



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4346

DATE FILMED 4-1-97 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK007956
AR#95-3

April 19, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: CITIZENS FOR JACK METCALF - REFERRAL MATTER

AK (MUR 4346)

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On March 12, 1996 the Commission approved the Final Audit Report (FAR) on Citizens for Jack Metcalf. The report was released to the public on April 10, 1996. As a result, the attached finding (Finding II.A.1. - Apparent Excessive Contributions from Candidate's Spouse) from the final audit report is being referred to your office.

All workpapers and related documents are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Mary Moss or Tom Nurthen at 219-3720.

Attachment:

Finding II.A.1. (Apparent Excessive Contributions from Candidate's Spouse), FAR Pgs. 3-6.

II. Audit Findings and Recommendations

A. Apparent Excessive Contributions

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

Section 431(8)(A)(i) of Title 2 of the United States Code states that the term "contribution" includes any 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.

Section 110.10(b) of Title 11 of the Code of Federal Regulations states, in part, that a candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property shall be considered as personal funds of the candidate.

Section 100.7(a)(1)(i)(A) of Title 11 of the Code of Federal Regulations states, in relevant part, that a loan which exceeds the contribution limitations of 2 U.S.C. 441a shall be unlawful whether or not it is repaid.

Section 100.7(a)(1)(i)(D) of Title 11 of the Code of Federal Regulations states a candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign.

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Section 116.3(a) of Title 11 of the Code of Federal Regulations states that a commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Section 116.3(c) of Title 11 of the Code of Federal Regulations states, in relevant part, that when determining whether credit was extended in the ordinary course of business, the Commission will consider whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

Section 116.1(e)(3) of Title 11 of the Code of Federal Regulations defines extension of credit as the failure of the political committee to make full payment to the creditor by a previously agreed to due date. In addition, Section 116.1(f) states that for the purpose of this part, creditor means any person or entity to whom a debt is owed.

Lastly, section 104.11(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished.

1. Apparent Excessive Contributions from Candidate's Spouse

The Committee received twelve loans in 1994 totaling \$41,736 from the Candidate and/or Candidate's spouse. Two of the loans, one for \$12,000 and the other for \$13,000, originated from the Teachers' Credit Union. The Candidate obtained the \$12,000 loan on August 4, 1994. He retained \$6,000 of the proceeds and considered it as a repayment for a \$6,000 loan he made to the Committee on July 28, 1994. The Candidate then loaned the remaining proceeds (\$6,000) to the Committee.

Preliminary documentation pertaining to the loan provided by the Committee during fieldwork consisted only of the Loan Transaction/Advance Voucher from the Teachers' Credit Union. This Loan Transaction/Advance Voucher indicated that the Candidate's spouse obtained the second loan for \$13,000 on August 10, 1994 from Teachers' Credit Union, using the couple's 1991 Chrysler Lebanon automobile as collateral for the loan. That voucher, signed by the Candidate's spouse^{2/}, indicated the purpose

^{2/} Although requested, the Committee did not provide a copy of the loan application.

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of the loan was for "campaign funds." Again the proceeds were disbursed directly to the Candidate. The Candidate retained \$2,330 as repayment for a loan of \$1,330 (actual amount loaned \$1,336) on July 25, 1994 and another loan of \$1,000 on August 4, 1994. The remaining \$10,670 in proceeds were loaned to the Committee.

At the exit conference the Audit staff advised the Committee representatives that the loan obtained from Teachers' Credit Union by the Candidate's spouse would be considered an excessive contribution. The Committee representatives related that the loan was actually obtained by the Candidate, but the Candidate's spouse signed for the funds at the Candidate's convenience. The Committee could not produce documentation from Teachers' Credit Union to substantiate their explanation prior to the completion of the audit fieldwork, but stated they would investigate further. Absent that documentation, the Audit staff determined the Candidate's spouse made loans to the Committee totaling \$13,000, of which \$12,000 were considered excessive contributions.

In the interim audit report, the Audit staff recommended the Committee provide evidence to demonstrate the contributions noted above were not excessive or repay the Teacher's Credit Union for the amount owing on the \$13,000 loan. Absent such a repayment, provide documentation from the credit union that demonstrated the loan had been restructured to exclude the candidate's spouse from being the maker and person responsible for repayment of the loan.

In response the Committee provided a copy of a loan application that encompassed both the \$12,000 and \$13,000 loan. With respect to the \$13,000 loan, the Committee provided a letter from the Teacher's Credit Union loan officer in which she stated that under State regulations the Candidate's spouse could not apply for a loan in her own name since she did not have her own account at the credit union. The Treasurer again stated "the only reason Norma [Candidate's spouse] signed on the Advance Voucher was that Jack [Candidate] was not able to make a trip to the credit union on that day." Lastly, the Committee demonstrated it has repaid the entire \$13,000 loan by providing a copy of the loan repayment transaction history and a letter from a Teacher's Credit Union loan officer, both of which documented the loan was repaid in full. The final payment was made on May 26, 1995.

As previously stated, both loans were listed on a single loan application. The Candidate signed the loan application on August 4, 1994. The Candidate's spouse signed the loan application on August 10, 1994. Even though both loans were listed on a single loan application and both signatures were included thereon, it remains our position that the Candidate was the sole maker of the \$12,000 loan. The loan application and the

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Loan Transaction/Advance Voucher were signed by the Candidate on August 4, 1994, the date the proceeds of the \$12,000 loan were disbursed.

As to the \$13,000 loan, it appears it was jointly obtained by the Candidate and his spouse. The Candidate's spouse signed the loan application and Loan Transaction/Advance Voucher on August 10, 1994. The loan proceeds were disbursed (August 10, 1994) payable to the Candidate and his spouse. As previously stated, the \$13,000 loan was secured by a vehicle jointly owned by the Candidate and his spouse. Washington is a community property state. Further, the Consumer Loan Agreement and Disclosures state "when you sign as a loan applicant, you agree, jointly and individually, to the following terms and conditions and all other loan documents related to this Account including any Loan Advance Voucher, Loan Proceeds Check, and Power of Attorney." Therefore, half the value of the \$13,000 loan represents a contribution by the Candidate's spouse for the period of time the loan was outstanding (August 10, 1994 through May 26, 1995).

As a result, it appears the Candidate's spouse made contributions in the form of loans to the Committee totaling 6,500 of which \$5,500 is in excess of the contribution limitation.

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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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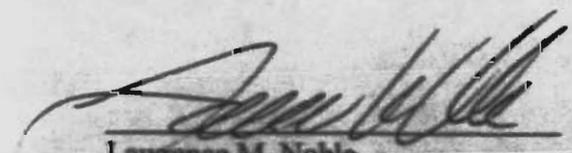
RECOMMENDATIONS

- 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

Don Watts, Treasurer
Citizens for Jack Metcalf
5705 Evergreen Way #203
Everett, WA 98203

RE: MUR 4346

Dear Mr. Watts:

On April 19, 1996, the Audit Division referred the enclosed matters to the Office of General Counsel involving Citizens for Jack Metcalf ("Committee") and Don Watts, 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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WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4346

DATE FILMED 9-1-97 CAMERA NO. 4

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