FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4152

DATE FILMED 4-24-86 CAMERA NO. 4

CAMERAMAN JMH

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-20
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 2 2 42 PM '94

ROBERT F. BAUER
(202) 434-1602

December 2, 1994

MUR 4152

DEC 2 1 43 PM '94

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

Dear Mr. Noble:

The undersigned files this Complaint, alleging pervasive violations of the Federal Election Campaign Act of 1971, as amended, by Colin McMillan, the Republican nominee for the United States Senate from the State of New Mexico. Having spent almost two million dollars of his own money for various campaign purposes, Mr. McMillan has refused to disclose how his vast monies were spent. Even in the face of public pressure, he maintains that he is not required to report these expenditures as required by law.

Mr. McMillan has committed -- and continues to commit -- an unprecedented reporting violation which runs into the millions of dollars. For every day that his refusal to comply with the law continues, this violation becomes "knowing and willful" and justifies the imposition of the severest sanctions of Federal law.

<u>$1.7 million Spent but Not Disclosed</u>

The facts of this case are undisputed. Mr. Millan's campaign has disclosed that the candidate has spent over $1.7 million from his own pocket for various campaign purposes. The campaign does not, however, report these expenditures in the itemized detail required by law. And it continues to claim that it need not do so and that it will not do so.

The campaign's legal contentions are nonsense, of course. Mr. McMillan has spent funds for various campaign-related purposes. By law, these expenditures constitute in-kind contributions. The regulations of the Commission state that "each in-kind contribution" must be reported as a contribution" but "shall also be reported as an expenditure." 11 C.F.R. § 104.13(a)(1), (2). On each occasion that McMillan pays

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for, as examples, television time or postage, the campaign must report as if it had made the expenditures itself.

Moreover, the Act imposes detailed reporting requirements on "expenditures" to any person which exceed $200 in amount. It provides specifically that each such expenditure must be reported along with the date and a clear statement of purpose. The Commission notes that this statement of purpose may not be slighted, but rather should set out in detail, for each such expenditure, its character:

> "(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount and purpose of each expenditure.
>
> (A) As used in (citation omitted) *purpose* means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements of (citation omitted) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as *advances, election day expense, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote* and *voter registration* would not meet the requirements of (citation omitted) for reporting the purpose of an expenditure."

11 C.F.R. § 104.3(b)(4)(i)(A).

None of these requirements has been satisfied in the case of the millions of dollars of expenditures by Mr. McMillan. According to a report in the Albuquerque Journal, McMillan's expenditures have included payments for television time, "direct mail and fundraising expenses, travel and lodging, printing, events, postage and telephone expenses." Albuquerque Journal, October 27, 1994, at A-1. See also, The Journal, October 23, at D-3 has obtained this information only upon its direct request of McMillan. Still this McMillan disclosure falls short of what would be required if he reported properly through his principal campaign committee.

For example, McMillan has provided to The Journal only "lump-sum" disclosure of all expenses other than television time expenses. His campaign has only made available "ballpark" numbers for various categories. One example is the category "printing, campaign events, postage and telephone," for which a total of $15,000 was informally disclosed without further breakdown. Another $20,000 was claimed to have been spent in the general category of campaign signs and bumper stickers. But the law requires more -- complete itemization, including statement of purpose, for each payment to any one person exceeding $200.

McMillan "Defense"

McMillan has offered two defenses, neither of which stands the lightest test of accuracy or credibility.

First, the McMillan campaign claims that it has handled the matter precisely in accordance with the Act and regulations. This Complaint demonstrates that a simple examination of the Commission's regulations would have revealed to McMillan that the law, in fact, requires the reporting that he declines to provide.

Second, he offers the suggestion that somehow, as a millionaire, he is not required to follow the rules which apply to candidates of ordinary means. The Journal reports that he defended his flouting of the disclosure rules with this remarkable statement: "Personal expenditures are the only way to offset the incumbent's advantage . . . . "

So it is apparently the belief of Mr. McMillan that the rules are different for him, and that where other candidates might have to comply with the federal laws, he is free to disregard them -- because he is wealthy. This notion is false, and utterly at odd with the letter and spirit of the campaign laws which were designed, in fact, to eliminate any advantage of the wealthy in the conduct of our nation's politics.

Knowing and Willful Violations of the Law

McMillan remains adamant that the law does not require him to report and that he will not do so. His continuing refusal to report -- to amend the reports already improperly filed -- suggests that from this point forward, his violation must be treated as "knowing and willful" within the meaning of the Act. A "knowing and willful" violation, of course, requires the imposition of the severest sanctions under the statute, including civil penalties at a level of 200% of the expenditures involved in the violation.

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Thus, the civil penalty imposed in this case could, by law, well exceed $3 million. This is a clear measure of the significance of this violation and of the importance of prompt action by the Commission.

Very truly yours,

Robert F. Bauer
Counsel to Respondents

District of Columbia

SUBSCRIBED AND SWORN to before me this 2nd day of December, 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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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1994

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

RE: MUR 4152

Dear Mr. Bauer:

This letter acknowledges receipt on December 2, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4152. 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

9604373248 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1994

Jack C. Emmons, Treasurer
McMillan for U.S. Senate
2129 Osuna Road, N.E., Suite 207
Albuquerque, NM 87113

RE: MUR 4152

Dear Mr. Emmons:

The Federal Election Commission received a complaint which indicates that McMillan for U.S. Senate ("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 4152. 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

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9604373248 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1994

Colin R. McMillan
2129 Osuna Road, N.E., Suite 207
Albuquerque, NM 87113

RE: MUR 4152

Dear Mr. McMillan:

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 4152. 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

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9604032401

LAW OFFICES
WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 434-5000
FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

LON E. MUSSLEWHITE
(202) 434-5074

December 22, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Dec 22 4 01 PM '94

BY FACSIMILE AND BY HAND

Ms. Alva E. Smith
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4152

Dear Ms. Smith:

We represent the Colin McMillan for U.S. Senate Campaign Committee. A Statement of Designation of Counsel is enclosed.

Because we have only recently been brought into this matter (and because of a delay in the delivery of the FEC letter advising the campaign of a complaint), we request an extension of time to respond to the complaint filed by Robert F. Bauer. Our response will supplement the letter already sent to you by campaign treasurer, C. Jack Emmons, and will explain in more detail why the FEC should take no action in this matter.

We request an extension of time until January 16, 1995. This would be an extension of approximately 20 days from the due date of the response which would normally be no earlier than December 26, 1994.[1] We note that the FEC letter to Mr. Emmons was delayed in its delivery due to the fact that the campaign headquarters to which the letter was sent had been closed.

Please contact me or Terrence O'Donnell (202-434-5678) of this firm as soon as possible with your decision.

Sincerely,

Lon E. Musslewhite

Lon E. Musslewhite

Enclosure

---

[1] The FEC letter to Mr. Emmons advising him of the complaint was dated December 8, 1994. We understand that, under FEC regulations, the normal 15-day response period is increased by a 3-day period for service by mail, thus, making the deadline December 26, 1994.

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STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 22 4 01 PM '94

MUR _____

NAME OF COUNSEL: Terrance O'Donnell

ADDRESS: Williams & Connolly
725 Twelfth St. NW
Washington, DC 20005

TELEPHONE: 202-434-5678

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.

12/21/94
Date

Signature

RESPONDENT'S NAME: Colin McMillan

ADDRESS: 118 W. First St.
Roswell, NM 88201

HOME PHONE: 505-623-4086

BUSINESS PHONE: 505-623-1225

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

December 29, 1994

Terrence O'Donnell, Esq.
Lon E. Musslewhite, Esq.
Williams & Connolly
725 Twelfth St., N.W.
Washington, D.C. 20005

RE: MUR 4152
Jack C. Emmons, Treasurer
McMillan for U.S. Senate
Colin R. McMillian

Dear Messrs. O'Donnels and Musslewhite:

This is in response to your letter dated December 22, 1994, requesting an extension until January 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 January 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

9604373224

LAW OFFICES
WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 434-5000
FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

LON E. MUSSLEWHITE
(202) 434-5074

December 23, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 27 10 26 AM '94

BY FACSIMILE AND BY HAND

Ms. Alva E. Smith
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4152

Dear Ms. Smith:

This is to confirm our telephone conversation today in which you indicated that our time to respond to the complaint in the above matter has been extended to Tuesday, January 17, 1995. Thank you for your prompt response to our request.

As you requested in our telephone conversation today, we have enclosed additional Statements of Designation of Counsel showing that Terrence O'Donnell and I represent Colin McMillan, the Colin McMillan for U.S. Senate Campaign Committee, and C. Jack Emmons, Treasurer of the Committee.

Please call me if you have any questions.

Sincerely,

Lon E. Musslewhite

Lon E. Musslewhite

Enclosures

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 4152

NAME OF COUNSEL Terrence O'Donnell
Lon E. Musslewhite
725 Twelfth St., NW
Williams & Connolly
Washington, DC 20005

TELEPHONE Terrence O'Donnell 202-434-5678
Lon E. Musslewhite 202-434-5074

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
DEC 27 10 26 AM '94

The above-named individuals are hereby designated as my counsel and the counsel of the McMillan for U.S. Senate Committee and are authorized to receive any notification and other communications from the Commission and to act on my behalf before the Commission.

Date: December 23, 1994

C Jack Emmons
C. Jack Emmons

RESPONDENT'S NAME: C. Jack Emmons

ADDRESS: 7111 Prospect Place, NE
Suite D
Albuquerque, New Mexico 87110

HOME PHONE: 505-856-6038

BUSINESS PHONE: 505-883-6523

9604373246

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4152

NAME OF COUNSEL: Terrence O'Donnell
Lon E. Musselwhite
725 Twelfth St., NW
Williams & Connolly
Washington, DC 20005

TELEPHONE: Terrence O'Donnell 202-434-5678
Lon E. Musslewhite 202-434-5074

The above-named individuals are hereby designated as my counsel and are authorized to receive any notification and other communications from the Commission and to act on my behalf before the commission.

Date: December 23, 1994

Colin McMillan

Colin McMillan

RESPONDENT'S NAME: Colin McMillan

ADDRESS: 118 W. First St.
Roswell, New Mexico 88201

HOME PHONE: 505-623-4086

BUSINESS PHONE: 505-623-1225

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 12, 1995

Lon E. Musslewhite, Esq.
Terrence O'Donnell, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

RE: MUR 4152

Dear Messrs. Musslewhite and O'Donnell:

This is in response to your letter dated December 23, 1994, confirming our phone conversation regarding an additional day 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 January 17, 1995.

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

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EH Emmons, Hagood & Company
Certified Public Accountants

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dec 27 11 33 AM '94

December 17, 1994

Lawrence Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR 4152

Dear Mr. Noble:

I am responding to the complaint filed by Robert F. Bauer on behalf of Senator Jeff Bingaman's reelection campaign supporters against the McMillan for U.S. Senate Committee.

The complaint stated that the McMillan campaign has "knowingly and willfully" violated the Federal Election Campaign reporting act. In fact, the campaign has followed the instructions received from Pat Sheppard, Senior Reports Analyst of the Reports Analyst Division of the Federal Election Commission. Ms. Sheppard replied to our early inquiry that the campaign committee had no obligation to itemize the expenditures reported under the Debts and Obligations Schedule D until the campaign committee reimbursed those expenditures, other than loans which were to be detailed on Schedule C of the campaign committee reports. When the Bingaman supporters voiced their concern during the general election, we again checked with Ms. Sheppard. Once again, we were assured by Ms. Sheppard that no itemization was required until the debts and obligations were repaid to the candidate.

However, because it has never been the candidate's intention to avoid full disclosure of how his monies were spent on behalf of the campaign, enclosed is a detailed itemization by month of the debts and obligations expenditures, along with our recently amended November 28th report which includes this itemized report as an addendum to Schedule D.

I hope this satisfactorily addresses the issues in the complaint. If you have any questions, please call me or write to me at the Albuquerque address listed below.

Sincerely,

C. Jack Emmons

C. Jack Emmons
Treasurer
McMillan for U.S. Senate

Enclosure

7111 Prospect Place, N.E. • Suite D • Albuquerque, NM 87110 • 505-883-6523 • FAX 505-883-5282
112 West Marcy Street • Suite 403 • Santa Fe, NM 87501 • 505-983-8808 • FAX 505-983-8668
Member - Division for CPA Firms AICPA

9604373249 9

EH Emmons, Hagood & Company
Certified Public Accountants

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 27 11 33 AM '94

December 17, 1994

Pat Sheppard
Senior Report Analyst
Reports Analyst Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: McMillan for U.S. Senate (C00284224)

Dear Ms. Sheppard:

Enclosed is an amended November 28th report for the McMillan for U.S. Senate Committee.

The report is being amended for the following reasons:

a. Candidate loans were reported on Schedule C and the Detailed Summary Sheet, but not itemized as receipts on Schedule A. Schedule A for Line 13 is enclosed.

b. The Partial repayment of loans to the candidate was shown as a disbursement on the Detailed Summary Sheet, but no Schedule B was supplied to show the expenditure by the campaign committee. Schedule B for Line 19 is enclosed.

c. The loan on October 21st from the candidate was listed on Schedule C as $175,000 instead of the actual loan of $125,000. However, the total of the three loans for the reporting period was accurately reported in the campaign totals on Schedule C and Schedule D.

d. When the campaign received the final month-to-month itemized expenditures by Mr. McMillan on behalf of the campaign, we discovered that the campaign had over-reported $42,573.21 in Debts and Obligations. The balance is being adjusted on Schedule D to reflect this difference. The inaccurate reporting occurred in the July 15, 1994 report due to the mid-month cut-off in May for that report versus the month-to-month accounting done by Mr. McMillan's office. Expenditures were double reported. Mr. McMillan's figures are the accurate ones, because his accountant tracked all of those expenditures for Mr. McMillan, not the campaign. The itemized expenditures listed as Debts and Obligations on Schedule D are attached as an addendum to that schedule in this amended report.

If you have any questions, please feel free to contact me at the Albuquerque office.

Sincerely,

C. Jack Emmons

C. Jack Emmons
Treasurer

Enclosures

7111 Prospect Place, N.E. • Suite D • Albuquerque, NM 87110 • 505-883-6523 • FAX 505-883-5282
112 West Marcy Street • Suite 403 • Santa Fe, NM 87501 • 505-983-8808 • FAX 505-983-8668

Member - Division for CPA Firms AICPA

9604373250

REPORT OF RECEIPTS AND DISBURSEMENTS

For An Authorized Committee
(Summary Page)

USE FEC MAILING LABEL OR TYPE OR PRINT

1. NAME OF COMMITTEE (in full)
McMillan for U.S. Senate

ADDRESS (number and street) ☐ Check if different than previously reported.
2129 Osuna, NE, P. O. Box 3767

CITY, STATE and ZIP CODE — STATE/DISTRICT
Albuquerque, NM 87190-3767

2. FEC IDENTIFICATION NUMBER
C00284224

3. IS THIS REPORT AN AMENDMENT?
[XX] YES ☐ NO

4. TYPE OF REPORT

☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid-Year Report (Non-election Year Only)

☐ Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____
[XX] Thirtieth day report following the General Election on 11-08-94 in the State of New Mexico
☐ Termination Report

This report contains activity for ☐ Primary Election [X] General Election ☐ Special Election ☐ Runoff Election

SUMMARY

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
5. Covering Period 10-29-94 through 11-28-94		
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e))	157,206.34	885,699.04
(b) Total Contribution Refunds (from Line 20(d))	225.00	2,650.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from 6(a))	156,981.34	883,049.04
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	407,875.23	1,408,556.98
(b) Total Offsets to Operating Expenditures (from Line 14)	1,330.80	1,575.10
(c) Net Operating Expenditures (subtract Line 7(b) from 7(a))	406,544.43	1,406,981.88
8. Cash on Hand at Close of Reporting Period (from Line 27)	18,016.79	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)		
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	1,985,002.30	

For further information contact:
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Toll Free 800-424-9530
Local 202-219-3420

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer
C. Jack Emmons

Signature of Treasurer
C Jack Emmons

Date
12-17-94

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

FEC FORM 3
(revised 4/87)

9604373250 1

SCHEDULE A **ITEMIZED RECEIPTS**

Separate schedule(s) for each category of the Detailed Summary Page	PAGE 1 OF 1
	FOR LINE NUMBER 13

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
McMillan for U.S. Senate

A. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Colin McMillan 118 West First Roswell, NM 88201		11-16-94 10-29-94 10-21-94	$ 80,000.00 98,000.00 125,000.00
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		
B. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		
C. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		
D. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		
E. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		
F. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		
G. Full Name, Mailing Address and ZIP Code	Name of Employer / Occupation	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: ☐ Primary ☐ General ☐ Other (specify):	Aggregate Year-to-Date > $		

SUBTOTAL of Receipts This Page (optional)	303,000.00
TOTAL This Period (last page this line number only)	303,000.00

9604373250 2

SCHEDULE B **ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page

PAGE 1 OF 1

FOR LINE NUMBER 19

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

McMillan for U.S. Senate

A. Full Name, Mailing Address and ZIP Code Colin McMillan 118 West First Roswell, NM 88201	Purpose of Disbursement Partial repayment of loans to campaign Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 11-4-94	Amount of Each Disbursement This Period 6,273.00
B. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period

SUBTOTAL of Disbursements This Page (optional)	6,273.00
TOTAL This Period (last page this line number only)	6,273.00

9604373250 3

SCHEDULE C
(Revised 3/80)

LOANS

Page 1 of 2 for
LINE NUMBER D3
(Use separate schedules for each numbered line)

Name of Committee (in Full)
McMillan for U.S. Senate

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Colin McMillan 118 West First Roswell, NM 88201 Election: Primary General Other (specify)	125,000.00	-0-	

Terms: Date Incurred 10-21-94 Date Due Open Interest Rate 0 %(apr) Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Election: Primary General Other (specify):			

Terms: Date Incurred _____ Date Due _____ Interest Rate _____ %(apr) Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $

SUBTOTALS This Period This Page (optional) .....

TOTALS This Period (last page in this line only) .....

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

4-00145

9604373250 4

SCHEDULE C
(Revised 3/80)

LOANS

Page 2 of 2 for
LINE NUMBER D3
(Use separate schedules for each numbered line)

Name of Committee (In Full)
McMillan for U.S. Senate

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Colin McMillan 118 West First Roswell, NM 88201 Election: Primary XX General Other (specify):	80,000.00	6,273.00	499,727.00

Terms: Date Incurred 11-16-94 Date Due Open Interest Rate () %(apr) Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
Colin McMillan 118 West First Roswell, NM 88201 Election: Primary XX General Other (specify):	98,000.00	-0-	

Terms: Date Incurred 10-29-94 Date Due Open Interest Rate 0 %(apr) Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $	

SUBTOTALS This Period This Page (optional)	303,000.00
TOTALS This Period (last page in this line only)	499,727.00

Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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SCHEDULE D
(Revised 3/80)

DEBTS AND OBLIGATIONS
Excluding Loans

Page 1 of 1 for
LINE NUMBER 10
(Use separate schedules for each numbered line)

Name of Committee (in Full) McMillan for U.S. Senate	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
A. Full Name, Mailing Address and ZIP Code of Debtor or Creditor Colin McMillan 118 West First Roswell, NM 88201	1,512,887.60	14,961.61	(42,573.21)* See note below	1,485,275.30
Nature of Debt (Purpose): Various campaign expenses See attached addendum for details.				
B. Full Name, Mailing Address and ZIP Code of Debtor or Creditor The balance is being adjusted to reflect the difference reflected in the totals between the McMillan for U.S. Senate FEC reports and the actual expenditures. The over-reported amount of $42,573.21 occurred during the mid-month reporting period on the July 15th reporting period. Mr. McMillan's accounting was done on a month-to-month basis, so some expenditures were double reported.				
Nature of Debt (Purpose):				
C. Full Name, Mailing Address and ZIP Code of Debtor or Creditor				
Nature of Debt (Purpose):				
D. Full Name, Mailing Address and ZIP Code of Debtor or Creditor				
Nature of Debt (Purpose):				
E. Full Name, Mailing Address and ZIP Code of Debtor or Creditor				
Nature of Debt (Purpose):				
F. Full Name, Mailing Address and ZIP Code of Debtor or Creditor				
Nature of Debt (Purpose):				
1) SUBTOTALS This Period This Page (optional)				
2) TOTALS This Period (last page in this line only)				1,485,275.30
3) TOTAL OUTSTANDING LOANS from Schedule C (last page only)				499,727.00
4) ADD 2) and 3) and carry forward to appropriate line of Summary Page (last page only)				1,985,002.30

4-00145

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MCMILLAN FOR US SENATE
NET CAMPAIGN EXPENDITURES MADE FROM COLIN'S ROSWELL
CASH BASIS

DATE	DESCRIPTION	AMOUNT
02/93	TOTAL EXPENDITURES	$4,871.50
03/93	TOTAL EXPENDITURES	$1,194.77
09/93	TOTAL EXPENDITURES	$7,[illegible]
10/93	TOTAL EXPENDITURES	$1,947.96
11/93	TOTAL EXPENDITURES	$492.41
12/93	TOTAL EXPENDITURES	$7,088.51
	TOTAL 1993	$22,183.08
01/94	TOTAL EXPENDITURES	$[illegible]
02/94	TOTAL EXPENDITURES	$4,[illegible]
03/94	TOTAL EXPENDITURES	$3,510.[illegible]
04/94	TOTAL EXPENDITURES	$104,502.17
05/94	TOTAL EXPENDITURES	$177,182.54
06/94	TOTAL EXPENDITURES	$4,372.41
07/94	TOTAL EXPENDITURES	$47,99[illegible].21
08/94	TOTAL EXPENDITURES	$765,880.99
09/94	TOTAL EXPENDITURES	$411,020.60
10/94	TOTAL EXPENDITURES	$[illegible],490.71
11/94	NOV 1 THRU NOV 28	$78,513.[illegible]
	1994 THRU 11/28	$1,962,819.22
11/94	NOV 29-30	$[illegible]
GRAND TOTAL-INCEPTION THRU 11/30/94		$1,[illegible],749.82

- 3,777.52 subtracted for Nov 29 & 30 not in 11/28 FEC report
$1,985,052.30 new total

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
JULY, 1993

DATE	DESCRIPTION	AMOUNT
07/14/93	GREAT SOUTHWEST AVIATION-TRAVEL	$159.81
07/27/93	ALBUQUERQUE PUBLISHING	$28.50
07/27/93	AMERICAN EXPRESS-TRAVEL & LODGING	$647.02
07/27/93	FEDERAL EXPRESS CORP.	$13.00
07/27/93	HINKLE, COX, EATON, COFFIELD-LEGAL	$296.60
07/30/93	GREG GRAVES-CONSULTING	$2,750.00
07/30/93	LA FONDA HOTEL-LODGING	$155.00
07/31/93	MASTERCARD-TRAVEL & LODGING	$200.62
07/31/93	GREAT SOUTHWEST AVIATION-TRAVEL	$620.95
	TOTAL 7/93	$4,871.50

EXP0793.WK3

9604373250 8

MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
AUGUST, 1993

DATE	DESCRIPTION	AMOUNT
08/02/93	PERMIAN EXPLORATION CORP-AUTO RENTAL	$50.00
08/06/93	ALBUQUERQUE MEDIA MONITORING-VIDEO TAPES	$87.54
08/13/93	SANTA FE CONVENTION & VISITORS BUREAU-LODG	$140.00
08/13/93	WESTERN STATES REPUBLICAN LEADERSHIP CONF	$150.00
08/20/93	ALBUQUERQUE MEDIA MONITORING VIDEO TAPES	$87.54
08/25/93	GREG GRAVES-CONSULTING EXPENSES	$43.26
08/25/93	GREAT SOUTHWEST AVIATION-TRAVEL	$373.58
08/27/93	AMERICAN EXPRESS-TRAVEL & LODGING	$69.81
08/31/93	MASTERCARD-THE FRED HARVEY HOTEL-ALBQ	$111.03
08/31/93	MASTERCARD-DOUBLETREE HOTEL-ALBUQUERQUE	$82.01
	TOTAL 8/93	$1,194.77

EXP0893.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
SEPTEMBER, 1993

DATE	DESCRIPTION	AMOUNT
09/15/93	GREG GRAVES-CONSULTING	$2,750.00
09/16/93	GREG GRAVES-CONSULTING EXPENSES	$183.23
09/23/93	AT&T-POLITICAL CALLS	$144.90
09/27/93	ALISON, M.K. MORGAN-CONSULTING	$3,374.73
09/27/93	AMERICAN EXPRESS-TRAVEL & LODGING	$461.98
09/27/93	CELLULAR 3-POLITICAL CALLS	$20.71
09/27/93	PERMIAN EXPLORATION CORP-FED EX	$9.00
09/27/93	US WEST DIRECT-PHONE SVC	$43.38
09/30/93	C. MCMILLAN-POSTAGE	$15.60
	TOTAL 9/93	$7,003.53

EXP0993.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
OCTOBER, 1993

DATE	DESCRIPTION	AMOUNT
10/11/93	AIRBORNE EXPRESS	$27.91
10/11/93	GREAT SOUTHWEST AVIATION-TRAVEL	$293.49
10/11/93	US WEST COMMUNICATIONS-PHONE SVC & CALLS	$87.41
10/13/93	GREAT SOUTWEST AVIATION-TRAVEL	$211.42
10/27/93	ALBUQUERQUE PETROLEUM CLUB-LUNCHEON	$261.79
10/27/93	AIRBORNE EXPRESS	$18.15
10/27/93	AMERICAN EXPRESS-TRAVEL & LODGING	$845.93
10/31/93	MASTERCARD-DOUBLETREE HOTEL-ALBQ	$93.36
10/31/93	RECLASS HINKLE COX ETAL-LEGAL	($296.60)
	TOTAL 10/93	$1,542.86

EXP1093.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
NOVEMBER, 1993

DATE	DESCRIPTION	AMOUNT
11/12/93	AT&T-PHONE CALLS	$43.37
11/12/93	GREAT SOUTHWEST AVIATION-TRAVEL	$315.90
11/12/93	US WEST COMMUNICATIONS-PHONE SVC & CALLS	$96.14
11/23/93	PERMIAN EXPLORATION CORP-AIRBORNE EXPRESS	$27.00
	TOTAL 11/93	$482.41

EXP1193.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
DECEMBER, 1993

DATE	DESCRIPTION	AMOUNT
12/02/93	GCP, INC.-COMPUTER PROGRAMMING	$3,039.62
12/06/93	AMERICAN EXPRESS-TRAVEL & LODGING	$2,493.79
12/16/93	GREAT SOUTHWEST AVIATION-TRAVEL	$306.83
12/30/93	AMERICAN EXPRESS-TRAVEL & LODGING	$447.00
12/31/93	SHELL-AUTO FUEL	$25.50
12/09/93	PHILLIPS 66-AVGAS	$41.20
12/30/93	PHILLIPS 66-AVGAS	$188.60
12/31/93	RANCHO MIRAGE HOTEL-LODGING	$407.16
12/31/93	SANTA FE HILTON HOTEL-LODGING	$138.31
	TOTAL 12/93	$7,088.01

EXP1293.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
JANUARY, 1994

DATE	DESCRIPTION	AMOUNT
01/06/94	POSTMASTER-POSTAGE	$58.00
01/13/94	POSTMASTER-POSTAGE	$29.00
01/20/94	GREAT SOUTHWEST AVIATION-POLITICAL TRAVEL	$1,010.72
01/20/94	US WEST COMMUNICATIONS-PHONE SVC & CALLS	$223.15
01/21/94	KENDALL JOYCE-REIMB CELLULAR PHONE CALLS	$16.42
01/28/94	ALBUQUERQUE PETROLEUM CLUB-MEALS	$31.56
01/28/94	AMERICAN EXPRESS-TRAVEL & LODGING	$494.69
01/31/94	MASTERCARD-AMBERLY SUITES HOTEL	$71.65
01/31/94	ED'S FLYING SERVICE-TRAVEL	$87.20
01/31/94	MASTERCARD-MEALS	$42.41
01/31/94	CUTTER FLYING-AIR TRAVEL	$232.18
	TOTAL 01/94	$2,296.98

EXP0194.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
FEBRUARY, 1994

DATE	DESCRIPTION	AMOUNT
02/18/94	AT&T-PHONE CALLS	$11.21
02/18/94	DEASON, PETERS, STOCKTON-ACCT SVCS	$584.72
02/18/94	FINA OIL & CHEMICAL-AUTO FUEL	$37.00
02/18/94	PERMIAN EXPLORATION CORP.-AUTO RENTAL	$100.00
02/18/94	MIKE PETTIT-PHOTO PRINTS	$30.00
02/18/94	US WEST COMMUNICATIONS-PHONE SVC & CALLS	$259.50
02/18/94	WILLIAMS & CONNOLLY-LEGAL	$240.24
02/18/94	WILLIAMS & CONNOLLY-LEGAL	$198.77
02/18/94	WILLIAMS & CONNOLLY-LEGAL	$266.44
02/24/94	VALLEY BANK-CASHIERS CHECK-THE LAKES APT #131	$615.98
02/28/94	AMERICAN EXPRESS-TRAVEL & LODGING	$1,594.84
02/28/94	CELLULAR 3-PHONE CALLS	$2.75
02/28/94	GREAT SOUTHWEST AVIATION-TRAVEL	$720.09
02/28/94	ROSWELL INN-LODGING	$141.17
	TOTAL 02/94	$4,802.71

EXP0294.WK3

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MCMILLAN FOR US SENATE
CAMPAIGN EXPENDITURES
MARCH, 1994

DATE	DESCRIPTION	AMOUNT
03/10/94	FINA OIL & CHEMICAL-AUTO FUEL	$26.33
03/10/94	US WEST COMMUNICATIONS-PHONE SVC & CALLS	$223.88
03/25/94	AT&T-PHONE CALLS	$6.25
03/25/94	KENDALL JOYCE-REIMB CELLULAR PHONE CALLS	$14.21
03/29/94	AMERICAN EXPRESS-TRAVEL & LODGING	$1,992.90
03/29/94	GREAT SOUTHWEST AVIATION-TRAVEL	$661.96
03/29/94	PLATEAU CELLULAR NETWORK-PHONE CALLS	$2.99
03/30/94	THE LAKES APTS-APT #131	$581.57
	TOTAL 03/94	$3,510.09

EXP0394.WK3

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
APRIL 1994

DATE PAID	DESCRIPTION	AMOUNT
4/12/94	#11469-PLATEAU CELLULAR NETWORK	$ 2.44
4/12/94	#11484-U.S. WEST COMMUNICATIONS-PHONE CALLS/SERVICE	139.01
4/13/94	#11486-POSTMASTER - STAMPS	58.00
4/18/94	#11494-ELVA LEINBERGER-REIMB. FOR EXPENSES-RALLY MTG.	12.11
4/18/94	#11493-YOUR WAY DELI-FOOD-RALLY MEETING	36.15
4/21/94	#11498-AT&T-LONG DISTANCE CALLS	4.04
4/25/94	#11500-SMITH & HARROFF, INC. - MEDIA	102,000.00
4/26/94	#11503-AMERICAN EXPRESS-TRAVEL AND LODGING	1,055.66
4/26/94	#11505-PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
4/26/94	PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
4/26/94	#11507-GREAT SW AVIATION-POLITICAL TRAVEL	393.02
4/27/94	#11509-CONTEL CELLULAR OF SW	9.92
4/30/94	#11519-THE LAKES APARTMENTS-APT. #131	591.82
TOTAL		$104,502.17

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
MAY 1994

DATE PAID	DESCRIPTION	AMOUNT
5/4/94	#11532-RENDALL JOYCE - REIMBURSEMENT FOOD AND MISC - CAMERA CREW-RANCH	$ 149.95
5/6/94	#11533-MCMILLAN FOR U.S. SENATE* LOAN TO CAMPAIGN	175,000.00
5/12/94	#11539-AT&T-LONG DISTANCE-POL.	12.34
5/12/94	#11549-PERMIAN EXPLORATION CORPORATION REIMB. FOR AIRBORNE EXP. TO DAVID SPOEDE	9.00
5/12/94	#11549-PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
5/12/94	#11552-POSTMASTER - STAMPS	93.00
5/12/94	#11559-U.S. WEST COMMUNICATIONS-PHONE CALLS/SERVICE	421.19
5/19/94	#11574-ENRIQUE KNELL-REIMBURSEMENT FOR EXPENSES	125.22
5/23/94	#11576-KAY R. MCMILLAN-MASTERCARD COLIN MCMILLAN TRAVEL AND LODGING	498.97
5/26/94	#11580-AMERICAN EXPRESS HELEN BOWE-POLITICAL FLIGHT - $224.00	224.00
5/26/94	#11582-ROBERT B. CORN-PILOT SERVICE	79.00
5/26/94	#11584-GREAT SW AVIATION POLITICAL TRAVEL - $469.87	469.87
TOTAL		$177,182.54

*ACTUAL FUNDS EXPENDED FOR CAMPAIGN REPORTING PERIOD ARE REPORTED IN DETAIL ON FEC REPORT

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
JUNE 1994

DATE PAID	DESCRIPTION	AMOUNT
6/1/94	#11595-THE LAKES APARTMENTS-APT. #131	$ 595.38
6/14/94	#11607-WILLIAM B. OWEN-POLITICAL TRIP WASHINGTON, DC 5/21-28	1,206.68
6/16/94	#11617-AT&T-PHONE CALLS	14.44
6/16/94	#11622-LDM ASSOCIATES	21.88
6/16/94	#11623-NEELEY-JAMES OFFICE SUPPLY OFFICE SUPPLIES-POLITICAL	32.45
6/16/94	#11625-PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
6/16/94	#11626-PLATEAU CELLULAR NETWORK	8.39
6/16/94	#11630-U.S. WEST COMMUNICATIONS	379.30
6/30/94	#11649-AMERICAN EXPRESS-TRAVEL AND LODGING	319.50
6/30/94	#11653-CUTTER FLYING SERVICE FUEL-POLITICAL TRIPS	248.96
6/30/94	#11655-INK SPOT PRINTING LUJAN/SPIEGEL LETTER	54.80
6/30/94	#11658-KAY R. MCMILLAN-MASTERCARD COLIN MCMILLAN-POLITICAL TRAVEL	400.50
6/30/94	#11660-THE LAKES APARTMENTS-APT. #131	608.26
6/30/94	ELEPHANT BUTTE INN-MASTER CARD-5/15/94	69.28
6/30/94	CUTTER AVIATION-GAS-5/12/94	192.98
6/30/94	HAMPTON INN-PHOENIX 5/16/94	62.90
6/30/94	PUBLIC SERVICE COMPANY-ELECTRICITY-APT. #131	56.71
TOTAL		$4,372.41

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CAMPAIGN EXPENDITURES PAID
JULY 1994

DATE PAID	DESCRIPTION	AMOUNT
7/7/94	#11664-WILLIAM B. OWEN, REIMB. CELLULAR PHONE 5/21-28 - DC POLITICAL TRIP	$ 76.56
7/11/94	#11668-CHARLES, WORRELL - PILOT SERVICE 7/8-9	228.78
7/14/94	#11671-AT&T-LONG DISTANCE-POLITICAL	15.65
7/14/94	#11673-ROBERT B. CORN - PILOT SERVICE	79.00
7/14/94	#11676-LDM ASSOCIATES-PHONE CALLS	17.78
7/14/94	#11680-PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
7/14/94	#11682-PUBLIC SERVICE COMPANY-ELECTRICITY APT. #131	23.16
7/14/94	#11686-U.S. WEST COMMUNICATIONS-PHONE CALLS/SERVICE	298.09
7/14/94	#11687-MESA AIR LINES - POLITICAL TRAVEL	92.00 79.00
7/20/94	#11695-KARL ROVE & CO.-POLITICAL LISTS	11,255.84 729.68
7/20/94	#11696-SMITH & HARROFF, INC.-CONSULTING SERVICES MEDIA PRODUCTION	5,000.00 25,495.60
7/21/94	#11701-CHAVES COUNTY CLERK FOIA COPIES	55.44
7/27/94	#11702-AMERICAN EXPRESS-TRAVEL AND LODGING	3,818.15
7/28/94	#11713-THE LAKES APARTMENTS-APT. #131	611.48
7/29/94	#11714-FEDERAL EXPRESS CORPORATION FED EX TO DENNIS HOWE	20.00
TOTAL		$47,996.21

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
AUGUST 1994

DATE PAID	DESCRIPTION	AMOUNT
8/2/94	#11723-CHAVES COUNTY CLERK-FOIA COPIES	$ 59.64
8/2/94	#11722-PUBLIC SERVICE COMPANY-ELECTRICITY APT. #131	16.75
8/5/94	#11727-ASSOCIATED POSTERS	1,224.00
8/5/94	#11728-F/P RESEARCH ASSOCIATES 7/94 CONSULTING SERVICES	1,281.31
8/5/94	#11729-KARL ROVE & COMPANY	14,272.77
8/5/94	#11730-NPW	1,500.00
8/5/94	#11731-PATRIOT PANELS-SIGNS	11,047.00
8/5/94	#11732-PONY PANELS-SIGNS	3,068.56
8/5/94	#11733-PRAXIS LIST COMPANY-POLITICAL LISTS	2,912.66
8/5/94	#11734-SMITH & BARROFF, INC.-TV/RADIO	131,000.00
8/5/94	#11735-VISION WEAR, INC.-ADVERTISING	6,364.57
8/10/94	#11743-PERMIAN EXLORATION CORPORATION-AUTO RENTAL	100.00
8/10/94	#11746-U.S. WEST COMMUNICATIONS-PHONE	302.91
8/10/94	#11747-MASTERCARD-TRAVEL AND LODGING	1,367.89
8/12/94	#11756-AT&T-LONG DISTANCE POL. $19.56	19.56
8/22/94	#11760-SMITH & BARROFF, INC. TV, RADIO, CONSULTING	95,000.00 240,000.00 5,081.41
8/23/94	#11763-MCMILLAN FOR U.S. SENATE* LOAN TO CAMPAIGN FOR EXPENSES	28,000.00
8/29/94	#11770-AMERICAN EXPRESS-TRAVEL AND LODGING	296.00
8/29/94	#11772-GREAT SW AVIATION-POLITICAL TRAVEL	1,070.01
8/29/94	#11776-PERMIAN EXPLORATION CORPORATION REIMB.-AIRBORNE EXPENSE	9.00
8/31/94	#11788-PUBLIC SERVICE COMPANY-ELECTRICITY APT. #131	14.26
8/31/94	#11789-THE LAKES APARTMENTS-APT. #131	608.79
8/31/94	COLIN MCMILLAN - POSTAGE METER-FOIA LETTERS	6.87
8/31/94	COLIN MCMILLAN - XEROX-568 COPIES @.10 EA	56.80
8/31/94	E. LEINBERGER - POL. HOURS	1,000.23
TOTAL		$545,880.99

*ACTUAL FUNDS EXPENDED FOR CAMPAIGN REPORTING PERIOD ARE REPORTED IN DETAIL ON FEC REPORT

MCMILLAN FOR U.S. SENATE

9604373521

MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
SEPTEMBER 1994

DATE PAID	DESCRIPTION	AMOUNT
9/1/94	#11791-BUREAU OF LAND MANAGEMENT-COPIES 1124 PAGES @ .13 FOIA	$183.92
9/6/94	#11793-MERLINDA J. PADILLA SPONSOR GUS MACKER-MCMILLAN SENATORS BASEBALL TEAM	174.85
9/7/94	#11794-SMITH & HARROFF, INC. TV-9/12-9/18 RETAINER 8/15-9/15	71,000.00
9/9/94	#11798 KENDALL JOYCE-CELLULAR PHONE	10.96
9/9/94	#11799-CINDY RAGSDALE REIMBURSEMENT FOR HESTON BREAKFAST DECORATIONS	43.88
9/12/94	#11801-JODIE ALFERS REIMBURSEMENT FOR HESTON BREAKFAST DECORATIONS	166.67
9/14/94	#11803-SMITH & HARROFF, INC. TV-9/19-9/25 $71,000 RADIO SPOTS $36,000	107,000.00
9/15/94	#11805-AT&T-ACCT. #0191083971991 LONG DISTANCE-POL.	17.12
9/15/94	#11808-MASTERCARD-TRAVEL AND LODGING	1,207.99
9/15/94	#11809-FEDERAL EXPRESS CORPORATION	25.50
9/15/94	#11814-PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
9/15/94	#11816-ROSWELL INN-CHARLTON HESTON BREAKFAST FOOD-$2,275, LODGING $197.75	2,472.75
9/15/94	#11819-U.S. WEST COMMUNICATIONS LD SERVICE 8/2-9/27	341.58
9/21/94	#11827-SMITH & HARROFF, INC. TV 9/26-10/2 - $71,000.00 RADIO - $36,000.00 MEDIA - $15,575.66	122,575.66
9/28/94	#11835-AIRBORNE EXPRESS	18.00
9/28/94	#11836-AMERICAN EXPRESS POLITICAL TRAVEL - $1,808.00	1,808.00
9/28/94	#11839-GREAT SW AVIATION-POLITICAL TRAVEL	1,609.81
9/28/94	#11843-PLATEAU CELLULAR NETWORK-PHONE CALLS	6.06
9/28/94	#11844-PUBLIC SERVICE COMPANY-ELECTRICITY-APT. #131	17.79
9/30/94	#11850-THE LAKES APARTMENTS-APT. #131	609.41
9/30/94	COLIN MCMILLAN-E. LEINBERGER-POL HOURS	675.48 948.27
9/30/94	POSTAGE METER	6.61 .29
TOTAL		$311,020.60

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
OCTOBER 1994

DATE PAID	DESCRIPTION	AMOUNT
10/1/94	#11856-ROSE MARKETING GROUP-CABLE TV	$ 29,625.38
10/1/94	#11855-SMITH & HARROFF, INC.-TV-RADIO	75,000.00
	MEDIA	10,118.93
10/4/95	#11854-POSTMASTER-STAMPS	174.00
10/5/94	#11860-SMITH & HARROFF, INC.-TV-RADIO-MEDIA	118,500.00
	CONSULTING	11,000.00
10/6/94	#11862-TELEMARK, INC.-ADVERTISING	14,562.81
10/12/94	#11865-AT&T-PHONE CALLS	19.06
10/12/94	#11867-ROBERT B. CORN-REIMB. PILOT SERVICE	429.17
10/12/94	#11868-CUTTER FLYING SERVICE-FUEL-POLITICAL TRIPS	173.25
10/12/94	#11869-MASTERCARD-TRAVEL AND LODGING	453.41
10/12/94	#11875-PERMIAN EXPLORATION CORPORATION-AUTO RENTAL	100.00
10/12/94	#11876-PLATEAU CELLULAR NETWORK-PHONE CALLS	9.79
10/12/94	#11879-U.S. WEST COMMUNICATIONS-PHONE CALLS/SERVICE	277.92
10/12/94	#11882-AIRBORNE EXPRESS	43.15
10/12/94	#11864-SMITH & HARROFF, INC. MEDIA	11,497.82
	MEDIA	10,160.14
	CONSULTING	11,000.00
	TV-RADIO	156,100.00
10/17/94	#11895-SOIL CONSERVATION SERVICE-FOIA COPIES	63.87
10/19/94	#11904-MCMILLAN FOR U.S. SENATE* LOAN TO CAMPAIGN	125,000.00
10/21/94	#11905-MINISTERIAL FELLOWSHIP OF ALBUQUERQUE GET-OUT-TO-VOTE	5,000.00
10/27/94	#11908-AIRBORNE EXPRESS	18.00
10/27/94	#11909-AMERICAN EXPRESS-TRAVEL AND LODGING	4,517.02
10/27/94	#11910-GREAT SW AVIATION-POLITICAL TRAVEL	383.12
10/27/94	#11919-MCMILLAN FOR U.S. SENATE* LOAN TO CAMPAIGN	98,000.00
10/31/94	#11926-CASH AND CARRY SOUTHWEST-SUPPLIES	119.26
10/31/94	COLIN MCMILLAN-POSTAGE METER	10.06
10/31/94	E. LEINBERGER-POL. HOURS	584.55
TOTAL		$682,940.71

*ACTUAL FUNDS EXPENDED FOR CAMPAIGN REPORTING PERIOD ARE REPORTED IN DETAIL ON FEC REPORT

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
NOVEMBER 1994

DATE PAID	DESCRIPTION	AMOUNT
11/1/94	#11933-CASH & CARRY SOUTHWEST-FIESTA SUPPLIES	$ 28.50
11/1/94	#11932-FARMERS COUNTRY MARKET-FIESTA FOOD & SUPPLIES	174.97
11/1/94	#11934-POSTMASTER-STAMPS	19.00
11/1/94	#11935-PUBLIC SERVICE COMPANY-ELECTRICITY APT. #131	14.98
11/1/94	#11929-THE LAKES APARTMENTS-APT. #131	261.85
11/3/94	#11946-JODIE ALPERS-REIMB. FIESTA SUPPLIES	78.45
11/3/94	#11941-DOMINGA CAMPOS-FIESTA ENTERTAINMENT	700.00
11/3/94	#11942-LOS NINOS FOLKLORICOS-FIESTA ENTERTAINMENT	200.00
11/3/94	#11943-NM MOUNTED PATROL-SECURITY SERVICES-FIESTA	120.00
11/3/94	#11945-PARTY BAND-FIESTA ENTERTAINMENT	400.00
11/3/94	#11944-PAUL RAGSDALE-REIMB. FIESTA SUPPLIES	32.00
11/4/94	#11948-CHARLOTTE EDMAN-REIMB. FIESTA SUPPLIES	44.70
11/4/94	#11947-PERMIAN EXPLORATION CORPORATION-FIESTA FLYER COPIES	50.00
11/4/94	COLIN MCMILLAN - POSTAGE	.52
11/7/94	#11951-MARTIN ALVAREZ-FIESTA CUSTODIAL SERVICES	84.00
11/7/94	#11950-CHISUM ELEMENTARY SHCOOL-FIESTA RENTAL	15.00
11/7/94	MCMILLAN FOR U.S. SENATE-REPAYMENT OF LOANS	(6,273.00)
11/16/94	#11958-AIRBORNE EXPRESS	9.00
11/16/94	#11959-ALBUQUERQUE PETROLEUM CLUB-MEETING	257.71
11/16/94	#11961-AT&T-LONG DISTANCE PHONE CALLS	31.09
11/16/94	#11964-MASTERCARD-TRAVEL AND LODGING	1,053.54
11/16/94	#11966-FEDERAL EXPRESS-MAIL	13.00
11/16/94	#11971-PERMIAN EXPLORATION CORPORATION AUTO RENTAL - 11/1-11/8	26.67
11/16/94	#11974-U.S. WEST COMMUNICATIONS-PHONE CALLS/SERVICE	258.55
11/16/94	#11976-CHARLES WORRELL-PILOT SERVICES	339.00
11/16/94	MCMILLAN FOR U.S. SENATE* LOAN TO CAMPAIGN	80,000.00
11/21/94	POSTMASTER-P.O. BOX REFUND	(48.50)
11/21/94	PUBLIC SERVICE COMPANY-FINAL ELECTRIC BILL	12.54

*ACTUAL FUNDS EXPENDED FOR CAMPAIGN REPORTING PERIOD ARE REPORTED IN DETAIL ON FEC REPORT

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MCMILLAN FOR U.S. SENATE
CAMPAIGN EXPENDITURES PAID
NOVEMBER 1994

DATE PAID	DESCRIPTION	AMOUNT
11/28/94	COLIN MCMILLAN - E. LEINBERGER-FOL. HOURS	$ 410.24
11/29/94	#11983-AMERICAN EXPRESS-TRAVEL AND LODGING	2,932.37
11/29/94	#11985-GREAT SW AVIATION-POLITICAL TRAVEL	815.15
TOTAL		$82,061.33

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LAW OFFICES
WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005
(202) 434-5000
FAX (202) 434-5029

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
95 JAN 17 PM 2:53

January 17, 1995

By Messenger

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

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JAN 17 2 53 PM '95

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Re: MUR 4152

Dear Ms. Taksar:

This letter is submitted on behalf of the McMillan for U.S. Senate Committee (the "McMillan Campaign Committee") and C. Jack Emmons, as treasurer (collectively, the "Respondents"), in response to the December 2, 1994 complaint filed by Robert F. Bauer (the "Second Complaint") on behalf of certain unnamed complainants.[1] The Federal Election Commission (the "FEC" or "Commission") has identified this matter as MUR 4152.[2]

For the reasons discussed below, the Second Complaint has no basis in law or fact and should be dismissed with prejudice. There are no grounds whatsoever for any action to be

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[1] As discussed below, the first complaint filed by Mr. Bauer on behalf of several individuals on October 31, 1994 (the "First Complaint") was dismissed, in our view, with prejudice, because it contained technical deficiencies that were not corrected within the proper time period.

[2] We have previously provided your office with appropriate Designations of Counsel. This letter is being filed under an extension granted by your office to January 17, 1995.

taken by the FEC against the McMillan Campaign Committee or its treasurer.

We are particularly troubled by the allegations in the Second Complaint because the McMillan Campaign Committee's FEC reports have followed the very specific reporting advice its treasurer received during the campaign from Ms. Pat Sheppard, the Senior Reports Analyst in the Reports Analysis Division for Authorized Committees. It is unfortunate that candidate committees that follow the rules, promptly seek FEC advice when they have reporting questions, and then faithfully follow that advice in their reports must then hire lawyers to defend against reckless charges like these. We reiterate, these charges should be dismissed.

COMPLAINT

The Second Complaint charges that the McMillan Campaign Committee has violated the Federal Election Campaign Act of 1971, as amended (the "Act"),[3] by failing to disclose in its FEC campaign reports the details of the expenditures made to third persons directly by Colin McMillan on behalf of his campaign (the "McMillan payments").

This conclusion is based on the argument that the McMillan payments must be shown as "in-kind contributions" that must also be reported as if they were campaign expenditures. The Second Complaint concludes that the Act required the McMillan Campaign Committee to disclose the persons to whom the McMillan payments were made, as well as the date, amount, and purpose of each such payment, at the time the McMillan payments were made, rather than at the time the payments are reimbursed by the Campaign Committee.

The Second Complaint also asserts that from the date of the complaint's filing (December 2, 1994), the McMillan Campaign Committee's "violation" must be treated as "knowing and willful" under the Act.

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[3] 2 U.S.C. §§ 431-455. All section references are to Title 2 of the United States Code and the regulations promulgated under the Act.

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RESPONSE

A. MCMILLAN CAMPAIGN COMMITTEE'S REPORTS FOLLOWED FEC SENIOR ANALYST'S SPECIFIC INSTRUCTIONS AND CONFORMED WITH APPLICABLE FEC REGULATIONS.

The Act and the regulations provide that if a treasurer uses his or her best efforts to obtain, maintain, and submit the information required by the Act, all reports shall be considered in compliance with the Act.[4] Mr. Emmons, McMillan Campaign Committee treasurer, did just that.

On at least two occasions, Mr. Emmons spoke by telephone with Pat Sheppard, FEC Senior Reports Analyst, on the subject of how he should report the McMillan payments, which the McMillan Campaign Committee had agreed to reimburse. We have spoken to Mr. Emmons and to Ms. Sheppard about these telephone calls and have summarized them below.[5]

Ms. Sheppard remembers that the calls were placed by Mr. Emmons, that the first call occurred sometime during the course of the campaign and that the second call occurred after a New Mexico newspaper article appeared on the reports right before the election. She thinks a third call might have taken place not long after the second call.

The circumstances surrounding the first telephone call between Ms. Sheppard and Mr. Emmons are as follows. The original McMillan Campaign Committee reports filed with the FEC presented the McMillan payments on Schedule C as loans to the campaign. In those reports, the McMillan payments were also shown as McMillan Campaign Committee disbursements, with all the requisite detail necessary for disbursements.

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[4] Section 432(i); FEC Reg. § 104.7.

[5] After obtaining your permission, Lon Musslewhite, one of the below-signed, telephoned Ms. Sheppard. She said that she could discuss with him (because he is one of the designated counsel of the McMillan Campaign Committee) the content of her previous telephone calls with Mr. Emmons and then did so. She made clear, however, that she could not discuss the merits of the complaint and she could not provide him with a written declaration summarizing those telephone calls.

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In a May 3, 1994 letter to Mr. Emmons (Exhibit A), Ms. Sheppard wrote that when a Committee receives a loan from a candidate, the FEC report must clarify whether the candidate used personal funds or borrowed the money from a lending institution. This led Mr. Emmons, on May 10, 1994, to call Ms. Sheppard for clarification.[6] In this conversation, Mr. Emmons noted that the McMillan payments were not cash infusions to the campaign but direct payments to third parties for the benefit of the campaign and that the Campaign Committee planned to reimburse Mr. McMillan for those payments.

Ms. Sheppard explained that, in the Commission's opinion, the McMillan payments were not loans to the campaign -- and thus cannot be reported on Schedule C -- because they were not cash infusions to the campaign. They were instead other debts and obligations and must be reported on Schedule D.[7]

Ms. Sheppard said that, as a result, the originally filed McMillan Campaign Committee reports were incorrect, because they included the McMillan payments among the campaign's itemized disbursements on Schedule B. She said the reports had to be corrected by removing those payments. Thus, she directed that the McMillan payments not be reported as disbursements of the McMillan Campaign Committee until the McMillan Campaign Committee reimburses Mr. McMillan. She said that, at that time, the McMillan Campaign Committee should report the expenditures on Schedule B (Itemized Disbursements) -- in the report for the period during which the reimbursement is made.[8]

In her recent conversation with Mr. Musslewhite, Ms. Sheppard confirmed that these were her instructions to Mr. Emmons and, she added, they were not unusual. These are the normal instructions she gives to campaigns for reporting payments like Mr. McMillan's. Moreover, she noted that all of the report

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6/ Alison Morgan, former McMillan Campaign Committee Finance Director, has informed us that she was also on that call, but Ms. Sheppard only remembers speaking to Mr. Emmons.

7/ See FEC Reg. § 104.3(d). We note that Schedule D says on its face that it does not include "loans."

8/ See FEC Form 3, Schedule B Instructions ("When a payment is made to reduce or extinguish an obligation owed BY the committee, the payment must be itemized on Schedule B . . . .").

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analysts in her office give the same advice in the same situation -- a fact she knows because those analysts report to her.

The McMillan Campaign Committee has faithfully followed Ms. Sheppard's explicit instructions. Mr. Emmons amended the previously filed reports to remove the McMillan payments from Schedule C and from the Schedule B disbursements listing and to show them as debts and obligations in Schedule D. From that point forward, Mr. Emmons reported all of the McMillan payments as a lump-sum debt and obligation on Schedule D and did not include them in the Schedule B disbursements listing.[2]

So that there was no confusion on the point, Mr. Emmons wrote Ms. Sheppard a letter on May 18, 1994 (Exhibit B) and made the following statement:

> Per your explanation provided in our verbal conversation on May 10, 1994, I have amended the Year End Report, as well as the First Quarter Report, to indicate that the campaign has an outstanding debt to Mr. McMillan, the candidate. This debt is presently shown as a lump-sum amount on Schedule D. <u>It is my understanding from our conversation that the disbursements personally made by Mr. McMillan will [be] itemized at the time the campaign reimburses him</u>. (Emphasis added).

This letter ended with the request that Ms. Sheppard review the enclosed amended reports and contact Mr. Emmons if additional

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[2] We note that Mr. McMillan's advances for the benefit of the campaign did not just take the form of expenditures to third parties -- reportable on Schedule D as debts and obligations of the Campaign Committee. During the campaign, Mr. McMillan loaned over $500,000 directly to the Campaign Committee. These loans were properly shown on Schedule C and the expenditures made directly by the Campaign Committee with those funds were fully reported on Schedule B.

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information were required. Ms. Sheppard did not contact Mr. Emmons on this point.[10]

In her recent conversation with Mr. Musslewhite, Ms. Sheppard said that she carefully reviews each report -- if she has a problem with any part of a report, she writes a letter to the treasurer requesting clarification or additional information. As she confirmed to Mr. Musslewhite, she had no problem with the McMillan Campaign Committee's reporting of the McMillan payments; if she had, she would have informed the committee in writing.

Mr. Musslewhite asked Ms. Sheppard whether she thought the descriptions of the purposes for the McMillan payments in the reports were specific enough. She said she thought they might be a little vague, but she was unconcerned when she reviewed the reports during the campaign, because she assumed she would receive the full detail when the payments were reimbursed by the Campaign Committee. She reiterated that if she had thought the described purposes were too vague when she reviewed the reports, she would have informed the Committee in writing -- but she did not do so.

Right before the election, in late October 1994, the McMillan Campaign Committee's reporting of the McMillan payments became the subject of New Mexico newspaper stories. Because of the increased attention, Mr. Emmons made a second call to Ms.

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[10] The complainants erroneously assert that the McMillan payments were "in-kind contributions" that must be shown as disbursements at the time they were made. This conclusion is based on an incorrect analysis of the law. Complainants rely on FEC Reg. § 104.13(a) which requires in-kind contributions to be shown as expenditures -- instead of § 104.11 which makes no such requirement with regard to debts and obligations of the campaign committee. However, even if § 104.13(a) applied to the McMillan payments, § 104.13(a)(2) states only that the "expenditure" side of those contributions is to be reported in accordance with § 104.3(b). Section 104.3(b) does not answer the question of when reimbursable third-party expenditures by candidates are to be reported. It would appear that Ms. Sheppard's office has reasonably interpreted the proper timing of that reporting to coincide with the reporting of analogous loan repayments under § 104.3(b)(2)(iii)(A) and § 104.3(b)(4)(iii), i.e., when the candidate is reimbursed. Cf. FEC Reg. § 116.5(c) (treatment as debt until reimbursed).

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Sheppard to confirm that the McMillan Campaign Committee was correctly reporting the McMillan payments.

Ms. Sheppard again told Mr. Emmons that the McMillan Campaign Committee was correctly reporting such payments as debts and obligations of the Campaign Committee on Schedule D and that there was no need to report the individual payments until the Campaign Committee reimbursed the candidate for the expenditures.

With the hope of ending the attention being given to this matter, Mr. Emmons voluntarily provided the FEC with a detailed monthly itemization of the McMillan payments on December 17, 1994.[11]

In light of the ongoing dialogue between Mr. Emmons and the FEC Senior Analyst, Ms. Sheppard, and the McMillan Campaign Committee's faithful adherence to Ms. Sheppard's specific reporting instructions, there can be no question that Mr. Emmons demonstrated "best efforts" to obtain, maintain, and submit the information required by the Act.[12] Moreover, that reporting was in complete conformance with FEC regulations.

For the above-stated reasons, the McMillan Campaign Committee reports should be considered in compliance with the Act and the Second Complaint should be dismissed with prejudice.

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[11] A detailed itemization by month of the McMillan payments was attached as an addendum to the Schedule D of the amended Post-General Election Report. A copy was sent to Lawrence Noble, FEC General Counsel, and Ms. Sheppard (Exhibit C - Mr. Emmons' December 17, 1994 cover letters). Mr. Emmons also filed an amended Post-General Election Report with the Secretary of the Senate and the New Mexico Secretary of State.

[12] However, even if there were no "best efforts" regulation under the Act, a committee's compliance with the FEC's specific reporting instructions should prevent the FEC from sanctioning that committee or its principals for doing what they were told to do.

B. **THE SECOND COMPLAINT, LIKE THE FIRST COMPLAINT, WAS LEGALLY INSUFFICIENT**

In addition to the foregoing, the Second Complaint, like the First Complaint filed on November 30, 1994, was legally insufficient and, accordingly, should be dismissed. See FEC Reg. §§ 111.4, 111.5.

The Act specifically provides that:

> The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.[13]

A complaint must provide the full name and address of the complainants, and the contents of the complaint must be sworn to and signed (by the complainants) in the presence of a notary public.[14]

The Second Complaint does not comply with the requirements of the Act and regulations. First, the Second Complaint is signed by Robert F. Bauer as "Counsel to Respondents," but does not identify the complainants whom Mr. Bauer represents.[15] Second, these unnamed complainants have not sworn and signed the Second Complaint in the presence of a notary public.

Because the Second Complaint does not comply with the requirements of the Act and the regulations, the FEC is not statutorily empowered to proceed with this complaint. Thus, the Second Complaint should be dismissed on these grounds as well.

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[13] Section 437g(1).

[14] Section 437g(1); FEC Reg. §§ 111.4 & 111.5.

[15] If the complainants are the same persons who filed the First Complaint, then the Second Complaint should likewise be barred. If the FEC permits the same complainants to file an identical complaint, after the complainants took no action to correct the first complaint, then the regulations would have no legal meaning. Complainants would be permitted to file the same complaint over and over without limit.

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CONCLUSION

For the reasons set forth above, the Second Complaint should be dismissed.

Very truly yours,

Terrence O'Donnell

Lon E. Musslewhite

Enclosures: (Exhibits A, B and C)

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Exhibit A

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

Jack C. Emmons, Treasurer
McMillan for US Senate
P.O. Box 3767
Albuquerque, NM 87190

MAY 3 1994

Identification Number: C00284224

Reference: Year End Report (7/1/93-12/31/93)

Dear Mr. Emmons:

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:

-You must provide the occupation and name of employer for each contributor required to be itemized on Schedule A. Please amend your report to include the omitted information.

With respect to the occupation and name of employer of the contributor, your committee may demonstrate "best efforts" to obtain the required information. This demonstration must describe your committee's procedures for requesting the information. You may also supply a copy of the solicitation. Under 11 CFR §104.7(b), the solicitation shall consist of a clear request for the required information (i.e., name, mailing address, occupation, and name of employer). The request should also inform the contributor that the reporting of such information is required by law. Amended Schedules A containing the missing occupations and names of contributors' employers must be provided to the Commission as such information becomes available to the committee. See 11 CFR §104.3(a)(4)(i) and 11 CFR §104.7.

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used personal funds or borrowed the money from a lending institution or some other source. If the candidate borrowed funds from a lending institution, or other source, please provide the name of the lending institution and the complete terms of the loan. Additionally, for loans from a lending institution, you must file an FEC FORM C-1 (copy attached) and a copy of the loan agreement. If the loan(s) was from personal

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funds, please acknowledge that fact in an amendment to this report. It is important to note that "personal funds" is strictly defined by Commission Regulations. See 11 CFR §110.10. (11 CFR §§100.7(a)(1) and 104.3(d))

-When several loans are owed by the same person or bank, you must report each loan separately, including the original date, the amount, the outstanding balance and all other terms. These loans should not be combined into a single figure. Please amend your report to correct this problem.

-Expenditures to American Express for $3,871.51 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

96043325336

Exhibit B

McMillan Colin For United States Senate

RECEIVED FEC MAIL SENATE
1994 MAY 25 PM 3:39

HAND DELIVERED ☐

May 18, 1994

Pat Sheppard
Senior Reports Analyst/Reports Analyst Division
F.E.C.
999 E. Street, NW
Washington, DC 20463

Re: McMillan for U.S. Senate (C00284224)
Dear Ms. Sheppard:

Per your written request of May 3, 1994, please find enclosed the Amended Year-End Report (7-1-93 - 12-31-93) for McMillan for U.S. Senate.

Per your explanation provided in our verbal conversation on May 10, 1994, I have amended the Year End Report, as well as the First Quarter Report, to indicate that the campaign has an outstanding debt to Mr. McMillan, the candidate. This debt is presently shown as a lump-sum amount on Schedule D. It is my understanding from our conversation that the disbursements personally made by Mr. McMillan will itemized at the time the campaign reimburses him.

With respect to occupation and name of employer of the contributor, please find attached a copies of solicitation indicating our best effort to obtain this information. Also, I am enclosing a copy of our letter requesting this information from the donor when the donor fails to provide same. This request is mailed after the campaign attempts to contact the donor by phone. The attached amended reports are updated as information has been provided.

Please review the amended reports, and please feel free to contact me if additional information is required.

Sincerely,

Jack Emmons

Jack Emmons
Campaign Treasurer

enclosures: Amended FEC Report as of 12/31/93 & 03/31/94
Copies of Solicitations
Copy of donor information request letter

2128 Osuna NE, Ste. 207 • Post Office Box 3767 • Albuquerque, N.M. 87190 • 505/345-0700 • Fax 505/345-3355

Paid for by McMillan for U.S. Senate. Party Corporate Contributions are prohibited. Contributions are not deductible for Income Tax purposes.

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Exhibit C

EH Emmons, Hagood & Company
Certified Public Accountants

December 17, 1994

Lawrence Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Noble:

I am responding to the complaint filed by Robert F. Bauer on behalf of Senator Jeff Bingaman's reelection campaign supporters against the McMillan for U.S. Senate Committee.

The complaint stated that the McMillan campaign has "knowingly and willfully" violated the Federal Election Campaign reporting act. In fact, the campaign has followed the instructions received from Pat Sheppard, Senior Reports Analyst of the Reports Analyst Division of the Federal Election Commission. Ms. Sheppard replied to our early inquiry that the campaign committee had no obligation to itemize the expenditures reported under the Debts and Obligations Schedule D until the campaign committee reimbursed those expenditures, other than loans which were to be detailed on Schedule C of the campaign committee reports. When the Bingaman supporters voiced their concern during the general election, we again checked with Ms. Sheppard. Once again, we were assured by Ms. Sheppard that no itemization was required until the debts and obligations were repaid to the candidate.

However, because it has never been the candidate's intention to avoid full disclosure of how his monies were spent on behalf of the campaign, enclosed is a detailed itemization by month of the debts and obligations expenditures, along with our recently amended November 28th report which includes this itemized report as an addendum to Schedule D.

I hope this satisfactorily addresses the issues in the complaint. If you have any questions, please call me or write to me at the Albuquerque address listed below.

Sincerely,

C. Jack Emmons

C. Jack Emmons
Treasurer
McMillan for U.S. Senate

Enclosure

7111 Prospect Place, N.E. • Suite D • Albuquerque, NM 87110 • 505-883-6523 • FAX 505-883-5282
112 West Marcy Street • Suite 403 • Santa Fe, NM 87501 • 505-983-8808 • FAX 505-983-8668
Member - Division for CPA Firms AICPA

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EH Emmons, Hagood & Company
Certified Public Accountants

OFFICE OF THE SENATE

December 17, 1994

Pat Sheppard
Senior Report Analyst
Reports Analyst Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: McMillan for U.S. Senate (C00284224)

Dear Ms. Sheppard:

Enclosed is an amended November 28th report for the McMillan for U.S. Senate Committee.

The report is being amended for the following reasons:

a. Candidate loans were reported on Schedule C and the Detailed Summary Sheet, but not itemized as receipts on Schedule A. Schedule A for Line 13 is enclosed.

b. The Partial repayment of loans to the candidate was shown as a disbursement on the Detailed Summary Sheet, but no Schedule B was supplied to show the expenditure by the campaign committee. Schedule B for Line 19 is enclosed.

c. The loan on October 21st from the candidate was listed on Schedule C as $175,000 instead of the actual loan of $125,000. However, the total of the three loans for the reporting period was accurately reported in the campaign totals on Schedule C and Schedule D.

d. When the campaign received the final month-to-month itemized expenditures by Mr. McMillan on behalf of the campaign, we discovered that the campaign had over-reported $42,573.21 in Debts and Obligations. The balance is being adjusted on Schedule D to reflect this difference. The inaccurate reporting occurred in the July 15, 1994 report due to the mid-month cut-off in May for that report versus the month-to-month accounting done by Mr. McMillan's office. Expenditures were double reported. Mr. McMillan's figures are the accurate ones, because his accountant tracked all of those expenditures for Mr. McMillan, not the campaign. The itemized expenditures listed as Debts and Obligations on Schedule D are attached as an addendum to that schedule in this amended report.

If you have any questions, please feel free to contact me at the Albuquerque office.

Sincerely,

C. Jack Emmons

C. Jack Emmons
Treasurer

Enclosures

7111 Prospect Place, N.E. • Suite D • Albuquerque, NM 87110 • 505-883-6523 • FAX 505-883-5282
112 West Marcy Street • Suite 403 • Santa Fe, NM 87501 • 505-983-8808 • FAX 505-983-8668

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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 204652

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR #4152

DATE COMPLAINT RECEIVED BY OGC: December 2, 1994
DATE OF NOTIFICATION TO RESPONDENTS: December 8, 1994
DATE ACTIVATED: October 24, 1995

RESPONDENTS: McMillan for U.S. Senate
Jack C. Emmons, as treasurer

Colin R. McMillan

RELEVANT STATUTE(S): 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i)
2 U.S.C. § 434(b)
2 U.S.C. § 437g(a)(1)
11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv)
11 C.F.R. §§ 104.3(a)(4)(i) and 104.3(b)(4)(i)
11 C.F.R. § 104.11
11 C.F.R. § 104.13(a)(1) and (2)
11 C.F.R. §§ 111.4 and 111.5
11 C.F.R. § 116.5(b)

INTERNAL REPORTS CHECKED: McMillan for U.S. Senate

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

According to the complaint filed in this matter, Colin R. McMillan violated the Federal Election Campaign Act of 1971, as amended, ("The Act") by failing to properly report $1.7 million in expenditures which he made on behalf of his own campaign. Mr. McMillan was the

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Republican nominee for the United States Senate from New Mexico in the 1994 general election. He lost the general election with 46 % of the vote.

II. FACTUAL AND LEGAL ANALYSIS

A. SUFFICIENCY OF THE COMPLAINT

Counsel for the respondents, the McMillan for U.S. Senate Committee and Jack Emmons, as treasurer, argues at page 8 of the response that the complaint giving rise to this matter is insufficient and should therefore be dismissed. Specifically, counsel argues that the complaint does not comply with the Act and regulations because the complaint is signed by Robert Bauer, "Counsel to Respondents," but does not identify the complainants whom counsel represents, in accordance with the requirements of 11 C.F.R. § 111.4 and 111.5. Counsel further argues that the unnamed complainants have not sworn and signed the complaint in the presence of a notary public in accordance with these regulations.

Pursuant to 2 U.S.C. § 437g(a)(1) of the Act, complaints filed with the Commission "shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury ...." Section 437g(a)(1) also states that the "Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." The regulations implementing this section of the Act are located at 11 C.F.R. § 111.4 and 111.5.

As stated on the face of the instant complaint, the complaint was filed by Mr. Robert F. Bauer, Perkins Coie, 607 Fourteenth Street, N.W., Washington, D.C. 20005. The complaint was also signed and sworn to by Mr. Bauer before a notary public. Thus, contrary to the respondents'

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argument, the complaint satisfies the identification of the complainant requirements contained in the statute and regulation. The fact that "Counsel to the Respondents" [sic] appears below Mr. Bauer's signature does not detract from the sufficiency of the complaint or Mr. Bauer's status as the complainant in this matter. Therefore, we recommend that the Commission reject the respondents' motion to dismiss the complaint in this matter.[1]

B. REPORTING VIOLATIONS

1. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act") requires that political committees, including a candidate's authorized committees, report the total amounts of contributions received and expenditures made in the reports for the reporting periods in which they occurred. 2 U.S.C. § 434(b). Authorized committees of candidates must also report separately all contributions received from the candidate. 2 U.S.C. § 434(b)(2)(B). The Act defines both "contribution" and "expenditure" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i). Further, the Act defines "anything of value" to include all in-kind contributions. 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

The Act requires political committees to identify through itemization the persons or entities which have made contributions or received expenditures in the aggregate amount or

[1] The respondents state that an earlier complaint was filed in this matter on November 30, 1994, but was deemed legally insufficient and subsequently dismissed. Respondents argue that if the complainants are the same persons who filed the first complaint then the instant complaint, like the earlier complaint, should be dismissed because the two complaints are identical and the complainants took no action to correct the first complaint. Based on the information provided, this Office is unable to locate evidence that an earlier complaint was ever filed in this matter. However, inasmuch as the instant complaint satisfies the requirements of the Act and regulations, see discussion, supra, consideration of any earlier complaint in this matter is unnecessary.

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value in excess of $200 within the calendar year. 2 U.S.C. § 434(b)(6)(A). Itemization requires providing the name and address of each such person or entity together with the date and amount of any such contributions or disbursements. The purpose of each such disbursement must also be provided. 11 C.F.R. §§ 104.3(a)(4)(i) and 104.3(b)(4)(i).

Payment by an individual from his or her personal funds for costs incurred in providing services or goods to a committee is considered a contribution to that committee. 11 C.F.R. § 116.5(b). An exception applies when the costs are incurred by an individual for transportation or subsistence expenses while traveling on behalf of the candidate or committee and the individual is reimbursed within a limited period of time.[2] See 11 C.F.R. § 116.5(b)(1) and (2). Specifically, payment for such travel or subsistence expenses is not considered a contribution, and therefore need not be reported, if the payment is reimbursed within thirty days from the date the expense was incurred if the individual paid with cash or a personal check or, if the individual paid with a credit card, within sixty days of the closing date on the credit card billing statement. If the committee does not make the reimbursement within the time periods described, the payment by the individual for such expenses is a contribution and must be reported. Id.; see discussion, infra.

The Act and regulations treat in-kind contributions the same as all other contributions and thus require committees to report them during the reporting period in which they were made. 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a) and 104.13(a). The issue of the appropriate timing for

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[2] An unreimbursed payment for transportation expenses incurred by an individual on behalf of any candidate or any political committee of a political party is also not a contribution if the aggregate value of the payments made by such individual on behalf of a candidate does not exceed $1000 with respect to a single election; and on behalf of all political committees of each political party does not exceed $2000 in a calendar year. 11 C.F.R. § 100.7(b)(8).

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the reporting of in-kind contributions was addressed in a decision of the United States District Court for the District of Columbia. In FEC v. American Federation of State, County and Municipal Employees - P.E.O.P.L.E., Qualified, et al., CA No. 88-3208 (RCL) (D.D.C. 1990) (opinion); (D.D.C. Oct. 31, 1990), AFSCME-PQ, a political committee, set up phone banks on behalf of a federal candidate and reported these in-kind contributions in the reporting period in which it disbursed funds to pay for the services rather than in the reporting period in which the services were provided to the candidate committee. Citing the portion of 2 U.S.C. § 434(b)(6) related to "other political committees" (2 U.S.C. § 434(b)(6)(B)), the court held "that in-kind contributions made by AFSCME-PQ to the McCloskey campaign in 1982 and 1984 are reportable as of the date the contributions were made, not the date of disbursements by AFSCME-PQ." The court based its ruling upon the "plain language" of 2 U.S.C. § 434(b), stating that this provision "in its entirety requires reporting of contributions in the period in which they were made." In addition, the court found that "to delay reporting of the in-kind contributions until after the elections would emasculate the fundamental purposes of the Act." After citing three such purposes, including "provid[ing] the electorate with information as to where political campaign money comes from and how it is spent . . . in order to aid the voters in evaluating those [candidates]" (quoting Buckley v. Valeo, 424 U.S. 1, 66), the court stated: "Inherent in this goal is the need to have the information available at the time voting decisions are being made."

In addition to requiring the reporting of in-kind contributions in the period in which they were made, the Act and regulations generally require simultaneous reporting of the in-kind contribution as an expenditure on the appropriate schedule (for typical in-kind contributions this

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is actually an artificial expenditure required in reporting in order to avoid inflating a committee's cash on hand). 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(b) and 104.13(a)(2). However, when an individual uses his or her personal funds (or personal credit) to pay for a campaign expense and will later be reimbursed by the committee for the payment, special reporting rules apply with respect to when the contribution is to be reported as an expenditure (in this situation the simultaneous reporting of an artificial expenditure in order to avoid inflating a committee's cash on hand would not be appropriate since an actual expenditure occurs when the committee reimburses the payment). Advisory Opinion 1992-1 provides guidance in this regard.

In Advisory Opinion 1992-1, the candidate inquired whether, inter alia, the committee could reimburse him for campaign related expenses that he paid for with his own personal funds. The Commission responded in the affirmative, and addressed the relevant reporting requirements. The Commission explained that the committee should report advances of the candidate's personal funds for campaign related expenses only as memo entries on Schedule A, so that they do not inflate total contributions reported. The Commission further explained that in contrast to the way other in-kind contributions are reported, corresponding disbursements should not be reported until the Committee subsequently reimburses the candidate. The disbursements reported should indicate the previous memo entry on Schedule A to which they relate.

The Commission also stated that the advances must be itemized if the outstanding amount advanced by the candidate, when aggregated with other contributions, exceeds $200 for the calendar year and the reimbursement does not bring the candidate below the $200 itemization threshold before the end of the reporting period. In addition, if the reimbursement is not made in the same reporting period as the original advance, the Committee must also itemize the advance

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as a debt on Schedule D if it exceeds $500 or has been outstanding for more than 60 days. 11 C.F.R. §§ 104.11 and 116.5.

2. The Complaint

The complaint in the present matter alleges that Mr. McMillan made more than $1.7 million in expenditures to his own campaign; however, his authorized committee, the McMillan for U.S. Senate Committee ("the Committee") allegedly did not report these expenditures "in the itemized detail required by law." The complaint argues that the only disclosure of these expenditures was found in newspaper accounts in New Mexico in late October, 1994, but that even these accounts were insufficient in detail. According to the cited news articles, Mr. McMillan made campaign-related expenditures for television time, direct mail, fundraising, travel and lodging, printing, "campaign events," campaign signs, bumper stickers, postage and telephone use. In response to the complaint, the respondents have asserted that their reports followed advice received from the Reports Analysis Division ("RAD") with regard to the reporting of campaign-related expenditures made by a candidate for which reimbursement is anticipated.

3. The Facts

According to information provided by the respondents and RAD, and information available on the public record in the forms of the Committee's original and amended reports, Requests For Additional Information ("RFAI's") sent by RAD and the Committee's responses to those inquiries, the following facts appear to be uncontested. The Committee registered with the Commission on September 30, 1993 and filed its first report, the 1993 Year End Report dated January 31, 1994, on February 4, 1994. On this original report the Committee itemized

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$77,402.10 in expenditures on Schedule B, including $22,714.01 in expenditures made by the candidate in anticipation of reimbursement. This same report also showed a total of $22,714.01 in loans from the candidate, Colin R. McMillan, on Schedule C. The same approach was used when the Committee prepared its 1994 April Quarterly Report. (See Attachment 1 for both original reports). Later, following receipt of an RFAI dated May 3, 1994, which raised questions, inter alia, about the reporting of the candidate's loan, the treasurer contacted RAD by telephone on or about May 10, 1994 and was instructed to amend the 1993 Year End Report to show the $22,714.01 only as a lump sum debt on a Schedule D. The Committee amended both its 1993 Year End Report and its 1994 April Quarterly Report as instructed. (Attachment 2).

The basis for this instruction according to RAD was that the payments made by the candidate for goods and services for which he expected reimbursement constituted neither loans, because the funds did not go to the Committee, nor in-kind contributions, because of the anticipated repayment. Rather, they should be considered debts owed to the candidate for payments which did not need to be itemized until the Committee reimbursed him for the expenditures.

On the basis of this advice the Committee, on May 18, 1994, filed amendments to its 1993 Year-End Report and its 1994 April Quarterly Report. These amendments: backed out the amounts reported earlier as loans from the candidate, thereby reducing the figures for total receipts; dropped out the itemized reporting of expenditures made by the candidate for which he had not been reimbursed, thereby reducing the figures for total expenditures; and added new Schedule D's which showed lump-sum debts owed the candidate "for various campaign expenses." The only transactions involving the candidate which were reported as loans on

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Schedule C's, and as receipts, were his provisions of funds which were actually deposited into the Committee's account. This same approach was then used by the Committee until December, 1994. In his cover letter dated, May 18, 1994, which accompanied the two amended reports submitted on that same date, the Committee's treasurer, C. Jack Emmons, stated: "It is my understanding from our conversation that the disbursements personally made by Mr. McMillan will [be] itemized at the time the campaign reimburses him."

On December 17, 1994, following receipt of the complaint, the Committee filed an amended 1994 Post Election Report which included an itemized listing by month of candidate expenditures totaling $1,985,002.30 as an addendum to the relevant Schedule D. These expenditures were dated between July 14, 1993 and November 29, 1994. On the same date, in his response to the complaint in this matter, Mr. Emmons reiterated his earlier statement in correspondence with RAD that the Committee had been assured "that no itemization was required until the debts and obligations were repaid to the candidate." On January 17, 1995, counsel for the Committee filed a second response to the complaint, restating the Committee's earlier position that they had followed instructions received from Commission staff and had therefore exerted their "best efforts" to comply with the Commission's regulations.

4. Analysis

As previously noted, with the exception of travel and subsistence expenses that are reimbursed within a certain timeframe, a payment by an individual using his or her personal funds for costs incurred in providing services or goods to a committee is considered a contribution to that committee. See 11 C.F.R. § 116.5(b). In this case, campaign related expenses, i.e. postage, direct mail services, fundraising, etc., paid by the candidate from his own

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personal funds for which he anticipated reimbursement from the committee were, like the phone banks in AFSCME, supra, in-kind contributions to the committee and, thus, should have been reported in the reporting period in which they were made in accordance with the requirements of the Act, see 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a) and 104.13(a), and pursuant to the Court's reasoning in AFSCME.

In reaching its decision in AFSCME concerning the timing of reporting in-kind contributions, the Court recognized that linking the reporting requirement to the timing of paying a bill for services rendered would allow too readily for manipulation of the reporting requirements just by delaying the billing until after the election. The court concluded that "to delay reporting of the in-kind contributions until after the elections would emasculate the fundamental purposes of the Act." Similarly in this situation, if the reporting requirement is governed by the time when the committee reimburses the candidate for expenditures the candidate made on behalf of the committee, a campaign could readily avoid disclosure of certain expenditures until after the election simply by having the candidate pay for the services at the time they are provided and reimbursing the candidate after the election is over. Allowing a committee to postpone reporting information concerning contributions that it has received until some indefinite time, possibly until after the election, flies in the face of the purposes of the disclosure policies underlying the Act.

Thus, it is the position of this Office that the expenditures made by Mr. McMillan on behalf of his campaign for which he anticipated reimbursement from the committee were contributions to his committee and thus, in accordance with Advisory Opinion 1992-1, should have been reported as memo entries on Schedule A in the reports for the quarters in which those

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expenditures occurred. Further, corresponding disbursements should be reported when the committee subsequently reimburses the candidate for the expenditures, see Advisory Opinion 1992-1; Section II(B)(1), supra.

Accordingly, we recommend that the Commission find reason to believe the McMillan for U.S. Senate Committee and Jack C. Emmons, as treasurer, violated 2 U.S.C. § 434(b). There is no information indicating that the candidate, Colin R. McMillan, was personally involved in the reporting of his payments on behalf of the Committee; therefore, this Office recommends that the Commission find no reason to believe that Mr. McMillan violated 2 U.S.C. § 434(b). Further, given the apparent reliance of the Committee and its treasurer upon information supplied by Commission staff as to the reporting of in-kind contributions for which the candidate anticipated repayment, this Office recommends that the Commission take no further action with regard to the Committee and Mr. Emmons, as treasurer, and close the file.

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III. RECOMMENDATIONS

1. Reject the respondents' motion to dismiss the complaint in this matter.

2. Find reason to believe that the McMillan for U.S. Senate Committee and Jack C. Emmons, as treasurer, violated 2 U.S.C. § 434(b), but take no further action in this matter.

3. Find no reason to believe that Colin R. McMillan violated 2 U.S.C. § 434(b).

4. Approve the appropriate letters.

5. Close the file.

Lawrence M. Noble
General Counsel

3/26/96
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments:
1. Original Reports filed by McMillan for U.S. Senate (2)
2. Amended Reports filed by McMillan for U.S. Senate (2)
3. Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
McMillan for U.S. Senate and	)	MUR 4152
Jack C. Emmons, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 1, 1996, the Commission decided by a vote of 5-0 to take the following actions in MUR 4152:

1. Reject the respondents' motion to dismiss the complaint in this matter.

2. Find reason to believe that the McMillan for U.S. Senate Committee and Jack C. Emmons, as treasurer, violated 2 U.S.C. § 434(b), but take no further action in this matter.

3. Find no reason to believe that Colin R. McMillan violated 2 U.S.C. § 434(b).

(continued)

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4. Approve the appropriate letters, as recommended in the General Counsel's Report dated March 26, 1996.

5. Close the file.

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

Attest:

4-1-96
Date

for Deborah Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Wed., March 27, 1996	11:16 a.m.
Circulated to the Commission:	Wed., March 27, 1996	4:00 p.m.
Deadline for vote:	Mon., April 01, 1996	4:00 p.m.

mwd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1996

Terrance O'Donnell, Esquire
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

RE: MUR 4152
McMillan for U.S. Senate and
Jack C. Emmons, as treasurer

Dear Mr. O'Donnell:

On April 1, 1996, the Federal Election Commission found reason to believe that your clients, the McMillan for U.S. Senate and Jack C. Emmons, as treasurer, violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that failing to report contributions in the reporting period in which they were made is a violation of Section 434(b) of the Act. Your clients should take steps to ensure that this activity does not occur in the future. Please note that when a candidate makes expenditures from his personal funds on behalf of his campaign and will later be reimbursed by the committee, such expenditures are contributions to the committee which must be reported as memo entries on Schedule A in the reports for the quarters in which those expenditures occurred. Corresponding disbursements should be reported when the committee subsequently reimburses the candidate for the expenditures.

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

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

cc: candidate

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: McMillan for U.S. Senate and Jack C. Emmons, as treasurer

MUR: 4152

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Robert F. Bauer on December 2, 1994. See 2 U.S.C. § 437g(a)(1).

A. SUFFICIENCY OF THE COMPLAINT

Pursuant to 2 U.S.C. § 437g(a)(1) of the Act, complaints filed with the Commission "shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury ...." Section 437g(a)(1) also states that the "Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." The regulations implementing this section of the Act are located at 11 C.F.R. § 111.4 and 111.5.

Counsel for the respondents, the McMillan for U.S. Senate Committee and Jack Emmons, as treasurer, argues that the complaint giving rise to this matter is insufficient and should therefore be dismissed. Specifically, counsel argues that the complaint does not comply with the Act and regulations because the complaint is signed by Robert Bauer, "Counsel to Respondents," but does not identify the complainants whom counsel represents, in accordance with the requirements of 11 C.F.R. § 111.4 and 111.5.

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Counsel further argues that the unnamed complainants have not sworn and signed the complaint in the presence of a notary public in accordance with these regulations.

As stated on the face of the instant complaint, the complaint was filed by Mr. Robert F. Bauer, Perkins Coie, 607 Fourteenth Street, N.W., Washington, D.C. 20005. The complaint was also signed and sworn to by Mr. Bauer before a notary public. Thus, contrary to the respondents' argument, the complaint satisfies the identification of the complainant requirements contained in the statute and regulation. The fact that "Counsel to the Respondents" [sic] appears below Mr. Bauer's signature does not detract from the sufficiency of the complaint or Mr. Bauer's status as the complainant in this matter.[1]

B. REPORTING VIOLATIONS

1. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act") requires that political committees, including a candidate's authorized committees, report the total amounts of contributions received and expenditures made in the reports for the reporting periods in which they occurred. 2 U.S.C. § 434(b). Authorized committees of candidates must also report separately all contributions received from the candidate. 2 U.S.C. § 434(b)(2)(B). The Act defines both "contribution" and "expenditure" as including

[1] The respondents state that an earlier complaint was filed in this matter on November 30, 1994, but was deemed legally insufficient and subsequently dismissed. Respondents argue that if the complainants are the same persons who filed the first complaint then the instant complaint, like the earlier complaint, should be dismissed because the two complaints are identical and the complainants took no action to correct the first complaint. Based on the information provided, this Office is unable to locate evidence that an earlier complaint was ever filed in this matter. However, inasmuch as the instant complaint satisfies the requirements of the Act and regulations, see discussion, supra; consideration of any earlier complaint in this matter is unnecessary.

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"anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i). Further, the Act defines "anything of value" to include all in-kind contributions. 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

The Act requires political committees to identify through itemization the persons or entities which have made contributions or received expenditures in the aggregate amount or value in excess of $200 within the calendar year. 2 U.S.C. § 434(b)(6)(A). Itemization requires providing the name and address of each such person or entity together with the date and amount of any such contributions or disbursements. The purpose of each such disbursement must also be provided. 11 C.F.R. §§ 104.3(a)(4)(i) and 104.3(b)(4)(i).

Payment by an individual from his or her personal funds for costs incurred in providing services or goods to a committee is considered a contribution to that committee. 11 C.F.R. § 116.5(b). An exception applies when the costs are incurred by an individual for transportation or subsistence expenses while traveling on behalf of the candidate or committee and the individual is reimbursed within a limited period of time.[2] See 11 C.F.R. § 116.5(b)(1) and (2). Specifically, payment for such travel or subsistence expenses is not considered a contribution, and therefore need not be reported, if the

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[2] An unreimbursed payment for transportation expenses incurred by an individual on behalf of any candidate or any political committee of a political party is also not a contribution if the aggregate value of the payments made by such individual on behalf of a candidate does not exceed $1000 with respect to a single election; and on behalf of all political committees of each political party does not exceed $2000 in a calendar year. 11 C.F.R. § 100.7(b)(8).

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payment is reimbursed within thirty days from the date the expense was incurred if the individual paid with cash or a personal check or, if the individual paid with a credit card, within sixty days of the closing date on the credit card billing statement. If the committee does not make the reimbursement within the time periods described, the payment by the individual for such expenses is a contribution and must be reported, Id.; see discussion, infra.

The Act and regulations treat in-kind contributions the same as all other contributions and thus require committees to report them during the reporting period in which they were made. 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a) and 104.13(a). The issue of the appropriate timing for the reporting of in-kind contributions was addressed in a decision of the United States District Court for the District of Columbia. In FEC v. American Federation of State, County and Municipal Employees - P.E.O.P.L.E., Qualified, et al., CA No. 88-3208 (RCL) (D.D.C. 1990) (opinion); (D.D.C. Oct. 31, 1990), AFSCME-PQ, a political committee, set up phone banks on behalf of a federal candidate and reported these in-kind contributions in the reporting period in which it disbursed funds to pay for the services rather than in the reporting period in which the services were provided to the candidate committee. Citing the portion of 2 U.S.C. § 434(b)(6) related to "other political committees" (2 U.S.C. § 434(b)(6)(B)), the court held "that in-kind contributions made by AFSCME-PQ to the McCloskey campaign in 1982 and 1984 are reportable as of the date the contributions were made, not the date of disbursements by AFSCME-PQ." The court based its ruling upon the "plain language" of 2 U.S.C. § 434(b), stating that this provision "in its entirety requires reporting of

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contributions in the period in which they were made." In addition, the court found that "to delay reporting of the in-kind contributions until after the elections would emasculate the fundamental purposes of the Act." After citing three such purposes, including "provid[ing] the electorate with information as to where political campaign money comes from and how it is spent . . . in order to aid the voters in evaluating those [candidates]" (quoting Buckley v. Valeo, 424 U.S. 1, 66), the court stated: "Inherent in this goal is the need to have the information available at the time voting decisions are being made."

In addition to requiring the reporting of in-kind contributions in the period in which they were made, the Act and regulations generally require simultaneous reporting of the in-kind contribution as an expenditure on the appropriate schedule (for typical in-kind contributions this is actually an artificial expenditure required in reporting in order to avoid inflating a committee's cash on hand). 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(b) and 104.13(a)(2). However, when an individual uses his or her personal funds (or personal credit) to pay for a campaign expense and will later be reimbursed by the committee for the payment, special reporting rules apply with respect to when the contribution is to be reported as an expenditure (in this situation the simultaneous reporting of an artificial expenditure in order to avoid inflating a committee's cash on hand would not be appropriate since an actual expenditure occurs when the committee reimburses the payment). Advisory Opinion 1992-1 provides guidance in this regard.

In Advisory Opinion 1992-1, the candidate inquired whether, inter alia, the committee could reimburse him for campaign related expenses that he paid for with his own personal funds. The Commission responded in the affirmative, and addressed the

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relevant reporting requirements. The Commission explained that the committee should report advances of the candidate's personal funds for campaign related expenses only as memo entries on Schedule A, so that they do not inflate total contributions reported. The Commission further explained that in contrast to the way other in-kind contributions are reported, corresponding disbursements should not be reported until the Committee subsequently reimburses the candidate. The disbursements reported should indicate the previous memo entry on Schedule A to which they relate.

The Commission also stated that the advances must be itemized if the outstanding amount advanced by the candidate, when aggregated with other contributions, exceeds $200 for the calendar year and the reimbursement does not bring the candidate below the $200 itemization threshold before the end of the reporting period. In addition, if the reimbursement is not made in the same reporting period as the original advance, the Committee must also itemize the advance as a debt on Schedule D if it exceeds $500 or has been outstanding for more than 60 days. 11 C.F.R. §§ 104.11 and 116.5.

2. <u>The Complaint</u>

The complaint in the present matter alleges that Mr. McMillan made more than $1.7 million in expenditures to his own campaign; however, his authorized committee, the McMillan for U.S. Senate Committee ("the Committee") allegedly did not report these expenditures "in the itemized detail required by law." The complaint argues that the only disclosure of these expenditures was found in newspaper accounts in New Mexico in late October, 1994, but that even these accounts were insufficient in detail. According to the cited news articles, Mr. McMillan made campaign-related expenditures

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for television time, direct mail, fundraising, travel and lodging, printing, "campaign events," campaign signs, bumper stickers, postage and telephone use. In response to the complaint, the respondents have asserted that their reports followed advice received from the Reports Analysis Division ("RAD") with regard to the reporting of campaign-related expenditures made by a candidate for which reimbursement is anticipated.

3. The Facts

According to information provided by the respondents and RAD, and information available on the public record in the forms of the Committee's original and amended reports, Requests For Additional Information ("RFAI's") sent by RAD and the Committee's responses to those inquiries, the following facts appear to be uncontested. The Committee registered with the Commission on September 30, 1993 and filed its first report, the 1993 Year End Report dated January 31, 1994, on February 4, 1994. On this original report the Committee itemized $77,402.10 in expenditures on Schedule B, including $22,714.01 in expenditures made by the candidate in anticipation of reimbursement. This same report also showed a total of $22,714.01 in loans from the candidate, Colin R. McMillan, on Schedule C. The same approach was used when the Committee prepared its 1994 April Quarterly Report. Later, following receipt of an RFAI dated May 3, 1994, which raised questions, inter alia, about the reporting of the candidate's loan, the treasurer contacted RAD by telephone on or about May 10, 1994 and was instructed to amend the 1993 Year End Report to show the $22,714.01 only as a lump sum debt on a Schedule D. The Committee amended both its 1993 Year End Report and its 1994 April Quarterly Report as instructed.

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The basis for this instruction according to RAD was that the payments made by the candidate for goods and services for which he expected reimbursement constituted neither loans, because the funds did not go to the Committee, nor in-kind contributions, because of the anticipated repayment. Rather, they should be considered debts owed to the candidate for payments which did not need to be itemized until the Committee reimbursed him for the expenditures.

On the basis of this advice the Committee, on May 18, 1994, filed amendments to its 1993 Year-End Report and its 1994 April Quarterly Report. These amendments: backed out the amounts reported earlier as loans from the candidate, thereby reducing the figures for total receipts; dropped out the itemized reporting of expenditures made by the candidate for which he had not been reimbursed, thereby reducing the figures for total expenditures; and added new Schedule D's which showed lump-sum debts owed the candidate "for various campaign expenses." The only transactions involving the candidate which were reported as loans on Schedule C's, and as receipts, were his provisions of funds which were actually deposited into the Committee's account. This same approach was then used by the Committee until December, 1994. In his cover letter dated, May 18, 1994, which accompanied the two amended reports submitted on that same date, the Committee's treasurer, C. Jack Emmons, stated: "It is my understanding from our conversation that the disbursements personally made by Mr. McMillan will [be] itemized at the time the campaign reimburses him."

On December 17, 1994, following receipt of the complaint, the Committee filed an amended 1994 Post Election Report which included an itemized listing by month of

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candidate expenditures totaling $1,985,002.30 as an addendum to the relevant Schedule D. These expenditures were dated between July 14, 1993 and November 29, 1994. On the same date, in his response to the complaint in this matter, Mr. Emmons reiterated his earlier statement in correspondence with RAD that the Committee had been assured "that no itemization was required until the debts and obligations were repaid to the candidate." On January 17, 1995, counsel for the Committee filed a second response to the complaint, restating the Committee's earlier position that they had followed instructions received from Commission staff and had therefore exerted their "best efforts" to comply with the Commission's regulations.

4. Analysis

As previously noted, with the exception of travel and subsistence expenses that are reimbursed within a certain timeframe, a payment by an individual using his or her personal funds for costs incurred in providing services or goods to a committee is considered a contribution to that committee. See 11 C.F.R. § 116.5(b). In this case, campaign related expenses, i.e. postage, direct mail services, fundraising, etc., paid by the candidate from his own personal funds for which he anticipated reimbursement from the committee were, like the phone banks in AFSCME, supra, in-kind contributions to the committee and, thus, should have been reported in the reporting period in which they were made in accordance with the requirements of the Act, see 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a) and 104.13(a), and pursuant to the Court's reasoning in AFSCME.

In reaching its decision in AFSCME concerning the timing of reporting in-kind contributions, the Court recognized that linking the reporting requirement to the timing

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of paying a bill for services rendered would allow too readily for manipulation of the reporting requirements just by delaying the billing until after the election. The court concluded that "to delay reporting of the in-kind contributions until after the elections would emasculate the fundamental purposes of the Act." Similarly in this situation, if the reporting requirement is governed by the time when the committee reimburses the candidate for expenditures the candidate made on behalf of the committee, a campaign could readily avoid disclosure of certain expenditures until after the election simply by having the candidate pay for the services at the time they are provided and reimbursing the candidate after the election is over. Allowing a committee to postpone reporting information concerning contributions that it has received until some indefinite time, possibly until after the election, flies in the face of the purposes of the disclosure policies underlying the Act.

Thus, the expenditures made by Mr. McMillan on behalf of his campaign for which he anticipated reimbursement from the committee were contributions to his committee and thus, in accordance with Advisory Opinion 1992-1, should have been reported as memo entries on Schedule A in the reports for the quarters in which those expenditures occurred. Further, corresponding disbursements should be reported when the committee subsequently reimburses the candidate for the expenditures, see Advisory Opinion 1992-1; Section II(B)(1), supra. Accordingly, there is reason to believe the McMillan for U.S. Senate Committee and Jack C. Emmons, as treasurer, violated 2 U.S.C. § 434(b).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1996

Terrance O'Donnell, Esquire
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

RE: MUR 4152
Colin McMillan

Dear Mr. O'Donnell:

On December 8, 1994, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 1, 1996, the Commission found, on the basis of the information in the complaint, and information provided by your Office, as well as by Mr. Jack Emmons, the treasurer of the McMillan for U.S. Senate commiteee, that there is no reason to believe that your client, Colin McMillan, violated 2 U.S.C. § 434(b). Accordingly, the Commission closed its file in this matter.

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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: _____
Lois G. Lerner
Associate General Counsel

Enclosure:
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 17, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

RE: MUR 4152
Colin R. McMillan
McMillan for U.S. Senate Committee
and Jack C. Emmons, as treasurer

Dear Mr. Bauer:

On April 1, 1996, the Federal Election Commission reviewed the allegations of your complaint dated December 2, 1994, and on the basis of the information provided in your complaint and information provided by Mr. Jack Emmons, the treasurer of the McMillan for U.S. Senate Committee, found that there is no reason to believe that Colin R. McMillan violated 2 U.S.C. § 434(b). However, the Commission found that there was reason to believe that the McMillan for U.S. Senate Committee and Jack C. Emmons, as treasurer, violated 2 U.S.C. § 434(b), and instituted an investigation of this matter. After considering the circumstances of this matter, however, the Commission determined to take no further action against these respondents, and closed the file in this matter on April 1, 1996. 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).

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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

THIS IS THE END OF MUR # 4152

DATE FILMED 4-24-96 CAMERA NO. 4

CAMERAMAN JMH

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