arlington, VA. Disburs for: P	clothing	06/16/93	MEMO $1568.06

B. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
Nordstom Arlington, VA. Disburs for: P	clothing	06/16/93	MEMO $223.90

SUBTOTAL of Disbursements This Page .....
TOTAL This Period .. .. $74939..

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EXHIBIT C

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[illegible] 13
[illegible] Page number: 17

[illegible] not be sold or used by [illegible] for commercial purpose. [illegible] solicit from the [illegible].

Full Name of Committee Reporting for Vermont Committee C00015362

A. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
Mendicino for Secretary of State Essex Junction, VT 05452 Disburse for: G	donation	09/30/94	$500.00

B. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
Chittenden Bank Visa P. O. Box 6569 Rutland, VT 05702 Disburse for: P	visa bill	09/12/94	$3000.00

C. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
USAir Crystal Park Four 2345 Crystal Drive Arlington, VA 22227 Disburse for: P	airline tickets	09/12/94	MEMO $277.00

D. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
USAir Crystal Park Four 2345 Crystal Drive Arlington, VA 22227 Disburse for: P	airline tickets	09/12/94	MEMO $548.00

E. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
USAir Crystal Park Four 2345 Crystal Drive Arlington, VA 22227 Disburse for: P	airline tickets	09/12/94	MEMO $394.00

F. Full Name, Address, Zipcode	Purpose of Disbursement	Date	Disburse
USAir Crystal Park Four 2345 Crystal Drive Arlington, VA 22227 Disburse for: P	airline tickets	09/12/94	MEMO $394.00

SUBTOTAL of Disbursements This Page $3500.00
TOTAL This Period ..... $[illegible].37

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 4, 1994

Robert F. Bauer, Esq.
Perkins Coie
607 14th Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 4112

Dear Mr. Bauer:

This letter acknowledges receipt on October 31, 1994, of your complaint filed on behalf of the Democratic Senatorial Campaign Committee 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 4112. 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 (KBS)

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

9504366553 64

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 4, 1994

Michael K. Smith, Treasurer
Jeffords for Vermont
River Street, P.O. Box 246
Montpelier, VT 05602

RE: MUR 4112

Dear Mr. Smith:

The Federal Election Commission received a complaint which indicates that Jeffords for Vermont ("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 4112. 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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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 (128)

Mary L. Taksar, Attorney
Central Enforcement Docket

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

95043665366

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 4, 1994

The Honorable James Merrill Jeffords
P.O. Box 246
Montpelier, VT 05601

RE: MUR 4112

Dear Senator Jeffords:

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 4112. 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.

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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 (423)

Mary L. Taksar, Attorney
Central Enforcement Docket

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

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STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MUR 4112

NAME OF COUNSEL: Edwina Rogers

Nov 18 2 59 PM '94

ADDRESS: National Republican Senatorial Committee
425 Second St. N.E.
Washington, D.C. 20002

TELEPHONE: 202-675-6073

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.

11/14/94
Date

Signature

RESPONDENT'S NAME: James A. Johnston

ADDRESS: P.O. Box 246
Montpelier, VT 05602

HOME PHONE:

BUSINESS PHONE: 802-223-5414

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National Republican Senatorial Committee

SENATOR PHIL GRAMM
CHAIRMAN

WILLIAM D. HARRIS
EXECUTIVE DIRECTOR

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
NOV 30 3 10 PM '94

November 29, 1994

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

Attn: Alva E. Smith (202 219-3400)

Re: MUR 4112

Dear Mr. Noble:

On behalf of Jeffords for Vermont ("Committee") and James A. Johnston, Treasurer, collectively (the "Respondents") the National Republican Senatorial Committee ("NRSC") respectfully requests that no action be taken on the complaint filed in MUR 4112 because the respondents have not violated the Federal Election Campaign Act of 1971, as amended, ("FECA") 2 USC 431 *et seq.*

I. Alleged Personal Use Violation

The Democratic Senatorial Campaign Committee("DSCC") has alleged that respondents violated 2 USC 439a because campaign funds were used during the course of the campaign to purchase certain clothing for then-candidate Senator Jeffords. Section 439a prohibits the conversion to personal use of "amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures..." (emphasis added). The Federal Election Commission ("FEC" or the "Commission") in interpreting this section of its regulations has defined excess campaign funds as follows:

> (e) Excess campaign funds. Excess campaign funds mean amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures.
> 11 CFR 113.1(e).

RONALD REAGAN REPUBLICAN CENTER
425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

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In the Commission's Advisory Opinion 1980-49, the FEC stated that "the Commission has stated in several advisory opinions that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds may be spent." In that opinion, the FEC permitted personal living expenses during the course of a campaign to be defrayed from a candidate's campaign funds. The FEC specifically differentiated between "excess campaign funds" and funds used during the course of a campaign.

As in AO 1980-49, the issue of whether "excess campaign funds" may be used for the purpose described in MUR 4112 is not presented by the facts in this complaint. Specifically, the funds used to purchase the clothing (2 suits, a raincoat, ties) at issue here were not "excess campaign funds" but rather were funds used during the course of the campaign to defray expenditures determined by the principal campaign committee to be necessary for the campaign. During the campaign, the campaign agents determined that it was necessary for the campaign to purchase certain appropriate clothing to be worn by the candidate for campaign appearances in the state of Vermont. Thus, because these funds were not "excess campaign funds", section 439a does not apply to the facts in this complaint. Accordingly, there is no violation of 2 USC 439a.

II. Alleged Disclosure Violation

The DSCC has alleged that respondents violated the FECA by filing reports of credit card spending in the third quarter report without the detailed accounting of individual charges exceeding $200. As evidence, the DSCC submitted a page from respondent Committee's FEC report. (*See* Complainant's Exhibit C). It is clear on the face of that page that the respondents have fully complied with the disclosure requirements of 11 CFR 104.9. Specifically, a disbursement to Visa totaling $3,000 is disclosed on the report. This payment is then fully itemized on that same page with a list of the name and address of each original vendor from which items were purchased. Further, the date, amount, and purpose of each payment is listed for all items in excess of $200. Thus respondents are in full compliance with 11 CFR 104.9.

III. Conclusion

Respondents have fully complied with the FECA. They have not violated the FECA as alleged in the DSCC complaint. Accordingly, we respectfully request that no action be taken against the respondents in this matter.

Sincerely,

Edwina Rogers

Edwina Rogers
General Counsel

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JUL 24 9 39 AM '95

SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

MUR 4112
DATE COMPLAINT FILED: October 31, 1994
DATE OF NOTIFICATION: November 4, 1994
DATE ACTIVATED: February 16, 1995
STAFF MEMBER: Tracey L. Ligon

COMPLAINANT: Democratic Senatorial Campaign Committee

RESPONDENTS: Jeffords for Vermont and
James A. Johnston, as treasurer.

The Honorable James Merrill Jeffords

RELEVANT STATUTES: 2 U.S.C. § 439a
2 U.S.C. § 434(b)

INTERNAL REPORTS CHECKED: 1993 Mid-Year Reports
1993 Year-End Reports
1994 Quarterly Reports
1994 Pre-Primary Reports
1994 Pre and Post General Reports
1994 Year-End Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("the Commission") by the Democratic Senatorial Campaign Committee on October 31, 1994. The complainant alleges that the Honorable James Merrill Jeffords (hereinafter "Senator Jeffords") and his campaign committee, Jeffords for Vermont and James A. Johnston, as treasurer, (hereinafter "the committee") violated 2 U.S.C. § 439a by using campaign funds to purchase clothing and other items for himself

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and others and also violated the Act by failing to itemize credit card charges exceeding $200 as required by law.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended, ("the Act"), provides that no amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may 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 holder of Federal office. 2 U.S.C. § 439a.[1]

Additionally, the Act requires political committees to report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made, together with the date, amount, and purpose of such expenditure. 2 U.S.C. § 434(b); 11 C.F.R. § 104.9.

B. Discussion

The complainant alleges that Senator Jeffords and his campaign committee violated 2 U.S.C. § 439a by using campaign contributions to purchase clothing and other items for Senator Jeffords and others. Specifically, the complainant points out that Senator Jeffords' 1993 mid-year report reflects a credit card

---

1. We note that the Commission recently promulgated new regulations implementing the personal use prohibition of Section 439a. See Section 113.1, Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862. However, the new regulations are not applicable to this case as the conduct alleged herein occurred prior to their April 5, 1995 effective date.

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charge of $2,755.30 for a purpose described as "travel/clothing expenses." The complainant states that the report was incomplete because it failed to provide an itemization of any charges exceeding $200 as required by law. The complainant also states that later, upon demand by the Commission, the committee provided an itemization of the charges, which reflected payments for clothing on June 16, 1993 to 1) Jos. A. Bank Clothiers in Arlington, Virginia, in the amount of $1,568.06; and 2) Nordstrom, also in Arlington, Virginia, in the amount of $323.90, for a combined total of money paid for clothing of $1,891.96. Based on these expenditures for clothing, the complainant argues that respondents violated Section 439a.

The complainant also referred to an article in the Burlington Free Press, dated October 28, 1994, in which it was reported that, in addition to spending campaign funds on the clothing discussed above, Senator Jeffords used campaign funds to purchase airline tickets for his family and contact lenses for himself. The article, in turn, referred to an earlier article, dated July 22, 1993, which indicates that the amounts spent for Senator Jeffords' contact lenses and for travel for himself and his family were $478 and $18,191.13, respectively. Among travel expenses, the earlier article reflects that, in 1991, Senator Jeffords used campaign funds to pay $205 for his daughter to fly to Vermont, $527.42 for his son to travel to a Vermont GOP event, and at least $900 for his wife to fly to Washington. The earlier article indicates specifically that Senator Jeffords used campaign funds as follows: $15 to pay a District of Columbia parking

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ticket, $570 for a dinner at Alfredo's restaurant in Burlington, Vermont, $50 to Christ Church in Alexandria, Virginia, $11,750 in contributions to other campaigns, and $31.80 for maple syrup on New Year's Eve. The earlier article further indicates that Senator Jeffords "has paid himself $350 [for] rent plus utilities every month since the 1988 campaign for storage space and a makeshift campaign office in what once was his parents' Rutland house." See Attachment 2. According to the articles, the expenditures, with the exception of the rental expenses, occurred between 1989 and 1992.[2]

The complainant also alleges that respondents violated the Act by failing to provide itemization of credit card charges exceeding $200.

1. Personal Use

In response to the complaint, respondents assert that the personal use prohibition of Section 439a applies only to amounts received by a candidate as contributions that are in excess of any amount necessary to defray campaign expenditures, emphasizing "in excess". Respondents state that, in interpreting Section 439a, the Commission has specifically differentiated between "excess campaign funds" and funds used during the course of a campaign and has held that candidates and their respective principal campaign

2. We note that pursuant to Section 439a, a committee may permissibly use campaign funds to contribute to churches and other organizations described in Section 170(c) of Title 26 as well as to other candidate committees. See 2 U.S.C. § 439a; Advisory Opinion 1986-36. The contributions made by the committee to other candidate committees do not exceed the $1,000 per candidate per election limit pursuant to 2 U.S.C. § 441a(a)(1).

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committees have wide discretion under the Act as to how campaign funds may be spent, citing Advisory Opinion 1980-49.

Because the complaint focused primarily on the clothing purchase, respondents also focused on that aspect of the allegations in replying to the Commission. Respondents explain that the funds used to purchase the clothing at issue, which respondents identify as two suits, a raincoat, and ties, were not excess campaign funds but rather funds used during the course of the campaign to defray expenditures determined by the principal campaign committee to be necessary for the campaign. Respondents state that the committee determined that it was necessary for the campaign to purchase certain appropriate clothing to be worn by the candidate for campaign appearances in Vermont. Therefore, respondents concluded that they have not violated section 439a because, they contend, Section 439a does not apply to the facts of this case.

Relevant to the expenditures reported in the Burlington Free Press articles, we note that Senator Jeffords was "grandfathered"[3]

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3. The Honorable James M. Jeffords began service in Congress as a member of the U.S. House of Representatives, where he served from 1975-89. Senator Jeffords was first elected to the Senate in 1988 and was re-elected in 1994. The 1979 amendments to the Federal Election Campaign Act amended Section 439a to prohibit the use of campaign funds by any person for personal use, other than an individual serving as a member of Congress on January 8, 1980. See Pub. L. No. 96-187, 93 Stat. 1339, 1366-67. This exemption from the personal use prohibition is known as the grandfather clause. Subsequently, Section 504 of the Ethics Reform Act of 1989 repealed the grandfather provision. See Pub. L. No. 101-194, 103 Stat. 1716. In doing so, Section 504 limited conversions to personal use by grandfathered members and former members to the unobligated balance in their campaign accounts on November 30, 1989. It also completely prohibited conversions of campaign funds by anyone serving in the 103rd or any later Congress. Thus, any grandfathered members who

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and, consequently, was not prohibited from using for personal expenses the unobligated balance in his campaign accounts on November 30, 1989, until January 1993, when he was installed as a member of the 103rd Congress. According to the articles, the expenditures, with the exception of the rental expenses, see discussion, infra, were each made between 1989 and 1992 and the funds used by the respondents in making the expenditures were from the more than $300,000 leftover from Senator Jeffords' successful bid for the U.S. Senate in 1988. Committee reports filed with the Commission substantiate that the cited expenditures were made between 1989 and 1992, a period during which grandfathered members of Congress were not prohibited from using for personal expenses the unobligated balance in their campaign accounts on November 30, 1989. In addition, information reflected in the committee's reports tends to support that the funds used by the respondents in making the cited expenditures were from the unobligated balance in their campaign accounts on November 30, 1989. Specifically, committee reports reflect that the committee's cash on hand was $312,249 both at the end of 1988 and at the beginning of 1990. Debts owed at the end of 1988 and at the end of 1990 were 0 and 1,066, respectively. Thus, it appears that neither Senator Jeffords nor the committee violated 2 U.S.C. § 439a by using campaign funds for the expenditures occurring between 1989 and

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(Footnote 3 continued from previous page)
returned to Congress in January, 1993 gave up the right to convert funds to personal use.

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1992 cited in the Burlington Free Press articles.[4]

As noted, the Burlington Free Press articles also indicate that, "every month since 1988," the committee paid Senator Jeffords $350 for rent plus utilities for the use of a house for campaign storage space and a campaign office. Again, as a "grandfathered" member of Congress, Senator Jeffords was not prohibited from using for personal or other lawful purposes the unobligated balance in his campaign accounts on November 30, 1989 until January 1993, when he began service in the 103rd Congress. The subject rental expenditures made between January 1993 and the date that the complaint in this matter was filed, when the use of campaign funds for personal use was strictly prohibited, also were not violative of Section 439a. Pursuant to the Commission's previous interpretations of the regulations implementing Section 439a that were in effect at the time, the use of campaign funds for renting campaign space from Senator Jeffords was a permissible use of campaign funds so long as the campaign did not pay rent in excess of the usual and normal charge for the kind of property being rented. See Advisory Opinion 1983-1. See also Advisory Opinions 1993-1, 1988-13, 1985-42, 1978-80, 1977-12, and 1976-53. The record contains no information indicating that $350 per month plus utilities is other than the usual and normal charge for the

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4. We note that the Burlington Free Press articles also report the assertions of Senator Jeffords and/or his campaign treasurer relating the cited expenditures to the Senator's duties as a holder of federal office, which assertions, if substantiated, would also provide a basis for the Commission to find that most of the expenditures were not violative of 2 U.S.C. § 439a. However, a review of the committee's reports did not provide any independent support for the respondents' assertions.

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rental of such property.[5] Thus, it appears that neither Senator Jeffords nor the committee violated 2 U.S.C. § 439a by using campaign funds to pay Senator Jeffords $350 monthly for rent plus utilities for the use of a house for campaign storage space and a campaign office under the regulations that were in effect at the time.

However, based on the following analysis, we recommend that the Commission find reason to believe that Senator Jeffords and his campaign committee violated 2 U.S.C. § 439a by using campaign funds to purchase the previously described items of clothing in June 1993. The clothing at issue was purchased after Senator Jeffords began service in the 103rd Congress and, consequently, no longer qualified under the grandfather provision. Thus, the clothing purchase occurred when Senator Jeffords was strictly prohibited from converting excess campaign funds to personal use.

As noted previously, respondents argue that Section 439a does not apply to this case because the purchase of the clothing at issue was not a use of "excess" campaign funds but rather a use of funds during the course of a campaign to defray expenditures

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5. Although it is unclear from the news article whether the house that Senator Jeffords rented to his campaign committee was the Senator's personal residence, we note that under the Commission's new rules implementing the personal use prohibition of Section 439a, which became effective on April 5, 1995, the use of campaign funds for rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family would constitute a "per se" personal use of campaign funds, even if part of the personal residence is being used in the campaign, see 113.1(g)(1)(i)(E)(1), Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862; Advisory Opinion 1995-8. Therefore, we recommend that any letter the Commission sends to the respondents advise the respondents accordingly.

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determined by the principal campaign committee to be necessary for the campaign. We consider the respondents' argument in two parts. Initially, we note that a distinction based on the time at which an expenditure was made - during the course of a campaign versus after the campaign - is not determinative of the question of whether a particular use of campaign funds is permissible under Section 439a. Pursuant to Section 113.1(e), excess campaign funds means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. Thus, the applicability of Section 439a is not based on the time in the election cycle but rather it is based on an act - the determination by the candidate that certain funds are in excess of any amount needed to defray campaign expenditures.

Such determination need not necessarily occur after the campaign is over. Indeed, the Commission has allowed a candidate to declare campaign funds to be "excess" during the course of a campaign. See Advisory Opinion 1986-36. Moreover, in instances where the Commission has found that the use of campaign funds during the course of a campaign would not constitute a bona fide campaign expenditure, it has viewed such uses of campaign funds as a determination by the candidate that the funds are not necessary to defray campaign expenditures, or, in other words, that such funds are excess campaign funds, and thus, subject to the Section 439a personal use prohibition. See Advisory Opinion 1987-2, 1985-42 (Commission held that candidate may use campaign funds to pay portion of lease on apartment to extent apartment is used for

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campaign purposes, but stated that payments by committee for uses of apartment that are not for campaign purpose "would appear to represent a use of excess campaign funds for a personal purpose.") Contrastingly, the Commission has concurred in candidates' treatment of certain post-election expenses as necessary to defray campaign expenditures; therefore, such funds were not considered excess campaign funds. See Advisory Opinions 1993-20, 1983-5, 1981-25, 1981-2.

The second part of the analysis involves respondents' argument that the purchase of the clothing at issue was permissible under the Act because the funds used to purchase such clothing were determined by the committee to be necessary to defray campaign expenditures. As the respondents point out, the Commission has consistently held that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds may be expended. However, such discretion, while broad, is not unlimited.

The disbursement of campaign funds must be a bona fide campaign expenditure (or incurred in connection with an individual's duties as a holder of Federal office). Under the regulations, an expenditure is "a purchase ... made by any person for the purpose of influencing any election for Federal office". While the Commission has allowed the candidates and their committees broad discretion in the use of campaign funds, to allow candidates to use contributions for personal uses largely if not wholly unrelated to any campaign purpose with impunity simply by asserting that the funds were necessary to defray campaign

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expenditures would defeat the basic purpose of the statute, which is to prevent the conversion of campaign funds to personal use. Thus, the question with which the Commission is confronted in considering whether campaign funds have been converted to personal use has been whether the candidate could reasonably show that the expenses at issue resulted from campaign activity.

Initially, we note that it appears that the Commission has never specifically addressed the question of whether it is within the discretion of candidates and their campaign committees to purchase for the candidate the type of clothing at issue - two suits, a raincoat, and ties. In the only marginally similar opinion, Advisory Opinion 1985-22, the Commission considered a candidate's request to use campaign funds to purchase "specialized attire," specifically, tuxedos and evening gowns, to wear at "politically related functions which [were] both social and official business." However, in that case the Commission concluded that the requester's committee could use the funds for these purposes because the requester was grandfathered. Thus, the Commission did not specifically address the permissibility of such a use of campaign funds pursuant to Section 439a.[6]

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6. We note that the Explanation and Justification of the Commission's revised regulations implementing Section 439a indicates that Advisory Opinion 1985-22 suggests that the use of campaign funds to purchase specialized attire would have been permissible if the clothing was to be used in connection with the campaign. Even to the extent that the Explanation and Justification does not overstate the Commission's decision in Advisory Opinion 1985-22, the clothing at issue is not "specialized attire;" rather, it is a type of ordinary everyday work attire for a member of Congress. Thus, in any event, Advisory Opinion 1985-22 would not be determinative in this case.

Respondents have cited Advisory Opinion 1980-49 in support of their contention that the purchase of clothing at issue was a permissible use of campaign funds. In Advisory Opinion 1980-49, the requester inquired whether a 1978 opinion (Advisory Opinion 1978-5) of the Commission that the use of campaign funds for the candidate's personal living expenses was permissible under the Act was affected by the enactment of the Section 439a personal use prohibition. The Commission concluded that it was not, and noted its opinion that candidates and their campaign committees have wide discretion under the Act as to how campaign funds may be spent. However, Advisory Opinion 1980-49 does not govern the facts of this case inasmuch as the term "personal living expenses" was not defined in that opinion and should not be viewed as encompassing every imaginable use of campaign funds for the candidate's personal lifestyle.[7] Such a construction would defeat the purpose of the personal use prohibition.

We believe that a review of the relevant body of advisory opinions issued after the 1980 enactment of the prohibition provides meaningful guidance in this case. The clothing at issue falls within a category of expenses that would exist irrespective of an individual's candidacy. In the past, when considering similar types of expenses paid with campaign funds, such as the

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7. In addition, we note that in Advisory Opinion 1992-4, which was considered by the Commission prior to the purchase of clothing at issue, the Commission considered whether Section 439a and its implementing regulations would permit or bar a candidate's committee from paying his living expenses and those of his wife, but could not reach a majority decision by the required four affirmative votes.

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purchase of a car for the candidate's use and the paying of portions of the candidate's rent, the Commission has allowed the use of campaign funds when, and to the extent that, the item is used for campaign purposes. See Advisory Opinions 1993-1 n.1, 1985-42, 1983-1. However, the Commission has stated that when such items are not used in connection with campaign activities, the use of campaign funds represents a use of excess campaign funds for a personal purpose. See Advisory Opinion 1985-42. Accordingly, in instances when a car purchased with campaign funds would at times also be used for the candidate's personal travel, the candidate has reimbursed the committee for such personal uses of the vehicle. See Advisory Opinion 1992-12 n.1, 1984-59. Similarly, a campaign committee may pay rent to a candidate only when the candidate's property is being used for campaign purposes, and in an amount representing only the period during which the property is used for such purposes. See Advisory Opinion 1993-1 n.1; see also Advisory Opinion 1988-13.[8]

By contrast, clothing, of the sort at issue, is an expense that would exist for an individual in Senator Jeffords' position irrespective of his candidacy but is so intrinsically personal that it is not conducive for pro rata apportionments based on time

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8. As previously noted, under the Commission's new rules implementing the personal use prohibition of Section 439a, which became effective on April 5, 1995, the use of campaign funds for rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family would constitute a "per se" personal use of campaign funds, even if part of the personal residence is being used in the campaign, see 113.1(g)(1)(i)(E)(1), Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862; Advisory Opinion 1995-8.

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used for campaign purposes versus time used for personal purposes because detection or monitoring of the periods during which such ordinary clothing items are used for personal purposes would be practically impossible. Thus, despite respondents' assertion that the clothing at issue was purchased for use by the candidate during campaign appearances, such ordinary clothing items are particularly vulnerable to personal use and yet are not workable under the framework used by the Commission for reimbursing the campaign treasury for periods when items purchased with campaign funds are used for personal purposes. Therefore, we recommend that the Commission find that Senator Jeffords and his campaign committee violated 2 U.S.C. § 439a by using campaign funds to purchase the clothing at issue.[9]

However, the amount of the violation is relatively small and the Commission's view regarding the permissibility of using campaign funds to purchase the clothing at issue may not have been readily discernible. Section 439a and the regulations in effect

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9. We note that this recommendation, while based on the state of the law at the time of the violation, is consistent with the Commission's revised regulations implementing Section 439a, which define personal use as any use of funds in a campaign account of a candidate for an expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder. Under the revised rules, the use of campaign funds to purchase clothing would constitute a "per se" personal use of campaign funds, and thus, violate Section 439a. The revised regulations contain an exception to the general prohibition against the purchase of clothing for clothing items of de minimis value that are used in the campaign, e.g., campaign T-shirts and caps with campaign slogans. The regulations treat the use of campaign funds for personal use as a determination by the candidate that the funds used are excess campaign funds. See Section 113.1(g), Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862.

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at the time of the activity at issue do not provide specific guidance regarding whether any particular expense was permissible or prohibited. In addition, many of the advisory opinion requests the Commission addressed regarding the personal use prohibition involved persons who, because they were Members of Congress on January 8, 1980, like Senator Jeffords, were eligible to convert campaign funds to personal use prior to the start of the 103rd Congress in January, 1993. Consequently, the question of whether a particular disbursement was a legitimate campaign expenditure or a conversion of campaign funds to personal use may not have been fully explored during the period between the enactment of the personal use prohibition in 1980, and 1993, when grandfathered members of Congress returning to the 103rd Congress could no longer convert campaign funds to personal use. Thus, prior to the recent April, 1995 enactment of the Commission's revised regulations, which the Commission promulgated in an effort to provide additional guidance on personal use issues to the regulated community, guidance regarding the application of Section 439a was relatively limited. In light of the foregoing, we recommend that the Commission take no further action with respect to the Section 439a violation and issue an admonishment to the respondents.[10]

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10. We note that the activity at issue may also be governed by Senate rules, however, we express no opinion as to their possible application since that issue is outside of the Commission's jurisdiction.

2. Itemization of Expenditures

We now turn to the complainant's second allegation - that the respondents "continue to file reports disclosing credit card charges but failing" to provide an itemization of the charges exceeding $200 in violation of 2 U.S.C. § 434(b); 11 C.F.R. § 104.9. The complainant points to the respondents' 1993 Mid-Year Report and states that "Mr. Jeffords made the necessary disclosure only after an admonitory letter from the Commission seeking the reporting detail that he had avoided." The complainant also alleges that in the committee's most recently filed third-quarter report, the respondents failed to provide an itemization of individual credit card charges exceeding $200 as required by law, citing Complainant's Exhibit C.

Respondents state that they have fully complied with the disclosure requirements of 11 C.F.R. § 104.9, and point out specifically that a $3,000 disbursement to Visa is disclosed on the October 15 Quarterly Report, Complainant's Exhibit C, and is fully itemized on the same page with a list of the name and address of each original vendor from which the items were purchased. Respondents also state that the date, amount, and purpose for each payment is listed for all items in excess of $200 in full compliance with 11 C.F.R. § 104.9.

In a Request for Additional Information dated September 6, 1994, the Commission advised the committee that corrections to its Amended Mid-Year Report (1/1/93-6/30/93) were needed, including providing an itemization of payments totaling $7,479.99 to a credit card company pursuant to 11 C.F.R. § 104.9. The Commission

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advised the committee to file a written response or an amendment to its report within fifteen days of the date of the letter. On September 23, 1994, the committee filed an amendment to its 1993 Mid-Year Report, providing the requested information.

We note that the respondents' October 15 Quarterly Report, particularly that portion cited by the complainant, Complainant's Exhibit C, See Attachment 3, appears to reflect an itemization of credit card charges in excess of $200 in accordance with 2 U.S.C. § 434(b); 11 C.F.R. § 104.9. Specifically, proper itemization of the disbursement to Chittenden Bank Visa in the amount of three thousand dollars ($3000.00) appears in the six entries, designated "MEMO", which immediately follow the credit card payment, see Attachment 3. The credit card payment and the six itemized entries are all dated September 12, 1994. Thus, it appears that the committee has complied with the reporting requirements of 2 U.S.C. § 434(b); 11 C.F.R. § 104.9 with respect to the credit card charges in its October 15 Quarterly Report.

However, as the complainant contends, the respondents initially failed to comply with the requirements of 2 U.S.C. § 434(b) by failing to itemize credit card charges exceeding $200 in its 1993 Mid-Year Report. In addition, it appears that, subsequently, in its 1993 Year-End Report, the respondents again violated 2 U.S.C. § 434(b) by failing to properly itemize credit card charges totaling $3,691.31 for expenditures made between July and December 1993. See Attachment 4. Specifically, respondents failed to list the name and address of the original vendor from which the item or service was purchased in accordance with

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2 U.S.C. § 434(b). Therefore, we recommend that the Commission find reason to believe that Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. § 434(b). However, in light of the relatively small amount of money involved and the fact that the respondents corrected their 1993 Mid-Year Report, we recommend that the Commission take no further action against the respondents other than to instruct the respondents to amend Schedule B of their 1993 Year-End Report in accordance with 2 U.S.C. § 434(b); 11 C.F.R. § 104.9, and issue an admonishment.

III. RECOMMENDATIONS

1. Find reason to believe that the Honorable James Merrill Jeffords violated 2 U.S.C. § 439a, but take no further action.

2. Find reason to believe that Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. § 439a, but take no further action.

3. Find reason to believe that Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. § 434(b), but take no further action, and instruct the respondent to amend Schedule B of the 1993 Year-End Report.

4. Approve the appropriate letters.

5. Close the file.

Lawrence M. Noble
General Counsel

9/21/95
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachments:
1. Response to Complaint
2. Burlington Free Press Articles (2)
3. Pages 17-18, Schedule B, of October 15 Quarterly Report
4. Page 2, Schedule B, of 1993 Year-End Report
5. Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Jeffords for Vermont and	)	MUR 4112
James A. Johnston, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 27, 1995, the Commission decided by a vote of 6-0 to take the following actions in MUR 4112:

1. Find reason to believe that the Honorable James Merrill Jeffords violated 2 U.S.C. § 439a, but take no further action.

2. Find reason to believe that Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. § 439a, but take no further action.

3. Find reason to believe that Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. § 434(b), but take no further action, and instruct the respondent to amend Schedule B of the 1993 Year-End Report.

(continued)

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4. Approve the appropriate letters, as recommended in the General Counsel's Report dated July 21, 1995.

5. Close the file.

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

Attest:

7-28-95
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Mon.,	July 24, 1995	9:39 a.m.
Circulated to the Commission:	Mon.,	July 24, 1995	11:00 a.m.
Deadline for vote:	Thurs.,	July 27, 1995	4:00 p.m.

mrd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 2, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert F. Bauer
General Counsel for the
Democratic Senatorial Campaign Committee
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 4112
Jeffords for Vermont and
James A. Johnston, as Treasurer

Dear Mr. Bauer:

This is in reference to the complaint you filed with the Federal Election Commission on October 31, 1994, concerning Senator James M. Jeffords and Jeffords for Vermont and James A. Johnston, as treasurer.

Based on that complaint, on July 27, 1995, the Commission found that there was reason to believe Senator Jeffords and Jeffords for Vermont and James A. Johnston, as treasurer violated 2 U.S.C. § 439a, and that Jeffords for Vermont and James A. Johnston, as treasurer violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against Senator Jeffords and Jeffords for Vermont and James A. Johnston, as treasurer, and closed the file in this matter on July 27, 1995. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, 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) 219-3690.

Sincerely,

Tracey L. Ligon
Attorney

Enclosure:
Factual and Legal Analysis

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 2, 1995

Edwina Rogers, Esquire
National Republican Senatorial Committee
425 Second St., N.E.
Washington, D.C. 20002

RE: MUR 4112
Jeffords for Vermont and
James A. Johnston, as Treasurer

Dear Ms. Rogers:

On July 27, 1995, the Federal Election Commission found reason to believe that your clients, Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. §§ 439a and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission advises you that the use of campaign funds to purchase ordinary clothing items is a violation of Section 439a of the Act. We further advise you that the Commission recently promulgated revised regulations which explicitly prohibit the purchase of clothing with campaign funds. See Section 113.1(g)(1)(i)(C), Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862. Under the revised regulations, which became effective on April 5, 1995, the use of campaign funds to purchase clothing constitutes a "per se" personal use of campaign funds. The revised regulations contain an exception to the general prohibition against the purchase of clothing for clothing items of de minimis value that are used in the campaign, e.g., campaign T-shirts and caps with campaign slogans.

Furthermore, under the Commission's revised rules implementing the personal use prohibition of Section 439a, the use of campaign funds for rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family constitutes a "per se" personal use of campaign funds, even if part of the personal residence is being used in the campaign, see 113.1(g)(1)(i)(E)(1), Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862; Advisory Opinion 1995-8. The regulations treat the use of campaign funds for personal use as a determination by the candidate that the funds used are excess campaign funds.

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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In addition, the Commission reminds you that failing to itemize credit card charges exceeding $200 is a violation of 2 U.S.C. § 434(b). Your clients should take steps to ensure that none of the foregoing activity occurs in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosure:
Factual and Legal Analysis

cc: The Honorable James Merrill Jeffords

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jeffords for Vermont and James A. Johnston, as treasurer MUR: 4112

The Honorable James Merrill Jeffords

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by the Democratic Senatorial Campaign Committee on October 31, 1994. See 2 U.S.C. § 437g(a)(1).

A. THE LAW

The Federal Election Campaign Act of 1971, as amended, ("the Act"), provides that no amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may 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 holder of Federal office. 2 U.S.C. § 439a.[1]

Additionally, the Act requires political committees to report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200

1. We note that the Commission recently promulgated new regulations implementing the personal use prohibition of Section 439a. See Section 113.1, Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862. However, the new regulations are not applicable to this case as the conduct alleged herein occurred prior to their April 5, 1995 effective date.

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within the calendar year is made, together with the date, amount, and purpose of such expenditure. 2 U.S.C. § 434(b); 11 C.F.R. § 104.9.

B. Discussion

The complainant alleges that the Honorable James Merrill Jeffords (hereinafter "Senator Jeffords") and his campaign committee, Jeffords for Vermont and James A. Johnston, as treasurer (hereinafter "the committee"), violated 2 U.S.C. § 439a by using campaign contributions to purchase clothing and other items for Senator Jeffords and others. Specifically, the complainant points out that Senator Jeffords' 1993 mid-year report reflects a credit card charge of $2,755.30 for a purpose described as "travel/clothing expenses." The complainant states that the report was incomplete because it failed to provide an itemization of any charges exceeding $200 as required by law. The complainant also states that later, upon demand by the Commission, the committee provided an itemization of the charges, which reflected payments for clothing on June 16, 1993 to 1) Jos. A. Bank Clothiers in Arlington, Virginia, in the amount of $1,568.06; and 2) Nordstrom, also in Arlington, Virginia, in the amount of $323.90, for a combined total of money paid for clothing of $1,891.96. Based on these expenditures for clothing, the complainant argues that respondents violated Section 439a.

The complainant also referred to an article in the Burlington Free Press, dated October 28, 1994, in which it was reported that, in addition to spending campaign funds on the clothing discussed above, Senator Jeffords used campaign funds to

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purchase airline tickets for his family and contact lenses for himself. The article, in turn, referred to an earlier article, dated July 22, 1993, which indicates that the amounts spent for Senator Jeffords' contact lenses and for travel for himself and his family were $478 and $18,191.13, respectively. Among travel expenses, the earlier article reflects that, in 1991, Senator Jeffords used campaign funds to pay $205 for his daughter to fly to Vermont, $527.42 for his son to travel to a Vermont GOP event, and at least $900 for his wife to fly to Washington. The earlier article indicates specifically that Senator Jeffords used campaign funds as follows: $15 to pay a District of Columbia parking ticket, $570 for a dinner at Alfredo's restaurant in Burlington, Vermont, $50 to Christ Church in Alexandria, Virginia, $11,750 in contributions to other campaigns, and $31.80 for maple syrup on New Year's Eve. The earlier article further indicates that Senator Jeffords "has paid himself $350 [for] rent plus utilities every month since the 1988 campaign for storage space and a makeshift campaign office in what once was his parents' Rutland house." See Attachment 2. According to the articles, the expenditures, with the exception of the rental expenses, occurred between 1989 and 1992.[2]

The complainant also alleges that respondents violated the Act by failing to provide itemization of credit card charges exceeding $200.

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2. We note that pursuant to Section 439a, a committee may permissibly use campaign funds to contribute to churches and other organizations described in Section 170(c) of Title 26 as well as to other candidate committees. See 2 U.S.C. § 439a; Advisory Opinion 1986-36.

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1. Personal Use

In response to the complaint, respondents assert that the personal use prohibition of Section 439a applies only to amounts received by a candidate as contributions that are in excess of any amount necessary to defray campaign expenditures, emphasizing "in excess". Respondents state that, in interpreting Section 439a, the Commission has specifically differentiated between "excess campaign funds" and funds used during the course of a campaign and has held that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds may be spent, citing Advisory Opinion 1980-49.

Because the complaint focused primarily on the clothing purchase, respondents also focused on that aspect of the allegations in replying to the Commission. Respondents explain that the funds used to purchase the clothing at issue, which respondents identify as two suits, a raincoat, and ties, were not excess campaign funds but rather funds used during the course of the campaign to defray expenditures determined by the principal campaign committee to be necessary for the campaign. Respondents state that the committee determined that it was necessary for the campaign to purchase certain appropriate clothing to be worn by the candidate for campaign appearances in Vermont. Therefore, respondents concluded that they have not violated section 439a because, they contend, Section 439a does not apply to the facts of this case.

Relevant to the expenditures reported in the Burlington Free

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Press articles, we note that Senator Jeffords was "grandfathered"[3] and, consequently, was not prohibited from using for personal expenses the unobligated balance in his campaign accounts on November 30, 1989, until January 1993, when he was installed as a member of the 103rd Congress. According to the articles, the expenditures, with the exception of the rental expenses, see discussion, infra, were each made between 1989 and 1992 and the funds used by the respondents in making the expenditures were from the more than $300,000 leftover from Senator Jeffords' successful bid for the U.S. Senate in 1988. Committee reports filed with the Commission substantiate that the cited expenditures were made between 1989 and 1992, a period during which grandfathered members of Congress were not prohibited from using for personal expenses the unobligated balance in their campaign accounts on November 30, 1989. In addition, information reflected in the committee's reports tends to support that the funds used by the respondents in making the cited expenditures were from the unobligated balance in

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3. The Honorable James M. Jeffords began service in Congress as a member of the U.S. House of Representatives, where he served from 1975-89. Senator Jeffords was first elected to the Senate in 1988 and was re-elected in 1994. The 1979 amendments to the Federal Election Campaign Act amended Section 439a to prohibit the use of campaign funds by any person for personal use, other than an individual serving as a member of Congress on January 8, 1980. See Pub. L. No. 96-187, 93 Stat. 1339, 1366-67. This exemption from the personal use prohibition is known as the grandfather clause. Subsequently, Section 504 of the Ethics Reform Act of 1989 repealed the grandfather provision. See Pub. L. No. 101-194, 103 Stat. 1716. In doing so, Section 504 limited conversions to personal use by grandfathered members and former members to the unobligated balance in their campaign accounts on November 30, 1989. It also completely prohibited conversions of campaign funds by anyone serving in the 103rd or any later Congress. Thus, any grandfathered members who returned to Congress in January, 1993 gave up the right to convert funds to personal use.

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their campaign accounts on November 30, 1989. Specifically, committee reports reflect that the committee's cash on hand was $312,249 both at the end of 1988 and at the beginning of 1990. Debts owed at the end of 1988 and at the end of 1990 were 0 and 1,066, respectively. Thus, it appears that neither Senator Jeffords nor the committee violated 2 U.S.C. § 439a by using campaign funds for the expenditures occurring between 1989 and 1992 cited in the Burlington Free Press articles.

As noted, the Burlington Free Press articles also indicate that, "every month since 1988," the committee paid Senator Jeffords $350 for rent plus utilities for the use of a house for campaign storage space and a campaign office. Again, as a "grandfathered" member of Congress, Senator Jeffords was not prohibited from using for personal or other lawful purposes the unobligated balance in his campaign accounts on November 30, 1989 until January 1993, when he began service in the 103rd Congress. The subject rental expenditures made between January 1993 and the date that the complaint in this matter was filed, when the use of campaign funds for personal use was strictly prohibited, also were not violative of Section 439a. Pursuant to the Commission's previous interpretations of the regulations implementing Section 439a that were in effect at the time, the use of campaign funds for renting campaign space from Senator Jeffords was a permissible use of campaign funds so long as the campaign did not pay rent in excess of the usual and normal charge for the kind of property being rented. See Advisory Opinion 1983-1. See also Advisory Opinions 1993-1, 1988-13, 1985-42, 1978-80, 1977-12, and 1976-53.

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The record contains no information indicating that $350 per month plus utilities is other than the usual and normal charge for the rental of such property.[4] Thus, it appears that neither Senator Jeffords nor the committee violated 2 U.S.C. § 439a by using campaign funds to pay Senator Jeffords $350 monthly for rent plus utilities for the use of a house for campaign storage space and a campaign office under the regulations that were in effect at the time.

However, based on the following analysis, we find that there is reason to believe that Senator Jeffords and his campaign committee violated 2 U.S.C. § 439a by using campaign funds to purchase the previously described items of clothing in June 1993. The clothing at issue was purchased after Senator Jeffords began service in the 103rd Congress and, consequently, no longer qualified under the grandfather provision. Thus, the clothing purchase occurred when Senator Jeffords was strictly prohibited from converting excess campaign funds to personal use.

As noted previously, respondents argue that Section 439a does not apply to this case because the purchase of the clothing at issue was not a use of "excess" campaign funds but rather a use of funds during the course of a campaign to defray expenditures

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4. Although it is unclear from the news article whether the house that Senator Jeffords rented to his campaign committee was the Senator's personal residence, we note that under the Commission's new rules implementing the personal use prohibition of Section 439a, which became effective on April 5, 1995, the use of campaign funds for rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family would constitute a "per se" personal use of campaign funds, even if part of the personal residence is being used in the campaign, see 113.1(g)(1)(i)(E)(1), Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862; Advisory Opinion 1995-8.

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determined by the principal campaign committee to be necessary for the campaign. We consider the respondents' argument in two parts. Initially, we note that a distinction based on the time at which an expenditure was made - during the course of a campaign versus after the campaign - is not determinative of the question of whether a particular use of campaign funds is permissible under Section 439a. Pursuant to Section 113.1(e), excess campaign funds means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. Thus, the applicability of Section 439a is not based on the time in the election cycle but rather it is based on an act - the determination by the candidate that certain funds are in excess of any amount needed to defray campaign expenditures.

Such determination need not necessarily occur after the campaign is over. Indeed, the Commission has allowed a candidate to declare campaign funds to be "excess" during the course of a campaign. See Advisory Opinion 1986-36. Moreover, in instances where the Commission has found that the use of campaign funds during the course of a campaign would not constitute a bona fide campaign expenditure, it has viewed such uses of campaign funds as a determination by the candidate that the funds are not necessary to defray campaign expenditures, or, in other words, that such funds are excess campaign funds, and thus, subject to the Section 439a personal use prohibition. See Advisory Opinion 1987-2, 1985-42 (Commission held that candidate may use campaign funds to pay portion of lease on apartment to extent apartment is used for

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campaign purposes, but stated that payments by committee for uses of apartment that are not for campaign purpose "would appear to represent a use of excess campaign funds for a personal purpose.") Contrastingly, the Commission has concurred in candidates' treatment of certain post-election expenses as necessary to defray campaign expenditures; therefore, such funds were not considered excess campaign funds. See Advisory Opinions 1993-20, 1983-5, 1981-25, 1981-2.

The second part of the analysis involves respondents' argument that the purchase of the clothing at issue was permissible under the Act because the funds used to purchase such clothing were determined by the committee to be necessary to defray campaign expenditures. As the respondents point out, the Commission has consistently held that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds may be expended. However, such discretion, while broad, is not unlimited.

The disbursement of campaign funds must be a bona fide campaign expenditure (or incurred in connection with an individual's duties as a holder of Federal office). Under the regulations, an expenditure is "a purchase ... made by any person for the purpose of influencing any election for Federal office". While the Commission has allowed the candidates and their committees broad discretion in the use of campaign funds, to allow candidates to use contributions for personal uses largely if not wholly unrelated to any campaign purpose with impunity simply by asserting that the funds were necessary to defray campaign

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expenditures would defeat the basic purpose of the statute, which is to prevent the conversion of campaign funds to personal use. Thus, the question with which the Commission is confronted in considering whether campaign funds have been converted to personal use has been whether the candidate could reasonably show that the expenses at issue resulted from campaign activity.

Initially, we note that it appears that the Commission has never specifically addressed the question of whether it is within the discretion of candidates and their campaign committees to purchase for the candidate the type of clothing at issue - two suits, a raincoat, and ties. In the only marginally similar opinion, Advisory Opinion 1985-22, the Commission considered a candidate's request to use campaign funds to purchase "specialized attire," specifically, tuxedos and evening gowns, to wear at "politically related functions which [were] both social and official business." However, in that case the Commission concluded that the requester's committee could use the funds for these purposes because the requester was grandfathered. Thus, the Commission did not specifically address the permissibility of such a use of campaign funds pursuant to Section 439a.

Respondents have cited Advisory Opinion 1980-49 in support of their contention that the purchase of clothing at issue was a permissible use of campaign funds. In Advisory Opinion 1980-49, the requester inquired whether a 1978 opinion (Advisory Opinion 1978-5) of the Commission that the use of campaign funds for the candidate's personal living expenses was permissible under the Act was affected by the enactment of the Section 439a personal use

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prohibition. The Commission concluded that it was not, and noted its opinion that candidates and their campaign committees have wide discretion under the Act as to how campaign funds may be spent. However, Advisory Opinion 1980-49 does not govern the facts of this case inasmuch as the term "personal living expenses" was not defined in that opinion and should not be viewed as encompassing every imaginable use of campaign funds for the candidate's personal lifestyle. Such a construction would defeat the purpose of the personal use prohibition.

We believe that a review of the relevant body of advisory opinions issued after the 1980 enactment of the prohibition provides meaningful guidance in this case. The clothing at issue falls within a category of expenses that would exist irrespective of an individual's candidacy. In the past, when considering similar types of expenses paid with campaign funds, such as the purchase of a car for the candidate's use and the paying of portions of the candidate's rent, the Commission has allowed the use of campaign funds when, and to the extent that, the item is used for campaign purposes. See Advisory Opinions 1993-1 n.1, 1985-42, 1983-1. However, the Commission has stated that when such items are not used in connection with campaign activities, the use of campaign funds represents a use of excess campaign funds for a personal purpose. See Advisory Opinion 1985-42. Accordingly, in instances when a car purchased with campaign funds would at times also be used for the candidate's personal travel, the candidate has reimbursed the committee for such personal uses of the vehicle. See Advisory Opinion 1992-12 n.1, 1984-59.

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Similarly, a campaign committee may pay rent to a candidate only when the candidate's property is being used for campaign purposes, and in an amount representing only the period during which the property is used for such purposes. See Advisory Opinion 1993-1 n.1; see also Advisory Opinion 1988-13.

By contrast, clothing, of the sort at issue, is an expense that would exist for an individual in Senator Jeffords' position irrespective of his candidacy but is so intrinsically personal that it is not conducive for pro rata apportionments based on time used for campaign purposes versus time used for personal purposes because detection or monitoring of the periods during which such ordinary clothing items are used for personal purposes would be practically impossible. Thus, despite respondents' assertion that the clothing at issue was purchased for use by the candidate during campaign appearances, such ordinary clothing items are particularly vulnerable to personal use and yet are not workable under the framework used by the Commission for reimbursing the campaign treasury for periods when items purchased with campaign funds are used for personal purposes. Therefore, we find that there is reason to believe that Senator Jeffords and his campaign committee violated 2 U.S.C. § 439a by using campaign funds to purchase the clothing at issue.

2. Itemization of Expenditures

We now turn to the complainant's second allegation - that the respondents "continue to file reports disclosing credit card charges but failing" to provide an itemization of the charges exceeding $200 in violation of 2 U.S.C. § 434(b); 11 C.F.R.

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§ 104.9. The complainant points to the respondents' 1993 Mid-Year Report and states that "Mr. Jeffords made the necessary disclosure only after an admonitory letter from the Commission seeking the reporting detail that he had avoided." The complainant also alleges that in the committee's most recently filed third-quarter report, the respondents failed to provide an itemization of individual credit card charges exceeding $200 as required by law, citing Complainant's Exhibit C.

Respondents state that they have fully complied with the disclosure requirements of 11 C.F.R. § 104.9, and point out specifically that a $3,000 disbursement to Visa is disclosed on the October 15 Quarterly Report, Complainant's Exhibit C, and is fully itemized on the same page with a list of the name and address of each original vendor from which the items were purchased. Respondents also state that the date, amount, and purpose for each payment is listed for all items in excess of $200 in full compliance with 11 C.F.R. § 104.9.

In a Request for Additional Information dated September 6, 1994, the Commission advised the committee that corrections to its Amended Mid-Year Report (1/1/93-6/30/93) were needed, including providing an itemization of payments totaling $7,479.99 to a credit card company pursuant to 11 C.F.R. § 104.9. The Commission advised the committee to file a written response or an amendment to its report within fifteen days of the date of the letter. On September 23, 1994, the committee filed an amendment to its 1993 Mid-Year Report, providing the requested information.

We note that the respondents' October 15 Quarterly Report,

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particularly that portion cited by the complainant, Complainant's Exhibit C, See Attachment 3, appears to reflect an itemization of credit card charges in excess of $200 in accordance with 2 U.S.C. § 434(b); 11 C.F.R. § 104.9. Specifically, proper itemization of the disbursement to Chittenden Bank Visa in the amount of three thousand dollars ($3000.00) appears in the six entries, designated "MEMO", which immediately follow the credit card payment, see Attachment 3. The credit card payment and the six itemized entries are all dated September 12, 1994. Thus, it appears that the committee has complied with the reporting requirements of 2 U.S.C. § 434(b); 11 C.F.R. § 104.9 with respect to the credit card charges in its October 15 Quarterly Report.

However, as the complainant contends, the respondents initially failed to comply with the requirements of 2 U.S.C. § 434(b) by failing to itemize credit card charges exceeding $200 in its 1993 Mid-Year Report. In addition, it appears that, subsequently, in its 1993 Year-End Report, the respondents again violated 2 U.S.C. § 434(b) by failing to properly itemize credit card charges totaling $3,691.31 for expenditures made between July and December 1993. See Attachment 4. Specifically, respondents failed to list the name and address of the original vendor from which the item or service was purchased in accordance with 2 U.S.C. § 434(b). Therefore, we find that there is reason to believe that Jeffords for Vermont and James A. Johnston, as treasurer, violated 2 U.S.C. § 434(b).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1995

Edwina Rogers, Esquire
National Republican Senatorial Committee
425 Second St., N.E.
Washington, D.C. 20002

RE: MUR 4112
Jeffords for Vermont and
James A. Johnston, as Treasurer

Dear Ms. Rogers:

This supplements our letter dated August 2, 1995, in which you were advised that the Federal Election Commission found reason to believe that your clients, Jeffords for Vermont and James A. Johnston, as treasurer, violated, inter alia, 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended, and determined to take no further action in the matter and closed its file.

As stated in the Factual and Legal Analysis, which accompanied the August 2, 1995 letter, your clients violated 2 U.S.C. § 434(b) by failing to properly itemize credit card charges totaling $3,691.31 for expenditures made between July and December 1993 in their 1993 Year-End Report. Specifically, your clients failed to list the name and address of the original vendor from which the item or service was purchased. The Commission hereby instructs your clients to amend Schedule B of their 1993 Year-End Report in accordance with 2 U.S.C. § 434(b).

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Danny L. McDonald
Chairman

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4112

DATE FILMED 8-29-95 CAMERA NO. 1

CAMERAMAN JMH

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 9/20/95

✓ Microfilm

_____ Public Records

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THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4112

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 12, 1995

VIA FIRST CLASS MAIL

The Hon. James Merrill Jeffords
513 Hart Senate Office Building
Washington, DC 20510

RE: MUR 4112
Jeffords for Vermont and
James A. Johnston, Treasurer

Dear Mr. Jeffords:

This Office is sorry to learn that you did not receive the copy we sent to your office of the letter addressed to your designated counsel notifying you of the Commission's determination on July 27, 1995, to take no further action and close the file in this matter.

According to the Designation of Counsel Statement received by this Office on November 18, 1994, Edwina Rogers of the National Republican Senatorial Committee was designated counsel for the Jeffords for Vermont committee and James A. Johnston, as treasurer. For your convenience, this Office has enclosed copies of two notification letters which were sent on August 2 and 3, 1995, which notified your committee of the Commission's determinations. Please note that your office was sent a courtesy copy of the August 2, 1995, letter.

This Office hopes that this information will resolve any concerns you may have. Should you have any further questions, please contact me at (202) 219-3690.

Sincerely,

Tracey L Ligon (by mrk)

Tracey L. Ligon
Attorney

enclosures

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Celebrating the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED