FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4400

DATE FILMED 4-1-97 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1996

Memorandum

TO: Lawrence M. Noble
General Counsel

THROUGH: John C. Surina
Staff Director

FROM: Robert J. Costa
Assistant Staff Director
Audit Division

SUBJECT: San Bernardino County Republican Central Committee - Referral Matters

On June 10, 1996, the Commission approved the final audit report (FAR) on San Bernardino County Republican Central Committee (the Committee). The report was released to the public on June 19, 1996. Attached are findings II.A., Apparent Over-funding by the Non-federal Account and II.C., Prohibited In-kind Contributions, which are being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Robert Simmons or Wanda Thomas at 219-3720.

Attachments:

FAR Findings II.A. (FAR pp. 3-5) and II.C. (FAR pp. 7-8)

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1. Apparent Over-funding by the Non-federal Account

Section 106.5(g)(1)(i) of Title 11 of the Code of Federal Regulations states, in relevant part, that a committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

Section 106.5(g)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states, in relevant part, that for each transfer of funds from a committee's non-federal account to its federal account, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay.

The Audit staff reviewed all disbursements from the federal and non-federal accounts, including the transactions disclosed on Schedule H-4, to determine if the Committee's federal account paid its allocable amount of shared expenditures during the period January 1, 1993 through December 31, 1994. The Committee reported that the non-federal amount of shared expenditures for the audit period totaled $68,984. Although the Committee disclosed varying allocation ratios on Schedule H-1 (Method of Allocation for Shared Federal and Non-federal Administrative Expenses and Generic Voter Drive Costs) and Schedule H-2 (Allocation Ratios for Individual Fundraising Events, Exempt Activities, and Shared Direct Candidate Support) throughout the audit period, a ratio of 50%/50% was used by the Committee to allocate all expenditures involving shared activity.

The Audit staff calculated, based on correct allocation ratios, $116,809 to be the non-federal amount of shared expenditures. However, an analysis of the federal and non-federal accounts identified $121,050 in transfers actually made. Therefore, transfers from the non-federal account exceeded the non-federal share of expenditures by $4,241 ($121,050 - $116,809).

At an interim conference and at the exit conference the Audit staff provided to the Committee schedules detailing the above finding. At the exit conference, the Treasurer indicated that the Committee did not dispute the finding and no additional information was available in resolution of the finding. During a conference the Committee's treasurer commented that she recently attended training in reporting shared activity presented by the Republican National Committee which would help her to prepare disclosure reports in the future.

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In the interim audit report, the Audit staff recommended that the Committee demonstrate that the non-federal account did not over-fund the federal account or refund the excess funding from the federal account to the non-federal account and provide evidence that such refund was made (i.e., a copy of the front and back of the negotiated refund check). It was further recommended that the refund be itemized on Schedule H-4 as a disbursement to the non-federal account for the purpose of making an adjustment, and, 100% of the expenditure be allocated to the federal share.

In a response to the interim audit report, the Committee stated that it did not dispute this finding. The Committee also asserted that funds were not available at the time of the response to repay the non-federal account. However, on its disclosure report for the period 1/1/96 through 3/31/96, the Committee reported a debt to the non-federal account in the amount of $4,241.

2. Allocable Voter Registration Expenses Paid by the Non-federal Account

Section 106.5(a)(2)(iv) of Title 11 of the Code of Federal Regulations states, in relevant part, that committees making disbursements in connection with federal and non-federal elections shall allocate expenses related to 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 without mentioning a specific candidate.

Section 106.5(g)(1)(i) of Title 11 of the Code of Federal Regulations states, in relevant part, that a committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

During the period January 1, 1993 through December 31, 1994 the non-federal account paid for allocable voter registration expenses totaling $41,512. None of this activity was disclosed on Schedule H-4 of the Committee's reports. Based on a ballot composition ratio of 22%, the Audit staff determined that $9,133 of these expenditures were allocable to the federal account.

At an interim conference and at the exit conference the Audit staff provided to the Committee schedules detailing the above finding. At the exit conference, the Treasurer indicated that the Committee did not dispute the finding and no additional information was available in resolution of the finding.

In the interim audit report it was recommended that the Committee refund an amount equal to the federal share of allocable voter registration expenses to the non-federal account and provide evidence that such refund was made (i.e., a copy of the front and back of the negotiated refund check). It was further recommended that the Committee file memo Schedules H-4 for 1993 and 1994 itemizing all shared voter

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registration expenditures made from the non-federal account, including their respective allocation ratios.

In a response to the interim audit report, the Committee stated that it did not dispute this finding. The Committee also asserted that funds were not available at the time of the response to repay the non-federal account. However, on its disclosure report for the period 1/1/96 through 3/31/96, the Committee reported a debt to the non-federal account in the amount of $9,133. Included in the Committee's response were comprehensive amended disclosure reports for 1993 and 1994 which complied with the latter part of the recommendation described above.

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C. PROHIBITED IN-KIND CONTRIBUTIONS

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any federal election, or for any political committee to knowingly accept or receive any contribution prohibited by this section.

Section 104.13(a)(2) of Title 11 of the Code of Federal Regulations states, in part, that each in-kind contribution shall also be reported as an expenditure at the same usual and normal value and reported on the appropriate expenditure schedule.

Sections 106.5(a)(2)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in part, that committees that make disbursements in connection with federal and non-federal elections shall allocate administrative expenses including rent and the direct costs of a fundraising event where federal and non-federal funds are collected by the Committee through such event.

Advisory Opinion 1992-33 states, in part, that a national party committee may accept corporate in-kind donations in connection with fundraising activities, but only if one of two conditions is met: (1) the amount of the federal share of goods or services is paid to the non-federal account in advance or on receipt; or (2) sufficient funds to pay for the federal share of goods or services have been transferred to a non-federal account in advance.

Our review of vendor invoices for the period January 1, 1993 through December 31, 1994 identified allocable in-kind contributions from corporations[3] totaling $12,578. The Audit staff determined that the federal share of the corporate in-kind contributions totaled $2,781. Donated office space[4], an administrative expense, accounted for $2,361 of the amount allocable to the federal account, whereas donated printing services for fundraising events accounted for the remaining $420.

During the audit period, the federal account did not make any disbursements to the non-federal account. Therefore, the Committee did not satisfy either of the conditions set forth in Advisory Opinion 1992-33 with respect to the corporate in-kind contributions. The previous Treasurer made a partial refund of $1,000 to one of the contributing corporations; however, this payment was not timely. As of November 6, 1995,

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3 The current incorporated status of contributors was verified with California's Secretary of State or through other sources.

4 On its disclosure reports, the Committee incorrectly attributed the in-kind contribution of office space to an officer of the corporation.

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the date of the exit conference, a balance of $1,781 ($2,781 - $1,000) had not been refunded by the Committee.

At an interim conference and at the exit conference the Audit staff provided to the Committee schedules detailing the above finding. At the exit conference, the Treasurer indicated that the Committee did not dispute the finding and no additional information was available in resolution of the finding.

In the interim audit report it was recommended that the Committee refund the federal share ($1,781) of the in-kind contributions to the contributors from the federal account and provide evidence of such refunds, i.e., copies of the front and back of the negotiated refund checks.

Included in the Committee's response to the interim audit report were copies of refund checks totaling $1,781. A front and back copy of one of the checks for $237 demonstrated that it had been negotiated. The Committee asserted that the remaining checks had not cleared the bank in time to be included with the response.

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 21 4 21 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

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.

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[2] These matters are: (1) MUR 4258 (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).

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

Nancy McLain, Treasurer
San Bernadino County
Republican Central Committee
7365 Carnelian Ave. #133
Rancho Cucamonga, CA 91730

RE: MUR 4400

Dear Ms. McLain:

On June 26, 1996, the Audit Division referred the enclosed matters to the Office of General Counsel involving the San Bernadino County Republican Central Committee ("Committee") and Nancy McLain, 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 # 4400

DATE FILMED 4-1-97 CAMERA NO. 4

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