FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4300

DATE FILMED 4-1-97 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 30, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: THE COMMITTEE TO ELECT MICHAEL PATRICK FLANAGAN - REFERRAL MATTER

MUR 4300

On January 5, 1996 the Commission approved the Final Audit Report (FAR) on The Committee to Elect Michael Patrick Flanagan. The report was released to the public on January 29, 1996. In accordance with the Commission approved materiality thresholds, the attached finding from the FAR is being referred to your office:

- Apparent Excessive Contributions

Although this matter meets the requirements for referral to your office, the dollar amount involved is relatively small. All working papers and related documentation are available for review in the Audit division. Should you have any questions please contact Tom Hunter or Rick Halter at 219-3720.

Attachment:

Finding II.B. (Apparent Excessive Contributions), FAR Pgs. 4-5.

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B. Apparent Excessive Contributions

Section 441a(a)(1) of Title 2 of the Unites States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. The term "anything of value" includes all in-kind contributions.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Our review of contributions from individuals identified 4 apparent excessive contributions totaling $3,680. Two involved checks ($2,000 and $4,000) where only one signature was present, although the Committee, in its records and on its reports, assigned the respective contributions between both spouses and

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elections. We did not find any evidence that the Committee attempted to reattributed or redesignate any of the contributions pursuant to 11 CFR 110.1(k)(3) or 110.1(b)(5). Of the remaining 2 contributions, one exceeded the contribution limit by $580 and the second by $100.

At the exit conference, the Committee was provided with a schedule detailing the issues discussed above. The Committee did not comment.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the contributions in question were not excessive; or absent such evidence, refund the excessive amounts to each individual and provide copies of the front and back of the negotiated checks.

In response to the interim audit report, the Committee stated that "... the contributions referred to ... were made by the contributors and received by the Committee with verbal direction that each spouse was contributing to both the primary and general election. ... However, because of the absence of a clear and unequivocal designation and the passage of time for the contributor to make a redesignation the Committee has agreed to refund..." contributions totaling $3,580 3/. The Committee provided copies of the front of three checks totaling $3,080 dated October 19, 1995. In addition, the Committee stated that it had already reimbursed an individual for $500 in March of 1995; however, no documentation supporting this transaction was provided. We have reviewed the July 31 Mid-Year Report for 1995 which disclosed a disbursement for $500 as a loan repayment.

The treasurer stated that when refund checks clear the bank, copies of the front and back will be provided to the Audit staff for our review.

3/ With regard to the remaining $100 apparent excessive contribution, an analysis of the Committee's response indicated that this amount does not appear to be excessive.

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FEDERAL ELECTION
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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)
	)
Enforcement Priority System II	)
	)

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On September 10, 1996, the Commission approved an Enforcement Priority System for enforcement matters assigned to OGC Public Financing, Ethics & Special Projects staff ("EPS II"). *See* Memorandum to the Commission, *PFESP Enforcement Priority System*, dated August 6, 1996.

This Office has rated all of its PFESP enforcement cases under EPS II. Based upon that evaluation, this Office has identified 12 MURs for closing. By closing these 12 cases, this Office will be better able to focus its resources on the more significant cases, generally presidential matters. Moreover, these closings will enable us to process the 1996 presidential audits in a more efficient manner.[1]

[1] This Office is currently assessing the impact of *FEC v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996), on our caseload. In *Williams*, the court ruled that the five-year statute of limitations under 28 U.S.C. § 2462 applies to the imposition of civil penalties in Commission enforcement actions. Unlike the initial implementation of the Enforcement Priority System ("EPS"), this Office is not recommending that certain cases involving stale activity be closed at this time. *See, e.g.*, Implementation of the Enforcement Priority System, approved April 20, 1993. This Office will forward specific recommendations in light of *Williams* in a subsequent report to the Commission.

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Attached for Commission approval is the form letter that would be sent should these recommendations be approved. With the exception of notification letters sent to respondents in audit referrals, this Office will use the form notification letters currently used by the Enforcement Division. Since there is no form notification letter for audit referrals, this Office drafted the form notification letter at Attachment 1. Unlike RAD referrals, audit referrals are immediately assigned a MUR number and will eventually go on the public record when closed. Thus, it is necessary for us to notify the respondents in these instances prior to the matter appearing on the public record.

II. CASES RECOMMENDED FOR CLOSING

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

Having evaluated the PFESP enforcement caseload, this Office has identified 12 cases that do not warrant pursuit relative to other pending matters.[2] A short description of each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this Report. *See* Attachment 2. Also attached are the referral materials where that information has not been circulated previously to the Commission. *See* Attachment 3.

[2] These matters are: (1) MUR 4251 (Republican State Committee of Delaware); (2) MUR 4266 (Friends of Marc Little); (3) MUR 4271 (People for English); (4) MUR 4300 (The Committee to Elect Michael Flanagan); (5) MUR 4337 (Montana State Democratic Central Committee); (6) MUR 4345 (Nevada State Democratic Party); (7) MUR 4346 (Citizens for Jack Metcalf); (8) MUR 4381 (United Republican Fund of Illinois, Inc.); (9) MUR 4400 (San Bernardino County Republican Central Committee); (10) MUR 4436 (Abraham for Senate); (11) MUR 4441 (Republican Party of Dade County); and (12) MUR 4618 (Mississippi Democratic Party Political Action Committee).

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RECOMMENDATIONS

1. Approve the notification form letter at Attachment 1.

2. Take no further action, close the file effective (date) and approve the appropriate letters in the following matters:

   a. MUR 4251
   b. MUR 4266
   c. MUR 4271
   d. MUR 4300
   e. MUR 4337
   f. MUR 4345
   g. MUR 4346
   h. MUR 4381
   i. MUR 4400
   j. MUR 4436
   k. MUR 4441
   l. MUR 4618

2/21/97
Date

Lawrence M. Noble
General Counsel

Attachments

1. Form letter
2. Description of low rated cases
3. Referral materials not previously circulated

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Enforcement Priority System II.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1997, the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

1. Approve the notification form letter, as recommended in the General Counsel's Report dated February 21, 1997.

2. Take no further action, close the file effective March 5, 1997 and approve the appropriate letters in the following matters:

a.	MUR 4251	g.	MUR 4346
b.	MUR 4266	h.	MUR 4381
c.	MUR 4271	i.	MUR 4400
d.	MUR 4300	j.	MUR 4436
e.	MUR 4337	k.	MUR 4441
f.	MUR 4345	l.	MUR 4618

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

Attest:

2-27-97
Date

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

Received in the Secretariat: Fri., Feb. 21, 1997 4:21 p.m.
Circulated to the Commission: Mon., Feb. 24, 1997 11:00 a.m.
Deadline for vote: Thurs., Feb. 27, 1997 4:00 p.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Donald Griffin, Treasurer
Committee to Elect
Michael Patrick Flanagan
350 N. LaSalle Street
Chicago, IL 60610

RE: MUR 4300

Dear Mr. Griffin:

On January 31, 1996, the Audit Division referred the enclosed matters to the Office of General Counsel involving the Committee to Elect Michael Flanagan ("Committee") and Donald Griffin, as treasurer, for possible enforcement action. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b). After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Committee. Accordingly, the Commission closed its file in this matter on March 5, 1997.

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

If you have any questions, please contact me at (800)424-9530 or (202) 219-3690.

Sincerely,

Gregory R. Baker
Special Assistant General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4300

DATE FILMED 4-1-97 CAMERA NO. 4

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