FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4432

DATE FILMED 4-25-97 CAMERA NO. 1

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1996

Memorandum

TO: Lawrence M. Noble
General Counsel

THROUGH: John C. Surina
Staff Director

FROM: Robert J. Costa
Assistant Staff Director
Audit Division

SUBJECT: Idaho Republican Party Federal Campaign Account - Referral Matter

On July 25, 1996 the Commission approved the Final Audit Report on the Idaho Republican Party Federal Campaign Account. The report was released to the public on August 2, 1996. As a result, the attached finding (Finding II.A. - Receipt of Prohibited Contributions) from the Final Audit Report is being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Melinda Madsen or Alex Boniewicz at 219-3720.

Attachment:

Finding II.A. (Receipt of Prohibited Contributions), Final Audit Report pages 3-8.

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A. RECEIPT OF PROHIBITED CONTRIBUTIONS

Section 102.5(a)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that each organization including a party committee, which finances political activity in connection with both federal and non-federal elections and which qualifies as a political committee under 11 CFR 100.5 shall establish a separate federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as provided in 11 CFR 106.5(g) and 106.6(e).

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations states that committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall pay the expenses of joint federal and non-federal activities by choosing one of the following options: pay the entire amount of the 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, establish a separate allocation account into which funds from its federal and non-federal accounts are

deposited solely for paying the allocable expenses of joint federal and non-federal activities. Committees which establish a separate allocation account are further required to make transfers from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

Section 106.5(g)(2)(ii) and (iii) of Title 11 of the Code of Federal Regulations states that funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following: for each transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay as required by 11 CFR 104.10(b)(3); and, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made. Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations defines the term "contribution" to include all loans received by the Committee. The term "loan" is defined to include a guarantee, endorsement, or any other form of security. The section further states that for each endorser or guarantor, the loan is deemed a contribution to the extent that it remains unpaid.

1. Committee Loan Secured by Prohibited Funds from the Non-Federal Account

On October 21, 1992, the Committee received a six- month loan from West One Bank of Idaho in the amount of $75,000. The loan had an interest rate of 5.4% and was to be repaid on April 20, 1993. The loan proceeds were deposited into the Committee's federal savings account, which made periodic transfers to its federal checking account for the payment of shared expenses.[5]

As part of the loan agreement, the Committee established a certificate of deposit (CD) with West One Bank of Idaho in the amount of $75,000 to be used as collateral for the loan. The CD was established on October 21, 1992 with a $75,750[6] transfer from the Committee's non-federal bank account, and had a maturity

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5 Throughout the audit period all of the Committee's bank accounts were maintained at West One Bank of Idaho. The Committee used the federal checking account for all federal and shared expenses, during the first six months of 1993. After June 30, 1993, the Committee began paying its shared expenses as described under 11 CFR §106.5(g)(1)(i) from this account.

6 Of this amount, $75,000 was to establish the CD and $750 was to pay a "prepaid finance charge" required by West One Bank as part of the loan agreement.

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date of April 20, 1993 with an interest rate of 3.4%. Based on the CD being issued to the Idaho Republican Party and labeled "Federal Account", the Audit staff treated the CD as a federal account and determined that neither the interest earned nor the one transfer to the non-federal account to close this account had been disclosed in reported activity for 1993 (see Finding II.C.1.).

Campaign finance law in the state of Idaho allows committees to receive corporate and labor union contributions for the purpose of funding state election activity. An examination of the existing balance and of deposits made into the non-federal account during September and October 1992 revealed that the $75,750 transferred from the non-federal account to secure the loan was composed primarily of prohibited funds. The major source of the prohibited funds appears to have been the National Republican Congressional Committee (NRCC). The Committee deposited a $112,000 check from the NRCC on September 25, 1992 in its non-federal account. The check was made payable to the "Idaho State Central Committee, Non-Federal Account". Reports filed by the NRCC with the Commission disclose this disbursement as a memo entry originating from the NRCC's non-federal account. Since the transfer was made from the NRCC's non-federal account, it seemed likely that the funds were from federally impermissible sources. The Committee only deposited an additional $5,946 in its non-federal account between this date and the date of the transfer to establish the CD.

In an April 6, 1994 letter from the Committee to the Commission's Reports Analysis Division, a Committee official wrote that it negotiated the loan so that "the federal account [could pay] its' share and the state accounts share of general administrative costs". The Committee's Post General and Year End disclosure reports for 1992 revealed that subsequent to the receipt of the loan, administrative expenses totaling approximately $118,000 were incurred; about $59,000 of which was the non-federal portion. The reports also indicate that, during that same time period, about $95,000 was transferred from the non-federal account to the federal checking account for shared activity.[7] Therefore, it appeared that not only was the loan secured with non-federal funds and then used to pay shared expenses from the federal checking account, but that the non-federal account also continued to reimburse the federal checking account for its portion of shared expenses.

Based on the Audit staff's review of this transaction, it appeared the non-federal account, in securing the loan for the Committee, made a prohibited contribution during the period the loan was outstanding. As a result of the transfer from the non-federal account used to establish the CD, the Committee converted non-federal funds into federal funds which is a prohibited contribution under 11 CFR 106.5(g)(2) and 102.5(a). Even if the Committee had established the CD as a non-federal account, its use of the CD as collateral for the loan is still a prohibited contribution pursuant to 11 CFR 100.7(a)(1) and 106.5(g)(2).

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7 A review of the Committee's disclosure reports for 1991 and 1992 did not indicate that the non-federal account overpaid its share of expenses for the election cycle.

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2. Prohibited Transfer from Non-Federal Account

The Committee repaid the loan on February 18, 1993 with money from its federal checking account. The amount repaid was $76,318 ($75,000 in principal and $1,318 in interest). The Committee reported the loan principal repayment and $627 of the interest paid on its Schedules B; the remaining interest paid ($691) was not reported (see Finding II.C.1.).

Similarly, on February 18, 1993, the Committee redeemed the CD for $75,521 (principal plus $839 interest less $318 early withdrawal fee) and deposited these funds into its non-federal account. This transfer of funds from the Committee's federal (CD) account to its non-federal account refunded the impermissible funds received on October 21, 1992 and described above in II.A.1..

Also on February 18, 1993, the non-federal account transferred $75,521 to the federal savings account, which in turn transferred $79,457 to the federal checking account. Without these transactions, the federal checking account would not have had the funds available to repay the loan. The Committee reported the $75,521 transfer from the non-federal account to the federal savings account, but did not report the $75,521 transfer from the federal (CD) account to the non-federal account (see Finding II.C.1).

Although the $75,521 transfer from the non-federal account to the federal savings account was reported, it was initially disclosed as a loan repayment. The Committee later amended its reports and asserted that the transfer represented a reimbursement for the non-federal share of administrative costs and was not reimbursement for the loan repayment.[8]

The Audit staff's review of shared expenses incurred during the period sixty days prior to, through ten days after February 18, 1993, revealed that the Committee was due about $39,000 from the non-federal account.[9] Furthermore, it was determined that, in addition to the $75,521 transfer on February 18, 1993, the Committee

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8 Based on this assertion and on reports filed by the Committee, the Commission's Reports Analysis Division requested the Committee transfer $26,214 from its federal account to its non-federal account to refund the apparent overpayment for shared non-federal expenses. The Committee complied on July 13, 1994, but did not report the transfer (see Finding II.C.).

9 A limited review of payments for shared activity during the two-year audit period concluded that the non-federal account had ultimately underpaid (by about ($140,000) the federal account for its portion of total shared expenses. Our analysis considered the $26,214 overpayment noted at footnote 8; however, this analysis did not consider the impact of the 70 day window on such payments as required by 11 CFR §106.5(g)

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had also received four other reimbursements from the non-federal account totaling about $19,000 within the same 70 day period. Finally, the Audit staff conducted a limited review of the Committee's shared activity, as reported on its disclosure reports for 1991 and 1992. It was determined that the non-federal account had underpaid its portion of shared activity by approximately $3,000. Thus, the Committee could have transferred approximately $23,000 ($39,000 - $19,000 + $3,000) from its non-federal to its federal account for shared expenses.

However, in the Audit staff's opinion, the facts indicate that the $75,521 transfer from the non-federal account to the federal checking account was related to the loan transaction and not to shared expenses. It is also the Audit staff's opinion that this transfer activity between the federal checking account and non-federal account has resulted in a prohibited contribution from the non-federal account of $75,521.

In summary, as a result of the transactions noted above, the Committee received a prohibited contribution from its non-federal account when the CD was established. Further, these prohibited funds were then used to secure a loan. Although the prohibited funds were returned to the non-federal account when the CD was liquidated, another prohibited contribution resulted when the money was again transferred from the Committee's non-federal account to a federal checking account for other than shared expenses. In addition to the loan secured with prohibited funds that enabled the Committee to pay shared expenses from the federal checking account, the non-federal committee continued to reimburse the allocation account for its share of allocable expenses. As a result, the non-federal account paid for both the federal and non-federal share of allocable expenses.

The Audit staff advised the Committee's representative of these matters at an interim conference and at the exit conference. The Committee's representative stated that it would take the necessary steps to comply with the Audit staff's recommendation.

In the interim audit report, the Audit staff recommended that the Committee demonstrate why the loan guarantee and subsequent transfers should not be considered contributions from the non-federal account in violation of 11 CFR §§102.5 and 100.7. Absent such a demonstration, the Committee was asked to submit documentary evidence identifying each shared expense associated with the $75,521 non-federal reimbursement to the allocation account.

In response to the interim audit report, a Committee official wrote: "The Idaho Republican Party loan guarantee and subsequent transfers were made as a result of lack of knowledge of FEC regulations with regard to the use of non-federal funds The [Committee], in filing the 1993 FEC report, was not attempting to circumvent Federal law or FEC regulations. To avoid any future occurrence, [the Committee has] implemented training programs and improved office procedures to avoid future problems." The new office procedures were further outlined in the response.

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Therefore, the Audit staff's opinion remains unchanged. The Committee's use of non-federal money to secure a loan, as well as the subsequent transfer of funds from the non-federal account used to repay the loan, resulted in prohibited contributions from the non-federal account.

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AGENDA DOCUMENT No. X97-15

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 4 3 10 PM '97

In the Matter of	)	28 U.S.C. § 2462
	)	Statute of Limitations
	)	
	)	
	)	

SENSITIVE

MAR 11 1997

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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I. INTRODUCTION

On December 26, 1996, the United States Court of Appeals for the Ninth Circuit issued a decision in *Federal Election Commission v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996). That decision held, *inter alia*, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6).

As noted in the memorandum regarding the filing of a petition for rehearing, the Office of General Counsel believes that the Commission should accept the court's core application of 28 U.S.C. § 2462 to its enforcement suits as the current state of the law. *See* Memorandum to the Commission, *Petition for Rehearing, and Suggestion for Rehearing En Banc, In Federal Election Commission v. Williams*, dated January 10, 1997. As also noted, however, we have sought further review of the court's decision

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relating to issues of equitable relief and equitable tolling.[1] *Id. See also FEC v. NRSC*, 877 F. Supp. 15, 21 (D.D.C. 1995).

This General Counsel's Report discusses the impact of 28 U.S.C. § 2462 on the Office of General Counsel's enforcement caseload.[2] This Report describes the active and inactive enforcement matters which are potentially affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462, and makes recommendations for each of the potentially affected matters. This Report addresses all cases where the statute of limitations potentially expires, or partially expires, by the end of calendar year 1997 (December 31, 1997).

The Office of General Counsel is recommending that

18 matters be closed at this time. By doing so, this Office believes that it will be able to devote more resources toward more recent activity, particularly those matters that arose from the 1996 election cycle. To avoid potential statute of limitations problems in the future, this Office will track its cases against the relevant statute of limitations and will perform regular reviews of its caseload. In addition, this Office will be making periodic recommendations to the Commission with respect to matters that may be affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462.

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[1] Pending the court's decision, issues such as equitable relief, equitable tolling and ongoing violations, will remain open. In some instances, although issues such as equitable tolling and equitable relief may still be viable, this Office has cited other factors to support our recommendation to close the matter. *See, e.g.*, cases involving apparent violations of 2 U.S.C. § 441a(f).

[2] This Report addresses enforcement matters assigned to the Public Financing, Ethics & Special Projects ("PFESP") and Enforcement areas.

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III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

B. Take no action, close the file and approve the appropriate letters in the following matters:

1. MUR 4267
2. MUR 4370
3. MUR 4392
4. MUR 4432
5. MUR 4468
6. MUR 4591
7. MUR 4614

C. Take no further action, close the file and approve the appropriate letters in the following matters:

1. MUR 3351
2. MUR 3571
3. MUR 3582
4. MUR 3586
5. MUR 3838
6. MUR 3841
7. MUR 3969
8. MUR 4091
9. MUR 4183
10. MUR 4209

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3/4/97
Date

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #X97-15
28 U.S.C. § 2462,	)	
Statute of Limitations	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document #X97-15:

1. Decided by a vote of 5-0 to -

A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

B. Take no action, close the file, and approve the appropriate letters in the following matters:

1. MUR 4267;
2. MUR 4370;
3. MUR 4392;
4. MUR 4432;
5. MUR 4468;
6. MUR 4591;
7. MUR 4614.

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C. Take no further action, close the file, and approve the appropriate letters in the following matters:

1. MUR 3351;
2. MUR 3571;
3. MUR 3582;
4. MUR 3586;
5. MUR 3838;
6. MUR 3841;
7. MUR 3969;
8. MUR 4091;
9. MUR 4183;
10. MUR 4209.

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

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Attest:

3-12-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 28, 1997

Richard W. Jackson, Treasurer
Idaho Republican Party
Federal Campaign Account
P.O. Box 2267
Boise, ID 83701

RE: MUR 4432

Dear Mr. Jackson:

On August 6, 1996, the Audit Division referred certain matters to the Office of General Counsel involving the Idaho Republican Party Federal Campaign Account ("the Committee") and Richard W. Jackson, as treasurer, for possible enforcement action. *See* Referral Materials. 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 and Richard W. Jackson, as treasurer. Accordingly, the Commission closed its file in this matter on March 11, 1997. The Commission reminds you, however, that the activity set forth in the referral appears to constitute an apparent violation of the Federal Election Campaign Act of 1971, as amended ("FECA"). You should take immediate steps to insure that this activity does not occur in the future.

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.

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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
Referral Materials

9704380092C

MUR 4432 (Idaho Republican Party Federal Campaign Account)
(audit referral) ('94 cycle)
PFESP Docket (Inactive)

The Audit Division referred this matter on August 6, 1996. The matter involves the receipt of prohibited contributions totaling $134,521. This Office recommends that the Commission exercise its prosecutorial discretion and take no action with respect to this matter, and close the file. The activities at issue occurred on October 21, 1992. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations in October 1997. Moreover, this matter does not warrant further pursuit in light of other matters pending in this Office. If the Commission adopts these recommendations, we include the appropriate admonishment language in the notification letters.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4432

DATE FILMED 4-25-97 CAMERA NO. 1

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