



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4345

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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April 17, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: NEVADA STATE DEMOCRATIC PARTY - MATTERS REFERABLE TO
THE OFFICE OF GENERAL COUNSEL

(MUR 4345)

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On April 2, 1996, the Commission approved the Final Audit Report on Nevada State Democratic Party. Since the Committee did not comply completely with the recommendations in the interim audit report, the following findings are being referred to your office:

- II.A. Contributions to and/or Expenditures on behalf of Federal Candidates
- II.B. Use of Funds from a Non-federal Account
- II.C. Use of Petty Cash
- II.E. Reporting of Disbursements

Should you have any questions regarding these matters, please contact Russ Bruner or Joe Stoltz at 219-3720. Workpapers are available for your review if necessary.

Attachments as stated

II. Findings and Recommendations

A. Contributions to and/or Expenditures on behalf of Federal Candidates

Sections 441a(c) and 441a(d) of Title 2 of the United States Code state, in relevant part, that notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of: (i) 2 cents multiplied by the voting age population of the State; or (ii) \$20,000, as adjusted for the increases in the Consumer Price Index.

Section 110.2(b)(1) of Title 11 of the Code of Federal Regulations states that no multicandidate political committee shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 100.8(b)(16) of Title 11 of the Code of Federal Regulations states, in relevant part, that the payment by the state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, or yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that the following conditions are met:

- Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type

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of general public communication or political advertising. For purposes of this section, the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

- The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.
- Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office.
- Such materials are distributed by volunteers and not by commercial or for-profit operations. For purposes of this section payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.
- Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption.

Sections 100.8(b)(18)(i), (ii), (iv), (v) and (vii) of Title 11 of the Code of Federal Regulations state, in part, that the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election of such candidates provided that the following conditions are met:

- Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this section, the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

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- The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.
- If such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be an expenditure on behalf of such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.
- Payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR section 104.3.
- Payments made from funds donated by a national committee of a political party to a state or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

Section 106.1(d) of Title 11 of the Code of Federal Regulations states that, for purposes of this section, clearly identified means: the candidate's name appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference.

Section 106.5(e) of Title 11 of the Code of Federal Regulations provides, in relevant part, that each state party committee shall allocate its expenses for activities exempt from the definition of expenditure under 11 CFR 100.8(b)(18), when conducted in conjunction with non-federal election activities, according to the proportion of time or space devoted in a communication. In the case of a publication, this ratio shall be determined by the space devoted to federal candidates or elections as compared to the total space devoted to all federal and non-federal candidates or elections. In the case of a phone bank, the ratio shall be determined by the number of questions or statements devoted to federal candidates or elections as compared to the total number of questions or statements devoted to all federal and non-federal candidates or elections.

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During the audit fieldwork the Committee's records did not contain contracts, invoices, receipts, or bills to establish the purpose of most of the Committee's disbursements as they related to its efforts on behalf of candidates in the 1992 General Election. This was especially the case for the larger disbursements the Committee made over the last six months of 1992. Documentation for many of the smaller disbursements made reference to the Clinton/Gore Committee (Clinton Committee) and Senator Reid's campaign. In some cases the invoices were made out to Friends of Harry Reid (Reid Committee). Further, personnel familiar with these disbursements were no longer with the Committee. The Committee reported no expenditures on behalf of federal candidates on Schedule F, Coordinated Expenditures, in any of their disclosure reports.

At the end of fieldwork, the Audit staff requested additional documentation and information concerning the Committee's disbursements. Based on the information submitted, it was determined that the Committee had made expenditures on behalf of federal candidates in the form of programs requiring allocation among several candidates as well as disbursements that were apparently on behalf of a particular candidate. Each group of disbursements is discussed below.

1. Expenditures Allocated Among Different Candidates

The Committee had two programs that involved more than one candidate. The first was a phone bank operated by Telemark for which the Committee paid \$100,000. After the conclusion of fieldwork, the Committee submitted a script used by the vendor. The script contained only four questions. One question asked what was the most important problem facing Nevada. The other three questions involved candidates. The first question asked who the respondent supported in the U.S. Senate race, Senator Reid or the Republican candidate. The second question involved the race for the U.S. Congress, and asked whether the person supported the Democratic candidates, Bilbray or Sferrazza, or the Republican candidates. The last question dealt with the State Assembly race. In addition to the amounts paid to Telemark, there are payments to two other vendors that appear to be related to this program, Metromail (\$2,361) and Passkey (\$1,419).

In the Audit staff's opinion, one-third of these costs should have been allocated to Senator Reid and one-sixth to each Congressional candidate.^{2/}

^{2/} The portion of the payments to Telemark allocable to the Reid Committee was \$33,333. Telemark was paid in two installments on September 10, and October 26, 1992. Between September 9 and November 9, 1992, the Reid Committee transferred \$135,540 in excess campaign funds to the Committee.

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The other program involved a poll for which the Committee paid Evan McDonough, Inc. \$5,490. The Committee did not supply the script(s) used for this poll. However, they did supply additional information from the vendor. The documentation states, in part, that the polling was designed to assess the political climate in the state of Nevada with regards to the upcoming general election. Information found in the data includes responses to specific vote questions (Presidential, Senate and Congressional races). It appears that the questions in the poll focused mainly on federal election activity.

Without additional information concerning the questions asked and the distribution of the results of the poll, the Audit staff was of the opinion that the costs should be allocated, one-third Clinton/Gore, one-third Senator Reid, and one-sixth for each of the two congressional candidates.

In the interim audit report, the Audit staff recommended that the Committee submit any information or documentation to demonstrate why the disbursements detailed above should not be considered 2 U.S.C. §441a(d) expenditures and allocated among the Senate and Congressional candidates as specified in the finding. Also, why one-third of the expenditure to Evan McDonough, Inc. was not a contribution on behalf of the Clinton/Gore Committee, rather than an exempt expenditure under 11 CFR §100.8(b)(18). Further, with respect to the poll, the information was to include a copy of the script used and documentation establishing the distribution of the information obtained.

In response to the interim audit report, the Committee submitted an affidavit from the Director of Field Operations and the Director of the Coordinated Campaign for the Committee for 1992. According to the affidavit, Telemark called targeted individuals to ask four political questions. Three of the questions were about specific candidates. The results of the polls were used by the Nevada State Democratic Party "for the purposes of updating the Committee's voter files, to get a general sense of the voters' views toward the Democratic candidates and the Democratic Party, and to determine who to target for the Committee's election day Get-Out-The-Vote program."

The Committee states further that the polls were for the purpose of the long term development of the Committee's voter file as well as in connection with generic get-out-the-vote activities, and no allocation to any candidate is necessary. The Committee goes on to conclude that there is no basis for the auditors contention that the Committee's payments were used for anything other than voter identification pursuant to 11 CFR 106.5(a)(2)(iv).

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This regulation cites generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. As stated above, the script provided by the Committee for this activity mentioned specific candidates. Therefore, these costs should be allocated one-third to Senator Reid and one-sixth to each Congressional candidate.

Also, the Committee supplied the script used by Evan McDonough, Inc. to conduct a series of political polls. The script contained 49 questions, a number of which were general in nature and not related to a specific candidate. According to the Committee, the \$5,490 payment was a partial payment for invoices totaling approximately \$85,000. The remaining amount was paid by the Reid Committee and the Democratic Senatorial Campaign Committee. The portion paid by the Committee represented a reasonable allocation (6%) of the benefit derived by the Committee and was apportioned pursuant to 11 CFR 106.4(e).

After reviewing the additional information, the Audit staff agrees that there is no need to allocate this expenditure to any candidate committee.

2. Clinton/Gore

The Committee paid another vendor, Joyce Advertising, a total of \$35,000 from the allocation account for what appeared to be television and radio production, and possibly air time, for the Clinton Committee. The invoice from the vendor has printed on it "Re: Clinton/Gore Victory '92 Political (Northern & Southern Nevada Statewide) Television - Radio - Production". Other information submitted indicates that this may include air time for television and radio spots. According to the Committee, this was not an expenditure on behalf of the Clinton Committee, but a generic party advertisement; however, no additional documentation beyond the invoice was provided.

In addition, the Chairman of the Committee thought that two payments to Bonanza Printing for \$28,075 were expenditures on behalf of the Clinton Committee. However, no information on the nature or use of the printed material was available. Based on the information provided, the interim audit report concluded that the expenditures on behalf of the Clinton Committee totaled \$64,905 (\$1,830 from Section 1 + \$35,000 + \$28,075).

The Committee was not authorized by the Democratic National Committee to make expenditures on behalf of the Clinton Committee.

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In the interim audit report, the Audit staff recommended the Committee demonstrate that it did not make a contribution on behalf of the Clinton Committee. The Committee was to submit additional documentation, such as a script for the commercial(s) run or produced by Joyce Advertising and copies of the materials produced by Bonanza Printing. If any materials produced qualified as exempt expenses pursuant to 11 CFR §100.8(b)(18), the material submitted should include information supporting the exemption claimed.

Contrary to earlier indications, in the response to the interim audit report, the Committee stated that they were unable to locate copies of the advertisement. The Committee submitted an affidavit from the former Chairman of the Committee. According to the affidavit submitted, the ads contained generic "Vote Democratic" message. The ads did not refer to the presidential candidate or any other specific candidate.

Since the Committee did not supply the specific information requested in the interim audit report, or submit any documentation of the attempts made to get this information, the Audit staff is of the opinion that these expenses should still be considered a contribution on behalf of the Clinton Committee.

The Committee also submitted additional information regarding the \$28,075 paid to Bonanza Printing. The Committee submitted another affidavit from the former Chairman stating that \$23,824 was for bumper stickers, signs, brochures and other campaign paraphernalia. Some specifically mentioned Bill Clinton and Al Gore. The affidavit continues, that since these materials were distributed by volunteers they are exempt expenditures on behalf of federal candidates under 11 CFR §100.8(b)(16).

The response continues that the other payment for \$4,251 was for office supplies and administrative materials, such as Committee letterhead, business cards and voter ballot cards. The Committee sent in samples of the materials supplied by Bonanza Printing.

The Committee did not submit copies of materials produced by Bonanza Printing to support the \$23,824 payment and any documentation to support that the materials were distributed by volunteers. The Committee did not submit documentation from Bonanza Printing to support that the samples submitted could be associated with the payment for \$4,251.

The Committee has not submitted sufficient documentation to establish that the \$28,075 paid to Bonanza Printing are not contributions on behalf of the Clinton Committee.

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4. Pete Sferrazza for Congress Committee

The Committee supplied invoices from Passkey, many of which refer to a mailing of brochures done on behalf of Pete Sferrazza. The amounts total \$8,501. The Committee Chairman believed that this activity may be related to a payment by the Committee to the Operating Engineers Local 3 in the amount of \$2,422 for producing the brochures mailed by Passkey. The cost of the brochures was reported by the Pete Sferrazza for Congress Committee (Sferrazza Committee) as an in-kind contribution from the Committee. From information supplied by the vendor, there was an additional payment of \$1,000 paid by someone other than the Committee. The Audit staff located a \$1,000 payment to this vendor on the Sferrazza Committee's disclosure report. This leaves a balance of \$7,501, apparently paid by the Committee. It was also noted that an additional \$4,920 was posted as a payment to the Committee's account with Passkey. The source of this payment was unknown.

The Committee also paid Valley Print and Mail \$12,000 for three mailings on behalf of the Sferrazza Committee. The Committee did not have any examples of the materials mailed by this vendor. The expenditures on behalf of Sferrazza Committee total \$40,134 (\$18,211 from Section 1 + \$7,501 + \$2,422 + \$12,000).

The Audit staff noted that the Democratic Congressional Campaign Committee (DCCC) reported a total of \$34,471 of 2 U.S.C. §441a(d) expenditures on behalf of the Sferrazza Committee. The combined national and state party limit on behalf of a U.S. Congressional candidate is \$55,240 for the state of Nevada. The DCCC reported that they had been designated to make these expenditures by the Democratic National Committee and the Committee.

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The Audit staff was provided with a copy of a letter dated October 21, 1992, designating the DCCC to make 441a(d) expenditures up \$10,000 on behalf of the Sferrazza Committee as the agent of the state party. In addition, the DNC Services Corporation also reported coordinated expenditures on behalf of the Sferrazza Committee of \$3,058.

The interim audit report concluded that expenditures on behalf of the Sferrazza Committee were in excess of the limitation by \$22,423 (\$34,471 + \$3,058 + \$40,134 - \$55,240). The Committee could have contributed up to \$5,000 directly to the Sferrazza Committee, but only contributed \$3,800. This would decrease the amount in excess of the limit to \$21,223 (\$22,423 - \$1,200).

In the interim audit report, the Audit staff recommended the Committee demonstrate that it did not exceed the 2 U.S.C. §441a(d) limitation for expenditures made on behalf of the Sferrazza Committee. Evidence submitted was to include an explanation and documentation establishing the extent of the Committee's coordination with the Sferrazza campaign or its agents with regard to these expenditures, examples of the materials mailed by Valley Print and Mail, whether any of the materials produced or mailed may be considered exempt pursuant to 11 CFR §100.8(b)(16), and any other explanation or documentation that the Committee believed was relevant to this issue. Also, the Committee was requested to identify the source of the \$4,920 payment posted to the Committee's account with Passkey.

Absent a demonstration that the Committee did not exceed the spending limitation, it was recommended that the Committee seek a refund of \$21,223 from the Sferrazza Committee.

In response to the interim audit report, the Committee acknowledged that they did not allocate costs totaling \$21,923, consisting of \$7,501 payments to Passkey, \$2,422 payment to Operating Engineers Local 3, and \$12,000 payments to Valley Print and Mail. However, they did not think they should allocate the amounts from Section 1 of this finding totaling \$18,211.

The Committee also disagreed with allocating the \$34,171 the DCCC reported as a 2 U.S.C. §441a(d) expenditure. The Committee submitted a letter from the candidate stating that the funds were used for media services for October 16, 1992. His letter continues, that the DCCC sent generic video spots which were not used and returned with the understanding that the \$34,171 would be backed out of the report.

The Committee also submitted a letter from the DNC Deputy General Counsel changing the \$3,058 2 U.S.C. §441a(d) expenditure to an in-kind contribution.

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Concerning the \$34,171 expenditure made by the DCCC, the Committee did not submit anything from that organization acknowledging that they had incorrectly reported this activity as a 2 U.S.C. §441a(d) expenditure on behalf of the candidate.^{3/}

For the reasons previously stated, \$17,296 from Section 1 should still be allocated to the candidate. The expenditures on behalf of Sferrazza Committee total \$38,019 [\$17,296 from Section 1 + \$7,501 + \$2,422 - \$1,200 + \$12,000]. Until the DCCC acknowledges that the \$34,171 was incorrectly attributed to the candidate and amends their reports, the \$34,171 should be considered an expenditure on behalf of the candidate. With the additional \$34,471 the 2 U.S.C. §441a(d) expenditures on behalf of the candidate total \$72,490. As a result, expenditures on behalf of the Sferrazza Committee are still in excess of the limitation by \$17,250 (\$72,490 - \$55,240). The Committee did not supply the source of the \$4,920 payment to Passkey.

B. Use of Funds from a Non-federal Account

Sections 102.5(a)(1)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in part, that a political committee that finances activity with respect to both federal and non-federal elections shall either: establish a separate federal account in a depository, such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act and all disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account; or, establish a political committee which shall receive contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for the use in connection with federal or non-federal elections.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations provides that committees that have established separate federal and non-federal accounts under 11 CFR 102.5 shall pay the expenses of joint federal and non-federal activities as follows: (i) pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or (ii) establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities.

^{3/} The Audit staff reviewed the indexes and could not locate an amendment by DCCC reversing the \$34,171 previously reported.

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Most of the Committee disbursements during the audit period were made from an allocation account established under 11 CFR §106.5(g)(1)(ii). Except as noted below, approximately 43% of the funds in the allocation account should have come from the federal account. Most of the disbursements were reported on the Committee's Schedules H-4, Joint Federal/Non-Federal Activity, using this percentage. However, during the audit period the federal account transferred \$34,246 more than the required 43%.

The Committee also made disbursements from the non-federal account that were, in some cases, to the same vendors or involved the same type of activity as the disbursements made from the allocation account. The Committee did not supply invoices, receipts, bills, or an explanation for most of the disbursements during fieldwork. Most of the information was obtained from the canceled checks or the Committee check register.

In reviewing the disbursements made from the non-federal account, the Audit staff attempted to eliminate disbursements that appeared to benefit only state and local candidates. During the period of 1991 and 1992, there were a total of \$227,650 in disbursements, excluding transfers to the allocation account, made from this account. Based on the information provided, the Audit staff determined that \$151,597 appeared to benefit only state and local candidates. Without additional documentation, in the Audit staff's opinion, the remaining disbursements of \$76,053 should have been made from the allocation account. Also, the federal account should reimburse the non-federal account 43%, \$32,703 of the \$76,053 that should have been paid from the allocation account.

In addition, many of the disbursements in Finding II.A. were paid from the allocation account. Therefore, only 43% of the funds used to pay the 2 U.S.C. §441a(d) expenditures were federal funds. The correct federal share should have been 50%, 67%, and 100%. Based on these adjustments, the federal account should reimburse the non-federal account an additional \$58,885.

In determining the federal account's total liability to the non-federal account, the following additional adjustments should be considered:

- The Committee received \$1,600 from the DNC Non-Federal Corporate Account that was deposited in the federal bank account (Finding II.D.);
- the Committee transferred a net amount of \$18,602 from the non-federal bank account directly to the federal bank account (Finding II.D.);

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as previously stated, during the audit period the federal account transferred \$34,246 more than the required 43% to the allocation bank account.

The total adjusted amount the federal account has underpaid is \$77,544 (\$32,703 + \$58,885 + 1,600 + \$18,602 - \$34,246). The Audit staff provided the Committee with schedules of the non-federal account disbursements questioned at the close of fieldwork.

In the interim audit report, the Audit staff recommended that the Committee submit documentation to establish that the \$76,053 did not represent the allocable portion of disbursements benefiting both federal and non-federal candidates, and as such, should have been paid from the allocation account. Absent such a demonstration, the federal account should transfer \$77,544 to the non-federal account or report a debt to the non-federal account on an amended year end disclosure report for 1992.

In response to the interim audit report, the Committee did not agree that the Committee's federal account owed the non-federal account \$77,544. They do not agree that the non-federal account made \$76,053 in allocable expenditures. According to the Committee, \$9,575 was used for non-federal purposes. The Committee submitted an affidavit to explain the reasons for not including these expenditures. The Audit staff agrees with the Committee's explanation, and only \$66,478 should have been paid from the Committee's allocation account. Therefore, the federal account owes the non-federal account \$28,586 (\$66,478 x 43%) for this activity.

As previously stated, the Committee did not think any of the expenses in Section A.1. of this report should be allocated to federal candidates. Based on the Committee response, the only adjustment should be for the expenditures to Evans McDonough, Inc. Therefore, the corrected amount is \$55,756.

In the response, the Committee does not think the Audit staff gave the Committee credit for a \$5,000 transfer from the federal to the non-federal account. In fact, this \$5,000 was part of the \$18,602 net amount the Committee transferred from the non-federal bank account. Therefore, the Committee received credit for the \$5,000 in the interim audit report. The Committee did not dispute the other adjustments in the interim audit report. The revised amount the federal account owes to the non-federal is \$70,298 (\$28,586 + \$55,756 + \$1,600 + \$18,602 - \$34,246). According to the Committee response, the federal account only owes \$19,296 to the non-federal account.

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C. Use of Petty Cash

Section 102.11 of Title 11 of the Code of Federal Regulations states, in part, that a political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase or transaction. If a petty cash fund is maintained, it shall be the duty of the treasurer of the political committee to keep and maintain a written journal of all disbursements. This written journal shall include the name and address of every person to whom any disbursement is made, as well as the date, amount, and purpose of such disbursement.

Section 432(c)(5) of Title 2 of the United States Code states the treasurer of a political committee shall keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

During the audit period the Committee made numerous cash disbursements. The Committee wrote checks totaling \$200,841 to petty cash from the allocation account and paid individuals and vendors with the funds. During fieldwork the Committee did not have the petty cash records organized to accommodate an efficient review of the records. Copies were made of these records and sent to the Commission where they could be organized by the Audit staff for review after the fieldwork.

The majority of the petty cash payments were for "Bounty". Bounty represents payments to individuals of \$2 for each new Democratic voter registered. It should be noted that the Committee made multiple payments to some individuals on a given day which were added together for a daily total. In many of these cases, the daily total was composed of 2 or 3 payments of \$100 each with the last payment less than \$100. The Committee's records contained prenumbered receipts for the majority of these payments. When multiple payments on a day occurred the supporting receipts are generally consecutively numbered.

Another project involving petty cash payments was election day "Poll Watchers". These individuals would hand out election day paraphernalia at the polls. They were paid \$60 each.

1. Supporting Documentation for Petty Cash Disbursements

The Committee maintained some type of record for most petty cash disbursements. However, not all of the documentation the Committee submitted was associated with a

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specific petty cash check. A total of \$85,704 in petty cash checks had supporting documentation attached to the checks. The Audit staff attempted to associate the remaining documentation with unsupported checks by date. Through this process, an additional \$90,644 in petty cash disbursements was supported.

Of the Committee's \$200,841 petty cash expenditures, the Audit staff was unable to locate documentation for \$21,093. In addition to the \$21,093 not documented, \$3,400 was stolen from the Committee on July 10, 1992.

2. Petty Cash Payments in Excess of \$100 Limitation

There were many disbursements that exceeded the \$100 limit under 11 CFR \$102.11. The Audit staff identified 271 petty cash payments to 72 individuals totaling \$78,031 of which \$50,931 exceeds the \$100 limitation to any person per purchase or transaction. Given the payment patterns and consecutively numbered receipts described above, for purposes of this review, all payments to an individual on a particular day were totaled as one transaction in order to apply the \$100 limitation. Also, the Committee made 11 petty cash payments to nine (9) vendors totaling \$3,048 of which \$1,948 exceeds the \$100 limitation.

In the interim audit report, the Audit staff recommended that the Committee provide records that support the \$21,093 in undocumented petty cash payments and also demonstrate that the \$52,879 (\$50,931 + \$1,948) of petty cash payments are not in excess of the \$100 expenditure limitation.

In response to the interim audit report, the Committee did not contest the \$21,093 and did not comment on the \$52,879.

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E. Reporting of Disbursements

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report shall disclose the name and address of 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 a candidate or committee operating expenditure.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations requires a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) to also report each disbursement from its allocation account in payment for a joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement

includes payment for allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

The Audit staff noted that the Committee failed to disclose mailing addresses on a number of itemized disbursements reported during the third and fourth quarters of 1992 on the Schedules H-4 and Schedules B. Also, on the Committee's fourth quarter 1992 report, eight items totaling \$4,987 were reported on Schedules B but were paid out of the federal allocation account. These items should be eliminated from Schedules B and reported on Schedules H-4.

As previously mentioned in Finding II.A. and II.B., some of the expenditures made on behalf of the four federal candidates were reported on Schedules H-4, Joint Federal/Non-Federal Activity, with an allocation for the federal share at 43%. The Committee did not report the correct amount of the federal share. In addition to the candidates specifically addressed in Finding II.A., the Committee also paid expenditures on behalf of Bilbray for Congress Committee totaling \$17,296. The Committee did not file any Schedules H-2, Allocation Ratios, and Schedules F, Coordinated Expenditures, disclosing these expenditures on behalf of federal candidates.

None of the disbursements made from the non-federal account that should have been made from the allocation account described in Finding II.B. were reported by the Committee.

In the interim audit report, the Audit staff recommended that the Committee, as part of the amended disclosure reports for the third and fourth quarter 1992, provide the missing mailing addresses on Schedules B and H-4 and correct the items paid from the federal allocation account reported on Schedules B which should have been reported on Schedules H-4.

The Committee should also file Schedules H-2 and F to disclose the expenditures made on behalf of the four candidate committees and correct the Schedules H-4 to reflect the correct federal share.

Memo Schedules H-4 for the disbursements made from the non-federal account should be included. These amounts should not be added into the disbursement totals of the other Schedules H-4.

In response to the interim audit report, the Committee filed amended Schedules B, F and H-4 which reflected the reporting of expenditures made on behalf of the four candidate

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committees for the federal share the Committee acknowledged they were responsible for reporting. Also, the Committee submitted a vendor listing of mailing addresses which materially corrected the disclosure of vendor identification. Since some of the expenditures are in dispute, the Committee did not file Schedules H-2. Therefore, the Committee did not file correct amended Schedules B, F, H-2, and H-4.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 21 4 21 PM '97

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

SENSITIVE

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 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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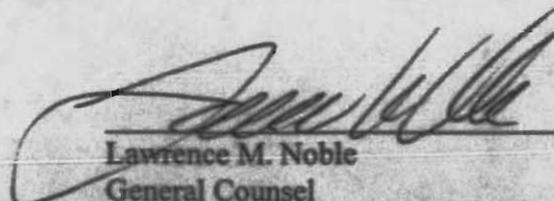
RECOMMENDATIONS

- 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

Jan Churchill, Treasurer
Nevada State Democratic Party
1785 East Sahara Avenue
Las Vegas, NV 89104

RE: MUR 4345

Dear Ms. Churchill:

On April 17, 1996, the Audit Division referred the enclosed matters to the Office of General Counsel involving Nevada State Democratic Party ("Committee") and Jan Churchill, 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 # 4345

DATE FILMED 4-14-97 CAMERA NO. 4

CAMERAMAN JMU

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