FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 4467

DATE FILMED 9-15-97 CAMERA NO. 4

CAMERAMAN JMD

9704353271 1

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chairs

Next Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 16 3 56 PM '96

September 16, 1996

MUR 4467

Lawrence M. Noble, Esq.
General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, DC 20463

Re: Complaint Against Millner for U.S. Senate

Dear Mr. Noble:

This letter constitutes a complaint against the Millner for U.S. Senate Committee and Sonny Scott, as treasurer (collectively "Respondents"), alleging violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. §§ 431 et seq. and related regulations of the Federal Election Commission ("FEC" or the "Commission"), 11 C.F.R. §§ 100.1 et seq.

In order to avoid itemizing certain disbursements made from their campaign account, the Respondents have funneled money from their account to various unnamed recipients through a payroll company. Respondents have made large lump payments to Payroll 1, an Atlanta company, which, in turn, disburses the payroll to Respondents' campaign employees. In this way, Respondents avoid disclosing the names of campaign workers, as well as their salaries.

Respondents claim this method has been employed in order to protect the privacy of the campaign employees. (See "Millner's workers not identified," The Atlanta Journal/Constitution (Aug 25, 1996)). Respondents have, however, listed payments to several individuals on their itemized disbursement forms. It appears the itemized individuals have less of a privacy interest than the employees paid through Payroll 1. In fact, there is no way to tell that the individuals listed on the itemized disbursement forms are not also being paid through Payroll 1. Respondents, to this point, have completely avoided disclosing this information.

The Act clearly states under section 434b(4)(A) that each report filed by

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

a treasurer of a political committee shall report all disbursements and "expenditures to meet candidate or committee operating expenses." In addition, section 434b(5)(A) requires the report to include the name and address of the person to whom the expenditure is made, as well as the date, the amount of the expenditure and the purpose of the expenditure.

This Commission has stated similar requirements for recordkeeping and reporting of disbursements. Regulation 102.9(b)(1) requires a political committee to keep an account of all disbursements made for the committee. The records are to include "the name and address of every person to whom any disbursement is made", the purpose of the disbursement, and the date and amount of the disbursement. The regulations also address the reporting of disbursements in 104.3(b). Here, the regulations assert that each report filed "shall disclose the total amount of all disbursements for the calendar year," which includes operating expenditures of the political committee. This report must itemize disbursements in excess of $200 and include the name and address of the person receiving the disbursement, the date of payment, the amount and the purpose of the expenditure.

The Commission has emphasized that large lump sum payments do not meet these disclosure requirements. In several instances, the Commission has made clear that hiding specific individual disbursements behind a single payee is not adequate disclosure. See, e.g., rules on credit card disbursements, 11 C.F.R § 102.9(b)(2) and 104.9; see also, candidate contributions, MUR 4152.

Respondents may not rely on AO 1983-25. While, in this opinion, the FEC held that payments to certain consultants or vendors did not need to be separately itemized, this case is distinguishable. In AO 1983-25, the recipients were independent contractors who had discretion over the funds they received from the campaign. Here, Payroll 1 is acting merely as an agent of the campaign, paying sums as directed by the Respondent and over which they have no discretion whatsoever.

The law clearly states that the Respondents must disclose their operating expenses, presumably including payroll information. To this point, the Respondents have failed to disclose any information about their employees or payroll, other than reporting the lump payment to Payroll 1. The Respondents used lump payments to an agent in order to evade the law and its purpose: to ensure that the public knows where the money is coming from and where it is spent. The Respondents have denied the public this knowledge.

9704353271 3

In light of this violation, the Commission should conduct a prompt and complete investigation to determine the scope of the violation. Based upon such an investigation, the undersigned asks the Commission to take appropriate steps to remedy the violations and ensure no further violations occur.

Respectfully submitted,

Paul Johnson
Executive Director
Democratic Senatorial Campaign Committee
430 South Capitol Street S.E.
Washington, DC 20003
(202) 224-2447

STATE OF District of)
County of Columbia) SS

SUBSCRIBED AND SWORN to before me this 16 day of September, 1996.

Notary Public

My Commission Expires:

10-31-2000

9704503271 4

Millner's workers not identified

By Mark Sherman
STAFF WRITER

Republican U.S. Senate nominee Guy Millner has not disclosed the names of the people on his campaign payroll or how much they are paid. The practice violates federal election law, according to Democratic and Republican opponents.

"The voters of Georgia deserve to know whose influence is being bought," Clint Day, a GOP Senate candidate who has since endorsed Millner, said last month.

Millner's campaign manager, Sonny Scott, said the campaign is doing nothing wrong and is trying to preserve the privacy of its employees. "It wouldn't seem like a fair thing to do to all these kids we have working here," Scott said.

The Federal Election Commission generally requires candidates to report the ultimate recipient of their money — in this case, the campaign workers.

FEC spokesman Ian Stirton would not address Millner's reports specifically, but he said the commission typically frowns on efforts to avoid disclosure by routing money through third parties.

Millner's campaign has spent nearly $500,000 on payroll, but his FEC reports list only lump-sum payments to a payroll distribution company.

Millner's GOP primary rivals, as well as Democratic nominee Max Cleland and the state Republican and Democratic parties, all list the employees on their payrolls.

Day said Millner was attempting to avoid full disclosure of his campaign expenses. Millner's employees include John Knox, the former Waycross mayor and candidate for statewide offices who has helped Millner gain support of religious conservatives.

Tim Phillips, Cleland's campaign manager, called the practice a "straight-up FEC violation."

"Either they just don't know any better or they're trying to hide something," Phillips said.

The Cleland campaign has not filed a complaint with the FEC, despite Phillips' assertion. Complaints can take years to resolve, making campaigns reluctant to lodge them in the first place, Phillips said.

8/25
D
ABC

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 23, 1996

Paul Johnson, Executive Director
Democratic Senatorial Campaign Committee
430 South Capitol Street, SE
Washington, DC 20003

RE: MUR 4467

Dear Mr. Johnson:

This letter acknowledges receipt on September 16, 1996, of the complaint you filed alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4467. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

9704503271 6

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 23, 1996

R. Charles Loudermilk, Treasurer
Guy Millner for US Senate Committee
1730 Northeast Expressway
Atlanta, GA 30329

RE: MUR 4467

Dear Mr. Loudermilk:

The Federal Election Commission received a complaint which indicates that Guy Millner for US Senate Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4467. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

9704532717

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Guy Millner

97043032713

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 23, 1996

Sonny Scott
c/o Guy Millner for US Senate Committee
1730 Northeast Expressway
Atlanta, GA 30329

RE: MUR 4467

Dear Mr. Scott:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4467. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

9 / 0 4 5 0 3 2 7 1 9

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9704503272C

MILLNER
U.S. SENATE

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
Oct 16 12 05 PM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 16 2 41 PM '96

Colleen T. Sealander, Esquire
Central Enforcement Docket
Federal Election Commission
999 E Street, NW.
Washington, D.C. 20463

RE: MUR 4467

Dear Ms. Sealander:

This will respond to the complaint filed against the Millner for U.S. Senate Committee in the above captioned matter.

This complaint was filed by the Democratic Senatorial Campaign Committee for the purpose of grabbing headlines for their candidate in the Georgia Senate election. For the record, the Millner for Senate Committee filed amendments for all its summary pages and Schedule Bs on September 23, 1996. Any information missing from the reports was the result of not understanding the requirements and not an attempt to hide information, as evidenced by the Committee's prompt amending of its reports once the omissions were brought to our attention.

Accordingly, the Millner for Senate Committee is in compliance with the Act, and Respondents respectfully request that the Commission take no further action in this matter.

Sincerely,

Sonny Scott
Campaign Manager

1730 N.E. Expressway, Atlanta, Georgia 30329 • 404-248-8896 • 800-755-0096 • Fax 404-728-9432
Paid for by Guy Millner for U.S. Senate
recycled paper

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Aug 14 4 18 PM '97

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4467
DATE COMPLAINT FILED: September 16, 1996
DATE OF NOTIFICATION: September 23, 1996
DATE ACTIVATED: January 8, 1997

STAFF MEMBER: Tony Buckley

COMPLAINANT: Paul Johnson, Executive Director
Democratic Senatorial Campaign Committee

RESPONDENTS: Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, Sr., as treasurer
Sonny Scott

RELEVANT STATUTES: 2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)(5)(A)

INTERNAL REPORTS CHECKED: Disclosure Reports
MUR Index
Advisory Opinion Index

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed on September 16, 1996, by Paul Johnson, Executive Director of the Democratic Senatorial Campaign Committee. Complainant alleges that Guy Millner's principal campaign committee for the 1996 Georgia Senate race, Guy Millner for U.S. Senate Committee ("the Committee"), failed to properly report certain disbursements. Specifically, Complainant alleges that the Committee failed to properly report individual payroll

97044532722

disbursements to its staff, reporting instead lump-sum payments to Payroll 1, a company which handles the Committee's payroll services.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

Pursuant to 2 U.S.C. § 434(a)(1), all political committees must file reports of receipts and disbursements with the Commission. Pursuant to 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i), a political committee must report the name and address of each person to whom an expenditure in excess of $200 is made by that committee to meet an operating expense, together with the date, amount and purpose of such operating expenditure.

B. Response to the Complaint

A response to the complaint was received addressing the allegations. According to that response, the omission of the names, addresses and individual disbursements amounts for the Committee staff members resulted from Respondents' failure to understand the reporting requirements. Respondents note that the Committee filed amendments for all of its summary pages and Schedules B on September 23, 1996. They suggest that they promptly amended their reports once the omissions were brought to their attention, and that this demonstrates that there was no attempt to hide information.

Specifically, on September 17, 1996, the Reports Analysis Division ("RAD") issued a Request for Additional Information ("RFAI") to Respondents and informed them that, after a review of the Committee's 1996 12 Day Pre-Runoff Report, that report needed to be amended to include the names and addresses of all payees to whom the Committee had disbursed in excess of

97044032723

$200 for the calendar year. Attachment 1. The RFAI specifically addressed the apparent lump-sum payment to Payroll 1.

On September 23, 1996, the Committee mailed a response to the RFAI. Attachment 2.[1] In addition to amending its Pre-Runoff Report, the Committee also amended its 1996 April and July Quarterly, and 12 Day Pre-Primary Reports, which had also contained lump-sum disbursements to Payroll 1.

C. **Analysis**

Pursuant to 2 U.S.C. § 434(b)(5)(A), the Committee was required to report disbursements for payroll to each of its employees receiving more than $200 in a calendar year. Instead, the Committee reported lump-sum payroll payments to a vendor, which then distributed individual paychecks.

While the Commission has issued certain advisory opinions which allow a committee to meet its reporting obligation by only reporting the disbursements to a vendor and not itemizing the payments by the vendor to the third parties, *see, e.g.*, Advisory Opinion 1983-25, those situations involved vendors which had contracted with the third parties to provide services to the

[1] This Office has attached only the cover letter, omitting the many pages of amended reports. Although this letter bears the date of September 22, 1996, according to its response to the complaint in this matter, the Committee "filed" its response on September 23, 1996. As the response was received by the Secretary of the Senate on September 25, 1996, and thus filed on that date, it appears that the Committee indeed mailed its response to the RFAI on September 23, 1996.

9 7 0 4 3 3 2 7 2 4

vendor in its efforts to perform under its contract with the committee. Here, the third parties receiving payment from the vendor provided services to the Committee under a direct employment agreement with the Committee. Thus, the payment obligation was owed by the Committee directly to the ultimate payees, and the Committee should have reported the individual payments to its employees.

Accordingly, this Office recommends that the Commission find reason to believe that Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, Sr., as treasurer, violated 2 U.S.C. § 434(b)(5)(A).

D. Ultimate Disposition

Although, the Committee has committed a violation of the Act, this Office believes that other circumstances warrant taking no further action in this matter and closing the file.

The complaint in this matter was not received until September 16, 1996. It was forwarded to Respondents on September 23, 1996, the same date that Respondents mailed in the correct information which was the subject of the complaint. Thus, it appears that Respondents amended their reports in response to inquiries from RAD rather than in response to the complaint in this matter. Because the activity at issue was dealt with separately through the Committee's normal communications with RAD, this Office believes the best course of action is to decline to pursue this matter further.

Accordingly, this Office recommends that the Commission take no further action against Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, as treasurer, and close the file.

9 7 0 4 3 0 3 2 7 2 5

III. RECOMMENDATIONS

1. Find reason to believe that Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, Sr., as treasurer, violated 2 U.S.C. § 434(b)(5)(A), but take no further action.

2. Approve the appropriate letters.

3. Close the file.

Lawrence M. Noble
General Counsel

8/14/97
Date

BY: _____
Lois G. Lerner
Associate General Counsel

Attachments:
1. September 17, 1996 RFAI
2. Committee's Response to RFAI

97044332726

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, Sr., as treasurer; Sonny Scott.	)	MUR 4467

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 20, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4467:

1. Find reason to believe that Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, Sr., as treasurer, violated 2 U.S.C. § 434(b)(5)(A), but take no further action.

2. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 14, 1997.

3. Close the file.

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

Attest:

8-20-97
Date

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

Received in the Secretariat: Thurs., Aug. 14, 1997 4:18 p.m.
Circulated to the Commission: Fri., Aug. 15, 1997 12:00 p.m.
Deadline for vote: Wed., Aug. 20, 1997 4:00 p.m.

bjr

97044032727

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 21, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Johnson, Executive Director
Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 4467
Guy Millner for U.S. Senate Committee
and R. Charles Loudermilk, as treasurer
Sonny Scott, Campaign Manager

Dear Mr. Johnson:

This is in reference to the complaint you filed with the Federal Election Commission on September 16, 1996, concerning Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, as treasurer.

Based on that complaint, on August 20, 1997, the Commission found that there was reason to believe Guy Millner for U.S. Senate Committee and R. Charles Loudermilk, as treasurer, violated 2 U.S.C. § 434(b)(5)(A), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against these Respondents and closed the file in this matter.

This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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

Sincerely,

Tony Buckley
Attorney

Enclosures
General Counsel's Report
Certification

97044532728

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 21, 1997

R. Charles Loudermilk, Treasurer
Guy Millner for U.S. Senate Committee
1730 Northeast Expressway
Atlanta, GA 30329

RE: MUR 4467
Guy Millner for U.S. Senate Committee
and R. Charles Loudermilk, as treasurer
Sonny Scott, Campaign Manager

Dear Mr. Loudermilk:

On August 20, 1997, the Federal Election Commission found reason to believe that Guy Millner for U.S. Senate Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(b)(5)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file.

The confidentiality provisions at 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 before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Vice-Chairman

Enclosure
General Counsel's Report

cc: Guy Millner

9704503227 29

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4467

DATE FILMED 9-15-97 CAMERA NO. #

CAMERAMAN Init

9704353273C