FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4497

DATE FILMED 1/16/98 CAMERA NO. 2

CAMERAMAN EES

98043854606

HELLMANN

U.S. REPRESENTATIVE - 7th District

Lee Ann Elliot
Chairwoman of the Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

MUR 4497

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUN
OCT 7 3:37 AM '96

September 30, 1996

Dear Chairwoman Elliot:

I am the Democrat candidate for the U.S. House of Representatives in the Seventh Congressional District of Indiana.

This letter and the enclosed materials are directed to your attention because of the exclusive primary jurisdiction of the Federal Election Commission with respect to the civil enforcement of the Federal Elections Campaign Act (2USCS §§ 431 et seq.) I believe they provide reason to believe that violations of the Act have occurred.

I believe the following facts are without dispute.

Ed Pease is the Republican candidate for the U.S. House of Representatives in the Seventh Congressional District of Indiana. On March 8, 1996, the candidate agreed to sell his home, a newly built residence, to Robert A. Funk of Piedmont, Oklahoma. The purpose of the transaction was to raise funds for a federal election that is subject to the Act. (Exhibit 1, Purchase Contract, Page 1 only, dated 8 March 1996, Exhibit 2, Terre Haute Tribune Star, 9/19/96.)

Prior to the sale, an appraisal was conducted by an experienced and reputable real estate broker that determined the value of the home to be $350,000. It represents the appraisal's opinion "free from any present or expected future interest in the property." (Exhibit 3, letter dated 5 March 1996)

The property was sold for $350,000, but not free of a retained future interest in the property as assumed in the appraisal. Instead, the candidate-seller retained a five year leasehold (Exhibit 4, dated 8 March 1996) in addition to the payment of the appraised value of $350,000.

The retention of the leasehold interest of substantial value presents a violation of the Act by both the candidate in accepting a contribution in excess of $1,000 and the grantee-lessee by making a

FOR BETTER GOVERNMENT THAT HONESTLY SERVES THE NEEDS OF PEOPLE
Paid for and authorized by the Hellmann for Congress Committee, James P. Hellmann, Treasurer
22 North 9th Street, Terre Haute, IN 47811

9 8 0 4 3 8 5 4 6 0 7

contribution in excess of $1,000 and exceeding the maximum personal contribution limit of $25,000.

No appraisal of leasehold is evident. But the following is apparent. The property taxes and risk of casualty loss are assumed under the lease by the buyer, Robert A. Funk. Property taxes are currently $2495.42 per annum. Casualty insurance is estimated to cost $600 per annum. Interest charged in the residential mortgage market in the Terre Haute area is approximately 8%. Total interest, property taxes and casualty insurance for the five year leasehold period are:

(8% of $350,000 for 5 years)	$140,000
($2495 for 5 years)	$12,475
(Casualty insurance, 5 years)	$3,000
	$155,480

$155,480 represents the opportunity cost and direct expenses of the lessor, Robert Funk.

With these costs, the lessor, Mr. Funk, undertook to lease the property for $72,000 ($1,200 per month), leaving a net difference and probable value of the 5 year leasehold of $83,480. This retention of a leasehold of $83,480, together with the payment of $350,000 to the candidate, Mr. Pease, allowed the purpose of the transaction to be realized. The proceeds of the transaction were then contributed by the candidate-lessee to the federal campaign. The candidate remains in possession of the real estate.

I request that this matter be investigated expeditiously.

Sincerely,

Robert F. Hellmann

I affirm under penalties perjury that the above and foregoing is true and correct to the best of my knowledge and belief.

Robert F. Hellmann

County of Vigo

State of Indiana

Subscribed and sworn to before me this 30th day of September, 1996

Jessie A. Cook

Notary Public

My Comm. Expires 10/16/99

My County of residence is Monroe

September 30, 1996

80178546008

EXHIBIT #1

REAL ESTATE PURCHASE CONTRACT

I, the undersigned Buyer, BOB FUNK, hereinafter referred to as "Buyer," on this 8th day of March, 1996, at Oklahoma City, Oklahoma County, Oklahoma, hereby agree to purchase from the undersigned Seller, ED PEASE, hereinafter referred to as "Seller," and the SELLER agrees to sell to BUYER, the following described real property, to-wit

(See Exhibit "A" attached hereto)

subject to existing zoning ordinance, restrictions, easements, and mineral rights previously reserved, or conveyed of record, and also subject to encroachments, if any, that might be shown by survey, upon the following terms and conditions ("Property")

TERMS: BUYER shall pay for the Property the sum of Three Hundred Fifty Thousand and No 100 Dollars ($350,000.00) payable as follows:

(a) The sum of Twenty Thousand Dollars ($20,000.00) (check) as earnest money, upon acceptance in writing and delivery of this Real Estate Purchase Contract ("Contract") to be paid to SELLER to serve as a down payment towards the purchase of the Property ("Earnest Money")

(b) At closing, IN CASH OR CERTIFIED FUNDS, the further sum of Three Hundred Thirty Thousand and No 100 Dollars ($330,000.00)

CONDITION OF PROPERTY

(a) On or before the day of closing, SELLER shall furnish a current termite clearance certificate from a licensed company showing the Property free and clear of visible termite infestation or other wood destroying organisms. If termites or other wood destroying organisms are discovered in the process of obtaining such certificate, then SELLER shall pay for the treatment. On or before the day of closing, BUYER shall acknowledge receipt of such termite clearance certificate in writing.

(b) Property Status - BUYER shall have Ten (10) days to inspect the condition of Property and notify the SELLER in writing of BUYER'S approval or disapproval. If BUYER discovers conditions objectionable to BUYER, then this Contract shall terminate and be null and void and the Earnest Money shall be returned to BUYER. BUYER shall have the right to reinspect the Property prior to closing to determine any changes in the condition of the Property. In the event the condition of the Property has changed, ordinary wear and tear excepted, SELLER shall repair the defect or return the condition of the Property to its earlier state. In the event SELLER fails and/or refuses to do same BUYER shall have the right to terminate this Contract and the Earnest Money shall be returned to BUYER.

(c) Until closing, risk of loss to the Property (ordinary wear and tear excepted) shall be upon SELLER. After the closing or transfer of possession, such risk shall be upon BUYER.

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EXHIBIT #2

happy people better ... Page A4 ... talk radio au... es continue to grow, Page D1

Tribune Star

Vol. 15, No. 131

tember 19, 1996 — Serving Terre Haute and the Wabash Valley — High today: 75° Low tonight: 51

Mostly sunny

Pease sells house for campaign

Candidate leasing it back now to live in

By Maureen Groppe
Tribune-Star Washington Bureau

WASHINGTON — Republican candidate Ed Pease is trying to exchange his house on Oak Maple Avenue for a seat in the House on Capitol Hill.

Pease sold his two-story brick house to a wealthy cousin in Oklahoma to raise money for his campaign, the Tribune-Star has learned. The candidate continues to live in the house and said he has a five-year lease.

After loaning his campaign $150,000 to win his competitive primary in the 7th District, Pease said he got the money by taking equity out of his house.

County records show Pease sold the house in April to Robert A. Funk, the founder of a fast-growing staffing services company and Pease's second cousin.

Asked why the campaign had said the funds came from equity in the home, Pease said, "When you sell a home, you're taking equity out of it."

Of the $150,000 that Pease has loaned his campaign, $115,000 came from the house sale. The rest, loaned before the sale, came from savings and a certificate of deposit, he said.

There are no legal limits on the amount of money a congressional candidate can give to his campaign. But if a candidate sells property to raise money for the race, a price significantly higher than the market value could be an illegal contribution, according to the Federal Election Commission.

Pease declined to disclose the sale price of the home and the terms of his lease because, he said, it could let his opponent know how much money he had available for his campaign. Instead, Pease provided the name of the real estate agent who appraised the house and suggested a rental price.

Troy Helman, a vice president at Coldwell Banker Larry Helman Realtors, said he did not draw up the terms of the sale and lease-back, but the appraisal he provided was a fair market price. Pease said he sold the house for the appraised price.

"We were scrupulously careful," he said. "I'm

By the book

- Federal election law says:
- Candidates can give or loan an unlimited amount of personal funds to their own campaign.
- If a candidate liquidates property to raise money for the campaign, the sale price must be a fair market value. A higher price could be considered an illegal contribution from the person who purchased the property.
- Individuals are limited to contributing $2,000 per election cycle to a candidate. The limit includes gifts, loans and in-kind contributions such as living accommodations.
- Campaigns can continue to raise money after the election to retire debts.

Source: Federal Election Commission

See **Pease**, Page A7

Pease

• Continued from Page A1

in compliance with the letter and the spirit of the law.

Democrat Bob Heilmann said his opponent should fully disclose the details of the transaction.

"I don't know of anybody who sold their home to run for Congress and has an arrangement where they can still reside in it," he said.

In a Sept. 3 debate between the candidates, Pease said that "every contribution from political action committees, from unions, from whatever sources, needs to be promptly and fully disclosed so that everyone knows what persons have made contributions and may therefore be attempting to influence what goes on in the legislature."

On a financial disclosure statement filed earlier this year, Pease estimated the house to be worth between $250,000 and $500,000. Pease said the sale price was within that range. After he sold the house, the candidate paid off a $200,100 mortgage.

Pease said he sold his home instead of taking out a loan because there was already a mortgage on the house and he could only borrow 80 percent of the house's value. Consequently, he approached his cousin about buying the property.

Renter: Ed Pease has a five-year lease on his home in Terre Haute.

Pease said he could not speculate why Funk would be willing to buy a house in Terre Haute. Funk, the chairman and chief executive officer of Express Person nel Services, did not return calls.

Express Personnel Services, which had $728 million in revenues last year, opened a Terre Haute franchise this year. The office is one of nearly 400 franchises around the world.

Funk and his wife each gave Pease's campaign $1,000 about the time the sale was conducted. They have given a combined $21,500 to Republican congressional candidates and political action committees so far this election cycle.

Pease built the 3,600-square-foot house in 1994 on 3.15 acres of land received from his parents, just east of the city limits and west of Hawthorn Park in East Creek Township. Personal touches include a fireplace bordered with rocks from the bed of the river that runs through a camp that Pease's family donated to the Boy Scouts.

The candidate said he is willing to risk his property because "When I make a commitment, I make a complete commitment of my time, my energy and my resources." Pease said he did not discuss terms of buying the house back after the election and will wait and see if his campaign has the ability to pay him back.

It is not unusual for candidates to invest in their campaigns. In 1994, 112 candidates gave or loaned their campaigns at least $100,000, according to the Center for Responsive Politics, an independent group that studies campaign finance. Candidates take the gamble knowing that, if they win, they are likely to attract enough contributions to pay their salaries back.

Opponent: Bob Heilmann says Pease should have disclosed the details of his real estate transaction.

But when candidates make such a personal contribution, the race sometimes becomes almost desperate, [illegible] campaign manager Paul Hendon, a spokesman for the center.

The temptation to resort to [illegible] tactics [illegible] gets great, [illegible] said.

Tribune-Star reporter Maureen Groppe [illegible] Washington report.

EXHIBIT #

LARRY HELMAN
REALTORS®

March 5, 1996

[illegible]

Mr. Ed Pease
1900 North Wildwood
Terre Haute, IN
47803

Dear Mr. Pease:

I have this day completed my appraisal of the property commonly known as 1900 North Wildwood, Terre Haute, Indiana. The property includes land and improvements and is owned by Ed Pease.

In my opinion, the present day fair market value of the property is $350,000 (Three Hundred and Fifty Thousand Dollars). The value of the property is expressed in dollars and is subject to any future changes which may occur in the value of the dollar.

All information and comments concerning the location, neighborhood, trends, rents or any other data of the property appraised herein represent the estimates and opinions of the appraiser, formed after an examination and study of the property.

While it is believed the information, estimates and analyses given and the opinions and conclusions drawn therefrom are correct, the appraiser does not guarantee them and assumes no liability for any errors in fact, in analysis or in judgment. No attempt has been made to render an opinion of title or of the status of easements or of any other matter of a legal character.

This appraisal represents the independent opinion of the appraiser free from any present or expected future interest in the property.

Respectfully submitted,
Coldwell Banker Larry Helman, Realtors

Troy D. Helman

TDH:dks
cc: file

A Independently Owned and Operated Member of Coldwell Banker Real Estate Corp. All rights reserved.

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EXHIBIT #4

Exhibit "B"

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into this 8th day of March, 1996, by and between Bob Funk (hereinafter collectively referred to as the "Lessor") and Ed Pease (hereinafter referred to as the "Lessee")

WITNESSETH

WHEREAS, the Lessor is the record title holder of certain improved property located at 5125 East Old Maple Avenue, Terre Haute, Vigo County, State of Indiana (formerly known as 1900 North Wildwood, Terre Haute, in Vigo County, State of Indiana), (such improved property being referred to herein as the "Property").

WHEREAS, the Lessor desires to lease the Property to the Lessee; and

WHEREAS, the Lessee desires to lease the Property

NOW, THEREFORE, for good and valuable considerations, the sufficiency and receipt of which are hereby acknowledged, as well as the covenants and promises herein contained, the Lessor and the Lessee hereby agree as follows.

1. **The Property**. For and in consideration of the prompt payment of the rent by Lessee as hereinafter provided and the performance by Lessee of the covenants hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property.

2. **Term**. The term of this Lease Agreement shall commence on the date of closing of the purchase of the Property by Lessor pursuant to the certain Real Estate Purchase Contract between Lessor and Lessee (the "Commencement Date"), and shall end on April 30, 2001, unless sooner terminated as provided herein.

3. **Rent**. The rent for the lease of the Property shall be payable to Lessor at 6300 Northwest Expressway, Oklahoma City, Oklahoma 73132, attention Bob Funk, or such other address that Lessor shall notify Lessee of in writing, in monthly installments of Twelve Hundred Dollars ($1200.00) (hereinafter called the "Rent"), each due and payable in advance and without demand on the first day of each and every month during the term hereof. Any late payment shall accrue interest at the rate of two percent (2%) per month.

4. **Utility Charges**. In addition to the Rent, Lessee shall pay all water, sewer, garbage, gas and electric services billed directly to the Lessee for use and occupancy of the Property.

Lessor_____
Lessee_____

98043854612

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 15, 1996

Robert F. Hellmann
Hellman for Congress
22 North 5th Street
Terre Haute, IN 47807

RE: MUR 4497

Dear Mr. Hellmann:

This letter acknowledges receipt on October 7, 1996, of the complaint you filled 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 4497. 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

3047854613

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 15, 1996

Stephen E. Hacket, Treasurer
Pease for Congress
P.O. Box 511
Seelyville, IN 47878

RE: MUR 4497

Dear Mr. Hacket:

The Federal Election Commission received a complaint which indicates that Pease for Congress 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 4497. 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 Pease for Congress 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.

13047854614

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

Sincerely,

Colleen Sealander, Attorney
Central Enforcement Docket

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

28043854615

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 15, 1996

Ed Pease
5125 East Old Maple Avenue
Terre Haute, IN 47803

RE: MUR 4497

Dear Mr. Pease:

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 4497. 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.

13047854616

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

Sincerely,

Colleen Sealander, Attorney
Central Enforcement Docket

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

80438546 17

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 15, 1996

Robert A. Funk
506 Peidmont Road, North
Piedmont, OK 73078-9701

RE: MUR 4497

Dear Mr. Funk:

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 4497. 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.

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

Sincerely,

Colleen Sealander, Attorney
Central Enforcement Docket

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

80438546 19

BOPP, COLESON & BOSTROM
ATTORNEYS AT LAW

JAMES BOPP, JR.

ASSOCIATES:
RICHARD E. COLESON
BARRY A. BOSTROM
JOHN K. ABEGG
SCOTT M. LUCAS
PAUL R. SCHOLLE

2 FOULKES SQUARE
401 OHIO STREET
P.O. BOX 8100
TERRE HAUTE, INDIANA 47808-8100

TELEPHONE
812/232-2434
FAX
812/235-3685
E-MAIL
jbopp@aol.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 28 11 20 AM '96

October 23, 1996

Erik Morrison
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4497

Dear Mr. Morrison:

Enclosed herewith please find the Statement of Designation of Counsel by Respondent Ed Pease. I will be serving as his counsel in this matter.

We hereby request an extension of time of 15 days to provide a response to the complaint. If granted, our response would be due on November 15th, since Mr. Pease received your letter on October 21.

This extension of time is requested because my current heavy litigation schedule precludes a response by November 5th. Specifically, I am currently involved in briefing election law matters in the 1st Circuit, in District Courts in Indiana and North Carolina and in a state court in New York. Furthermore, because I serve as Vigo County Republican Chairman, I have substantial election related responsibilities between now and November 5th.

We request this extension in order to afford my client the opportunity to make a full and complete response to the complaint.

Thank you for your cooperation in this matter.

Sincerely,

BOPP, COLESON & BOSTROM

James Bopp, Jr.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 4497

NAME OF COUNSEL: James Bopp, Jr.

FIRM: Bopp, Coleson & Bostrom

ADDRESS: P.O. Box 8100

401 Ohio Street

Terre Haute, IN 47808

TELEPHONE: (812) 232-2434

FAX: (812) 235-3685

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 28 11 20 AM '96

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/21/96
Date

Signature

RESPONDENT'S NAME: Ed Pease

ADDRESS: 5125 East Old Maple Avenue

Terre Haute, IN 47803

TELEPHONE: HOME(812) 877-4248

BUSINESS( )

80043854621

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1996

James Bopp, Jr.
Bopp, Coleson & Bostrom
2 Foulkes Square
401 Ohio Street
P.O. Box 8100
Terre Haute, IN 47808-8100

RE: MUR 4497
Ed Pease

Dear Mr. Bopp:

This is in response to your letter dated October 23, 1996 which we received on October 28, 1996 requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 15, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Erik Morrison

Erik Morrison, Paralegal
Central Enforcement Docket

80438546222

LAW OFFICES
MARION EDWYN HARRISON
WASHINGTON
FALLS CHURCH
ZURICH

MARION EDWYN HARRISON (DC, VA)
JOHN S. BAKER, JR. (DC, LA)
DANIEL M. REDMOND (DC)

TELEPHONE (202) 965-0800
TELEPHONE (703) 532-0303
FACSIMILE (703) 532-0086

CORRESPONDENCE TO:
107 PARK WASHINGTON COURT
FALLS CHURCH, VIRGINIA 22046

November 1, 1996

Erik Morrison, Esquire
Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 4 2 36 PM '96

Re: MUR 4497

Dear Mr. Morrison:

We represent Mr. Robert A. Funk, Respondent herein.

Respondent received on October 18, 1996 the Federal Election Commission letter dated October 15. We request a continuance of fifteen days to respond.

We are informed that the Designation of Counsel statement will be mailed to us. We will provide it as soon as we receive it.

Please correspond to our Virginia office.

We appreciate your cooperation.

Sincerely,

MARION EDWYN HARRISON

cc Sam Hammons, Esquire
Of Counsel

3 0 4 3 8 5 4 6 2 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 7, 1996

Marion Edwyn Harrison, Esq.
107 Park Washington Court
Falls Church, VA 22046

RE: MUR 4497
Robert A. Funk

Dear Mr. Harrison:

This is in response to your letter dated November 1, 1996 which we received on November 4, 1996 requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 18, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Erik Morrison, Paralegal
Central Enforcement Docket

80438546224

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

NOV 12 1 20 PM '96

LAW OFFICES
MARION EDWYN HARRISON
WASHINGTON
FALLS CHURCH
ZURICH

MARION EDWYN HARRISON (DC, VA)
JOHN S. BAKER, JR. (DC, LA)
DANIEL M. REDMOND (DC)

TELEPHONE (202) 965-0800
TELEPHONE (703) 532-0303
FACSIMILE (703) 532-0086

CORRESPONDENCE TO:
107 PARK WASHINGTON COURT
FALLS CHURCH, VIRGINIA 22046

November 7, 1996

Erik Morrison, Esquire
Federal Election Commission
Washington, D.C. 20463

Re: MUR 4497

Dear Mr. Morrison:

Pursuant to our letter of November 1, 1996, copy attached, we attach Statement of Designation of Counsel for our client, Mr. Robert A. Funk.

Sincerely,

MARION EDWYN HARRISON

cc Sam Hammons, Esquire
Of Counsel

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
NOV 12 1 20 PM '96

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4497

NAME OF COUNSEL: Marion Edwyn Harrison

FIRM: Law Offices of Marion Edwyn Harrison

ADDRESS: 107 Park Washington Court

Falls Church, Virginia 22046

TELEPHONE: (703) 532-0303

FAX: (703) 532-0086

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/05/96
Date

Signature

RESPONDENT'S NAME: Robert A. Funk

ADDRESS: 506 Piedmont Road, North

Piedmont, OK 73078-9701

Please forward all correspondence to:
6300 N.W. Expressway
Oklahoma City, OK 73132

TELEPHONE: HOME( )

BUSINESS(405) 840-5000

80438546 26

JAMES BOPP, JR.

ASSOCIATES:
RICHARD E. COLESON
BARRY A. BOSTROM
JOHN K. ABEGG
SCOTT M. LUCAS
PAUL R. SCHOLLE
DALE L. WILCOX

BOPP, COLESON & BOSTROM
ATTORNEYS AT LAW

2 FOULKES SQUARE
401 OHIO STREET
P.O. BOX 8100
TERRE HAUTE, INDIANA 47808-8100

TELEPHONE
812/232-2434
FAX
812/235-3685
E-MAIL
jboppjr@aol.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 18 10 19 AM '96

November 15, 1996

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4497

BY FEDERAL EXPRESS PRIORITY MAIL

Dear Sir or Madam:

This letter and the enclosed materials shall serve as our response to the complaint filed on October 7, 1996 by Mr. Robert Hellmann, Democrat candidate for the office of United States Representative from the 7th Congressional District of Indiana.

Mr. Edward Pease was the Republican candidate for the office of United States Representative from the 7th Congressional District of Indiana. Mr. Pease decided to sell his home to pay off his mortgage and raise money for his campaign. Mr. Pease was contacted by his cousin, Robert A. Funk, about purchasing the property. Mr. Funk desired to purchase the property because it was at one time his mother's homestead and he did not want the property to leave the family.

Prior to the sale, Mr. Funk, by counsel, contacted the Federal Election Commission (hereafter "FEC") to inquire whether a sale and lease of the property would violate any election law. Mr. Funk was advised that the sale and lease would be legal if he paid the **fair market value** for the property. The FEC informed Mr. Funk that he should get an independent appraisal of the property.

Mr. Funk obtained both an independent appraisal of the property (attached hereto as exhibit A) and an independent appraisal of the leasehold interest therein (attached hereto as exhibit B) from Mr. Troy Helman of Coldwell Banker in Terre Haute, Indiana on March 5, 1996. Mr. Helman concluded that the **fair market value** of the property was $350,000 and that the **fair market value** of any leasehold interest was $1,200 per month.

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On March 8, 1996, Mr. Funk and Mr. Pease entered into a purchase agreement (attached hereto as exhibit C) and a lease agreement (attached hereto as exhibit D). Mr. Funk agreed to purchase the property at the fair market value of $350,000. Mr. Funk then agreed to lease the property to Mr. Pease for the appraised fair market value of $1,200 per month. Subsequently, a complaint was filed with the FEC concerning this transaction on October 7, 1996 by Mr. Robert Hellmann, Democrat candidate for the office of United States Representative from the 7th Congressional District of Indiana.

The complaint asserts that Mr. Funk has made a contribution to Mr. Pease's campaign in excess of the legal limit set by FECA by purchasing Mr. Pease's property and leasing it back to him. As will be demonstrated, the complaint is without merit.

The Federal Election Campaign act of 1971 (hereafter "FECA") and the regulations thereunder expressly recognize that the fair market value of an item is the standard that must be used when determining its value for any purpose. For example, the definition of a contribution includes the value of any goods or services that are provided *without charge*. 11 CFR § 100.7(a)(1)(iii)(A). The regulations provide that the **fair market value** shall be used to determine the value of those goods and services. 11 CFR § 100.7(a)(1)(iii)(B). Likewise, the definition of an expenditure includes those goods and services provided at *no charge*. 11 CFR § 100.8(a)(iv)(A). Again, the regulations provide that the **fair market value** of the good or service shall be used to determine its value. 11 CFR § 100.8(a)(iv)(B).[1] Therefore, when a candidate sells a personal asset, the **fair market value** of the asset is the standard to use to determine if the candidate received a contribution.[2] In other words, as long as the transaction is based on the fair market value of the asset no contribution is recognized.

As discussed before, Mr. Funk received from Coldwell Banker an independent appraisal of the fair market value of the property for $350,000 (*see* exhibit A). On November 13, 1996, the property was again independently appraised by John S. Newlin of Newlin-Johnson of Terre Haute, Indiana (attached hereto as exhibit E). Mr. Newlin appraised the property at a fair market value of $350,000. As indicated by the purchase agreement (see exhibit C), Mr. Funk purchased the property from Mr. Pease for $350,000. Thus, the sale was made at the **fair market value**. Therefore, no

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[1] For further examples *see* 11 CFR § 104.13(a)(1)&(2), 11 CFR § 104.13(b)(1), and 11 CFR § 9004.9(a)(2)(i)&(ii).

[2] This fact is also evident from the representations made by the FEC to Mr. Funk's counsel.

contribution was made by Mr. Funk to Mr. Pease's campaign by purchasing the property.

Mr. Funk received from Coldwell Banker an independent appraisal of the **fair market value** of a leasehold interest in the property for $1,200 per month (*see* exhibit B). Mr. Hellmann's complaint alleges that the leasehold interest was not appraised or included in the appraisal of the purchase price. Specifically, his complaint stated that "no appraisal of leasehold is evident" and that it was the "appraisal's opinion 'free from any present or expected future interest in the property.'" *Hellmann's Complaint Pgs. 1-2.* Mr. Hellmann's assumption is mistaken for two reasons. First, it is evident from exhibit B that the fair market value of the leasehold was determined by appraisal on the same day that the property was appraised for sale. Second, Mr. Hellmann misunderstood what the appraiser meant by "[t]his appraisal represents the independent opinion of the appraiser free from any present or expected future interest in the property." This statement was not a representation by the appraiser that the appraisal did not contemplate a possible "future interest", such as a leasehold, in the property. Instead, the appraiser was expressing his own independence i.e., that he did not expect anything in return for performing the appraisal, present or future (*see* appraiser's letter of October 22, 1996, attached hereto as exhibit F).

On October 25, 1996, the leasehold interest was again independently appraised by John S. Newlin of Newlin-Johnson of Terre Haute, Indiana (which appraisal is attached hereto as exhibit G). Mr. Newlin determined that the fair market value of the leasehold interest in the property is $1,150 per month.

As evidenced by the lease agreement (*see* exhibit D), Mr. Funk leased the property to Mr. Pease for $1,200 per month. This amount was appraised to be the **fair market value** of the property. In fact, according to the second appraisal, Mr. Pease is paying more than the fair market value for the leasehold interest. Thus, Mr. Funk has not made a contribution to Mr. Pease's campaign by leasing him the property.

The landmark case of *Buckley v. Valeo* held that candidates must be allowed to use there own resources in a campaign without any limitation. 424 U.S. 1, 51-54. In the matter at hand, Mr. Pease has done no more than liquidate an asset at fair market value to fund his campaign. Therefore, according to *Buckley* and its progeny, he has committed no act for which he could be held liable under the FECA. It is evident from the facts that Mr. Funk did not make a contribution to Mr. Pease's campaign by the purchase and lease of the property at issue because the transaction was based upon **fair market value**.

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Mr. Pease, therefore, respectfully asks that no action against him should be taken, that the complaint be dismissed as meritless, and all other requested relief be denied the complainant.

Sincerely,

BOPP, COLESON & BOSTROM

Dale L. Wilcox

enclosures

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COLDWELL BANKER

LARRY HELMAN
REALTORS®
March 5, 1996

[illegible] CLIO STREET
TERRE HAUTE, IN 47807
BUS. (812) 238-2326
FAX (812) 238-[illegible]

Mr. Ed Pease
1900 North Wildwood
Terre Haute, IN
47803

Dear Mr. Pease:

I have this day completed my appraisal of the property commonly known as 1900 North Wildwood, Terre Haute, Indiana. The property includes land and improvements and is owned by Ed Pease.

In my opinion, the present day fair market value of the property is $350,000 (Three Hundred and Fifty Thousand Dollars). The value of the property is expressed in dollars and is subject to any future changes which may occur in the value of the dollar.

All information and comments concerning the location, neighborhood, trends, rents or any other data of the property appraised herein represent the estimates and opinions of the appraiser, formed after an examination and study of the property.

While it is believed the information, estimates and analyses given and the opinions and conclusions drawn therefrom are correct, the appraiser does not guarantee them and assumes no liability for any errors in fact, in analysis or in judgment. No attempt has been made to render an opinion of title or of the status of easements or of any other matter of a legal character.

This appraisal represents the independent opinion of the appraiser free from any present or expected future interest in the property.

Respectfully submitted,
Coldwell Banker Larry Helman, Realtors

Troy D. Helman

TDH:dks
cc:file

Exhibit A

A Independently Owned and Operated Member of Coldwell Banker Residential Affiliates, Inc.

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COLDWELL BANKER

LARRY HELMAN
REALTORS®

401 OHIO STREET
TERRE HAUTE, IN 47807
BUS. (812) 238-2526
FAX (812) 238-2533

March 5, 1996

Hammons, Vaught and Conner
Attn: Sam Hammons
50 Penn Place
Oklahoma City, OK 73118

Dear Mr. Hammons,

I appraised the property located at 1900 North Wildwood, Terre Haute, Indiana which is owned by Ed Pease. I was also asked to give an opinion as to a fair market value for renting the subject property. With four colleges and/or universities in Terre Haute, the rental market is somewhat varied. As a general rule, apartments and homes generally range in the $300 - $700 per month price range. More expensive homes are more difficult to rent because there is not a great demand for such rentals. However, it has been my experience that this type of property would rent in the $1100 to 1200 price range.

Therefore, it is my opinion that the present day fair market rental value is $1,200 (One Thousand Two Hundred Dollars) per month.

While it is believed that information, estimates and analyses given and the opinions and conclusions drawn therefrom are correct, the appraiser does not guarantee them and assumes no liability for any errors in fact, analysis or in judgment. All information and comments concerning the location, neighborhood, trends, rents or any other data of the property appraised herein represent the estimates and opinions of the appraiser formed after an examination and study of the property.

Sincerely,

Troy D. Helman

Troy D. Helman, CRB

Exhibit B

TDH:dks

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REAL ESTATE PURCHASE CONTRACT

I, the undersigned Buyer, BOB FUNK, hereinafter referred to as "Buyer," on this 8th day of March, 1996, at Oklahoma City, Oklahoma County, Oklahoma, hereby agree to purchase from the undersigned Seller, ED PEASE, hereinafter referred to as "Seller," and the SELLER agrees to sell to BUYER, the following described real property, to-wit:

(See Exhibit "A" attached hereto)

subject to existing zoning ordinance, restrictions, easements, and mineral rights previously reserved, or conveyed of record, and also subject to encroachments, if any, that might be shown by survey, upon the following terms and conditions ("Property"):

TERMS: BUYER shall pay for the Property the sum of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) payable as follows:

(a) The sum of Twenty Thousand Dollars ($20,000.00) (check) as earnest money, upon acceptance in writing and delivery of this Real Estate Purchase Contract ("Contract") to be paid to SELLER to serve as a down payment towards the purchase of the Property ("Earnest Money").

(b) At closing, IN CASH OR CERTIFIED FUNDS, the further sum of Three Hundred Thirty Thousand and No/100 Dollars ($330,000.00).

CONDITION OF PROPERTY:

(a) On or before the day of closing, SELLER shall furnish a current termite clearance certificate from a licensed company showing the Property free and clear of visible termite infestation or other wood destroying organisms. If termites or other wood destroying organisms are discovered in the process of obtaining such certificate, then SELLER shall pay for the treatment. On or before the day of closing, BUYER shall acknowledge receipt of such termite clearance certificate in writing.

(b) Property Status - BUYER shall have Ten (10) days to inspect the condition of Property and notify the SELLER in writing of BUYER'S approval or disapproval. If BUYER discovers conditions objectionable to BUYER, then this Contract shall terminate and be null and void and the Earnest Money shall be returned to BUYER. BUYER shall have the right to reinspect the Property prior to closing to determine any changes in the condition of the Property. In the event the condition of the Property has changed, ordinary wear and tear excepted, SELLER shall repair the defect or return the condition of the Property to its earlier state. In the event SELLER fails and/or refuses to do same BUYER shall have the right to terminate this Contract and the Earnest Money shall be returned to BUYER.

(c) Until closing, risk of loss to the Property (ordinary wear and tear excepted) shall be upon SELLER. After the closing or transfer of possession, such risk shall be upon BUYER.

Exhibit C

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(d) BUYER, by closing, shall be deemed to have accepted the Property, in then existing condition. BUYER is purchasing the Property based on BUYER'S own inspection and NO WARRANTIES expressed or implied by SELLER shall be deemed to survive the closing with reference to the condition of the Property or any fixtures or equipment.

(e) Except for the provisions above, SELLER shall deliver the Property in the present condition, ordinary wear and tear excepted.

(f) Utilities shall be left on, in SELLER'S name.

FIXTURES AND EXTRAS: The following items shall remain with the Property after the closing as Property of BUYER at no additional cost to BUYER and shall be considered a part of the purchase price; all wall to wall carpets; all bathroom mirrors; all ceiling fans; direct-wired lighting fixtures; curtains, drapes, curtain rods and other window treatments; all appliances; kitchen stove, washer and dryer; and fireplace accessories.

SPECIAL PROVISIONS: The parties agree at the closing to execute a Lease identical to Exhibit "B" attached hereto and made a part hereof.

TITLE EVIDENCE: Marketable fee simple title to the Property shall be conveyed to BUYER by General Warranty Deed in recordable form. Upon closing, the existing abstract of title shall become the property of BUYER.

TITLE COMMITMENT: Within ten (10) days after execution of this agreement, SELLER will deliver to BUYER a title commitment (the "Title Commitment") for issuance of an ALTA Form B Owner's Title Insurance Policy (the "Title Policy") covering the Property in the amount of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) issued by a title company to be mutually agreed to by BUYER AND SELLER showing marketable fee simple title to the Property to be vested in SELLER together with copies of the instruments, rights-of-way, covenants, restrictions and other conditions, if any, affecting the Property. The expense of the Title Policy shall be paid solely by BUYER. BUYER shall have fifteen (15) days from receipt of Title Commitment to notify SELLER of any objections to title and SELLER shall have until closing date to cure said objections. BUYER preapproves restrictive covenants, platted utilities, airport area regulations, mineral reservations, not located on the Property of record as not being title objections. If SELLER is unable or unwilling to cure any defects within such period, then unless BUYER waives such defects in writing this Contract shall terminate and the EARNEST MONEY returned to BUYER. The Title Policy shall insure against unfiled mechanic's and materialmen's liens.

(a) BUYER shall have the right to obtain a survey. In the event the survey discloses any encroachments and/or boundary disputes, such Title Policy shall provide encroachment coverage with exception(s) for matters disclosed by such survey, which exception(s) shall be subject to acceptance by Buyer in writing.

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TITLE POLICY: In the event that the Title Policy contains exceptions objectionable to BUYER and not removed by the closing date, BUYER may, at its option, waive such defects or rescind this Contract by reason of SELLER's failure, after exercising due diligence, to gain the approval of the Title Company to remove such exceptions. BUYER shall then be entitled to terminate this Contract and have the Earnest Money returned to Buyer.

SELLER'S EXPENSE: SELLER will pay, at closing, the following costs: One half (1/2) of the cost of any documentary stamps to be affixed to the General Warranty Deed; the costs of any title curative actions and/or documentation; the recording fees for any title curative documents; one half (1/2) of the closing cost charged by the Closing Agent; cost for preparation of the General Warranty Deed, Bill of Sale, and any and all other documents and instruments to be supplied by SELLER to BUYER under the terms of this Contract; cost of providing BUYER with an updated, full and complete abstract of title to the Property; and the cost of a termite report showing the Property to be free and clear of infestation.

TAXES, ASSESSMENTS AND PRORATIONS: SELLER shall pay all expenses owing to the date of closing, including, but not limited to, personal property taxes, matured or unmatured special assessments, insurance, all utility bills. Notwithstanding the foregoing, the Buyer shall pay all ad valorem taxes for the Property. All other expenses shall be prorated on the basis of thirty days to the month.

CLOSING/POSSESSION: This transaction shall be closed on or before April 30, 1996, unless closing is extended as may be required by Title Evidence above, or by written agreement of SELLER and BUYER with legal title delivered to BUYER at the time of closing. The closing shall take place at Hendrich Title Company.

DEFAULT:

(a) If BUYER wrongfully refuses to close, SELLER and BUYER agree that since it is impracticable and extremely difficult to fix the actual damages sustained, the Earnest Money shall be forfeited as liquidated damages to SELLER. SELLER may, at SELLER'S option, seek specific performance.

(b) If SELLER'S title defects cannot be corrected as herein provided, or if SELLER wrongfully refused to close, BUYER'S Earnest Money shall be returned after deduction for expenses incurred on BUYER'S behalf. BUYER may, at BUYER'S option, seek specific performance.

(c) In the event a suit for specific performance is instituted, the prevailing party shall have the right to recover all of such party's expenses and costs incurred by reason of such litigation including, but not limited to, attorney's fees, court costs, and costs of suit preparation.

BINDING EFFECT: This Contract, when executed by both SELLER and BUYER shall be binding upon and inure to the benefit of SELLER and BUYER, their respective heirs, legal representatives,

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(c) In the event a suit for specific performance is instituted, the prevailing party shall have the right to recover all of such party's expenses and costs incurred by reason of such litigation including, but not limited to, attorney's fees, court costs, and costs of suit preparation.

BINDING EFFECT: This Contract, when executed by both SELLER and BUYER shall be binding upon and inure to the benefit of SELLER and BUYER, their respective heirs, legal representatives, successors and permitted assigns. This Contract sets forth the complete understanding of SELLER and BUYER and supersedes all previous negotiations, representations and agreements between them and their agents. This Contract can only be amended, modified, or assigned by written agreement signed by both SELLER and BUYER.

ACCEPTANCE TIME: The foregoing offer is made subject to acceptance in writing hereon by SELLER and the return of an executed copy to the undersigned BUYER on or before 5:00 p.m., March 9th 1996.

TIME IS OF THE ESSENCE.

DISCLAIMER: It is expressly understood by SELLER and BUYER that SELLER does not warrant the present or future value, size by square footage, condition, structure, or structure systems of the property or any building. This paragraph shall survive the closing.

COUNTERPARTS: This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.

BUYER: _____
BOB FUNK

SELLER'S ACCEPTANCE: SELLER accepts the foregoing offer and shall sell the above described Property on the terms and conditions herein stated.

ACCEPTED this 9 day of MARCH, 1996

SELLER: _____
ED PEASE

1996 rtl pease realest.agm

EXHIBIT "A"

Lot Number One (1) in Robert R. & Joanna R. Pease One Lot Subdivision being a Subdivision of a part of the Northeast quarter of Section 18, Township 12 North, Range 8 West as shown by the recorded plat thereof in Plat Record 28, Page 30, records of the Recorder's Office of Vigo County, Indiana.

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Exhibit "B"

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into this 8th day of March, 1996, by and between Bob Funk (hereinafter collectively referred to as the "Lessor") and Ed Pease (hereinafter referred to as the "Lessee")

WITNESSETH:

WHEREAS, the Lessor is the record title holder of certain improved property located at 5125 East Old Maple Avenue, Terre Haute, Vigo County, State of Indiana (formerly known as 1900 North Wildwood, Terre Haute, in Vigo County, State of Indiana), (such improved property being referred to herein as the "Property");

WHEREAS, the Lessor desires to lease the Property to the Lessee; and

WHEREAS, the Lessee desires to lease the Property

NOW, THEREFORE, for good and valuable considerations, the sufficiency and receipt of which are hereby acknowledged, as well as the covenants and promises herein contained, the Lessor and the Lessee hereby agree as follows:

1. **The Property**. For and in consideration of the prompt payment of the rent by Lessee as hereinafter provided and the performance by Lessee of the covenants hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property.

2. **Term**. The term of this Lease Agreement shall commence on the date of closing of the purchase of the Property by Lessor pursuant to the certain Real Estate Purchase Contract between Lessor and Lessee (the "Commencement Date"), and shall end on April 30, 2001, unless sooner terminated as provided herein.

3. **Rent**. The rent for the lease of the Property shall be payable to Lessor at 6300 Northwest Expressway, Oklahoma City, Oklahoma 73132, attention Bob Funk, or such other address that Lessor shall notify Lessee of in writing, in monthly installments of Twelve Hundred Dollars ($1200.00) (hereinafter called the "Rent"), each due and payable in advance and without demand on the first day of each and every month during the term hereof. Any late payment shall accrue interest at the rate of two percent (2%) per month.

4. **Utility Charges**. In addition to the Rent, Lessee shall pay all water, sewer, garbage, gas and electric services billed directly to the Lessee for use and occupancy of the Property.

Lessor_____
Lessee_____

5. **Taxes and Insurance**. Lessor shall be responsible for the payment of ad valorem taxes on the Property and the payment of annual premiums for hazard insurance coverage for the Property. However, such insurance coverage shall not include coverage on any personal property of Lessee (or any other party) on or about the Property.

6. **Quiet Enjoyment**. Lessor covenants that Lessee shall peacefully and quietly have, hold and enjoy the Property for the agreed term and so long as Lessee is not in default hereunder.

7. **Condition of the Property**. Lessee has inspected and knows the condition of the Property and shall accept the Property in good order and condition on the Commencement Date. Lessee agrees that any and all appliances left on the Property, as of the Commencement Date, shall remain the property of Lessor and shall be accepted in "as is" condition. Lessor shall have no obligation to maintain and/or repair such appliances.

8. **Use of Property**. Lessee hereby agrees to use and occupy the Property exclusively as a private residence only.

9. **Care of Property** and **Improvements**. Lessee agrees to keep the Property, including the building, grounds, appurtenances and personal property in a clean, safe and sanitary condition and in good condition, repair and maintenance. Lessee shall pay (i) for any expense, damage or repair occasioned by the stopping of waste pipes or overflow due to Lessee's actions or lack thereof from bath tubs, wash basins or sinks (ii) for damage to window panes, window shades, curtain rods, wallpaper or any other damage to the interior of the Property due to Lessee's actions or lack thereof (iii) for damage to the exterior of the Property due to Lessee's actions or lack thereof and (iv) for any expense, damage or repair to the personal property. Lessee shall commit and suffer no waste to be committed on the Property. There shall be no change, alterations or improvements of any kind whatsoever upon the Property without the prior written consent of Lessor. Lessor and Lessee hereby agree that any and all changes, alterations or improvements of any kind requested to be made to the Property by Lessee shall first require Lessee to provide Lessor with written plans and specifications regarding the proposed changes, alterations or improvements of any kind upon the Property. In addition, Lessee will provide written confirmation of compliance with any and all local, city, county, state or other jurisdictional requirements related to such changes, alterations or improvements of any kind upon the Property.

10. **Television Antennae or Coaxial Cable**. No television antennae may be installed on the roof of the Property and no coaxial cable television lines may be installed across or below the ground and enter into the Property without the prior written consent of Lessor. Any such installation to which Lessor may consent must be installed and removed only by a licensed television installer. The cost of any such installation shall be solely that of Lessee.

11. **Indemnification of Lessor**. Lessee will indemnify and hold Lessor harmless of and from any loss and damage to any personal property belonging to Lessee or any of Lessee's guests or

Lessor_____
Lessee_____

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occupants, or for any injuries to Lessee or any of Lessee's guests or occupants except for any such loss arising from the gross negligence of Lessor. Lessee is urged, but is not required to, secure Lessee's own insurance against the above casualties or losses.

12. **Damage to or Destruction of Property**. If the Property shall be damaged or destroyed by fire or by the elements or other causes so as to render the Property unfit for occupancy, this Lease Agreement may be terminated, at the option of either Lessor or Lessee, in which event Lessor shall return to Lessee any prepaid and unearned Rent prorated as of the date of such destruction; provided, however, that in the event of partial damage not rendering the Property unfit for occupancy, Lessor shall promptly repair, replace and restore the Property to its former condition and this Lease Agreement shall continue in full force and effect, but Lessee shall in no case be entitled to any compensation, abatement or offset on account of annoyance or inconvenience arising from such damage and the ensuing repairs, provided, however, Lessor shall not be required to expend funds in excess of insurance proceeds actually received in repairing or restoring the Property.

13. **Inspection**. Lessor shall have the right upon reasonable notice and at reasonable hours to enter the Property for inspection and to make such repairs and alterations as may be deemed necessary or desirable by Lessor for the safety and maintenance of the Property.

14. **Holdover by Lessee**. Should Lessee remain in possession of the Property with the consent of Lessor after the natural expiration of this Lease Agreement, a new tenancy from month to month shall be created between Lessor and Lessee which shall be subject to all the terms and conditions hereof but shall be terminable on thirty (30) days' written notice served by either Lessor or Lessee on the other party.

15. **Surrender of Property**. At the expiration of the term of this Lease Agreement, Lessee shall quit and surrender the Property hereby demised in as good state and condition as it was at the commencement of this Lease Agreement, reasonable use and wear thereof and damages by the elements excepted.

16. **Default**. If any default is made in the payment of Rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, this Lease Agreement, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the Property and remove Lessee and all persons therefrom. Further, at Lessor's option, Lessor shall be entitled to bring an action to recover all remaining Rent to be paid under the remainder of the term of this Lease Agreement. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the Lease Agreement shall not result if, within Ten (10) days with respect to the payment of Rent and within Twenty (20) days with respect to a non-monetary breach, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time.

Lessor_____
Lessee_____

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17. **Abandonment**. If at any time during the term of this Lease Agreement Lessee abandons the Property or any part thereof, Lessor may, at Lessor's option, enter the Property by any means without being liable for any prosecution therefor, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at Lessor's discretion, as agent for Lessee, relet the Property, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option, hold Lessee liable for any difference between the Rent that would be payable under this Lease Agreement during the balance of the unexpired term, if this Lease Agreement had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of re-entry is exercised following abandonment of the Property by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the Property to also have been abandoned, in which Lessor may dispose of all such personal property in any manner Lessor shall deem proper in accordance with the applicable laws and is hereby relieved of all liability for doing so.

18. **Assignment and Subletting**. Lessee shall not assign this Lease Agreement or sublease the Property without the prior written consent of Lessor.

19. **Landlord's Lien**. Lessor shall have a lien on all personal property (except personal property exempt by statute) to secure payment of delinquent Rent and other sums due and unpaid under this Lease Agreement.

20. **Early Termination**. Lessor shall have the right to terminate this Lease Agreement prior to the end of the term provided in paragraph 2 above upon Sixty (60) days written notice to Lessee in the event that Lessor has a bona fide offer to purchase the Property. Provided, however, in the event that Lessor so elects to terminate this Lease Agreement, Lessor shall pay to Lessee the sum of One Thousand and No/100 Dollars ($1000.00) for such early termination.

21. **Captions**. The captions, headings, and arrangements used in this Lease Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

22. **Number and Gender of Words**. Whenever herein the singular number is used, the same shall include the plural where appropriate, and vice versa, and words of any gender shall include each other gender where appropriate.

23. **Notices**. Each notice, demand, request, and other communication required or permitted hereunder shall be in writing and shall be deemed to be delivered in person, if mailed by United States Certified Mail, Return Receipt Requested, Postage Prepaid, or private contract carrier against signed delivery receipt, on the date evidenced by the signed receipt, or the date upon which the Postal Service or carrier certifies that delivery has been refused by the addressee or is otherwise deemed impossible, addressed to the party to be notified at the address stated below.

Lessor_____
Lessee_____

If to Lessee:	Ed Pease 5125 East Old Maple Avenue Terre Haute, Indiana 47803
If to Lessor:	Bob Funk 6300 Northwest Expressway Oklahoma City, Oklahoma 73132

Each party to this Lease Agreement may at any time designate any other address by giving written notice to the other party of such new address for purposes of notice under this Lease Agreement.

24. **Governing Law**. This Lease Agreement is being executed and delivered in the State of Oklahoma, and the laws of such state shall govern the validity, construction, enforcement, and interpretation hereof and of the obligations, liabilities, rights, remedies, powers and privileges of the parties hereto.

25. **Time of the Essence**. It is expressly agreed by the parties hereto that time is of the essence with respect to this Lease Agreement and all terms and provisions herein.

26. **Entire Agreement**. The Lessee agrees that there are no representations, understandings, stipulations or promises pertaining to this Lease Agreement or the Property which are not incorporated herein. This Lease Agreement constitutes the entire agreement between the Lessor and Lessee and may not be modified or amended except by a written instrument executed by both the Lessor and Lessee.

27. **Binding Effect.** This Lease Agreement shall be binding on the parties hereto and their respective heirs, representatives, successors and assigns.

28. **Severability**. If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Lease Agreement will not be affected thereby. It is the intention of the Lessor and Lessee that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and which shall be legal, valid and enforceable.

29. **Counterpart**. This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Lessor_____
Lessee_____

IN WITNESS WHEREOF, this Lease Agreement is executed effective the ___th day of _____, 1996.

"LESSEE"

_____
Ed Pease

"LESSOR"

_____
Bob Funk

Lessor_____
Lessee_____

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into this 8th day of March, 1996, by and between Bob Funk (hereinafter collectively referred to as the "Lessor") and Ed Pease (hereinafter referred to as the "Lessee").

W I T N E S S E T H

WHEREAS, the Lessor is the record title holder of certain improved property located at 5125 East Old Maple Avenue, Terre Haute, Vigo County, State of Indiana (formerly known as 1900 North Wildwood, Terre Haute, in Vigo County, State of Indiana), (such improved property being referred to herein as the "Property");

WHEREAS, the Lessor desires to lease the Property to the Lessee; and

WHEREAS, the Lessee desires to lease the Property

NOW, THEREFORE, for good and valuable considerations, the sufficiency and receipt of which are hereby acknowledged, as well as the covenants and promises herein contained, the Lessor and the Lessee hereby agree as follows

1. **The Property**. For and in consideration of the prompt payment of the rent by Lessee as hereinafter provided and the performance by Lessee of the covenants hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property.

2. **Term**. The term of this Lease Agreement shall commence on the date of closing of the purchase of the Property by Lessor pursuant to the certain Real Estate Purchase Contract between Lessor and Lessee (the "Commencement Date"), and shall end on April 30, 2001, unless sooner terminated as provided herein.

3. **Rent**. The rent for the lease of the Property shall be payable to Lessor at 6300 Northwest Expressway, Oklahoma City, Oklahoma 73132, attention Bob Funk, or such other address that Lessor shall notify Lessee of in writing, in monthly installments of Twelve Hundred Dollars ($1200.00) (hereinafter called the "Rent"), each due and payable in advance and without demand on the first day of each and every month during the term hereof. Any late payment shall accrue interest at the rate of two percent (2%) per month.

4. **Utility Charges**. In addition to the Rent, Lessee shall pay all water, sewer, garbage, gas and electric services billed directly to the Lessee for use and occupancy of the Property.

5. **Taxes and Insurance**. Lessor shall be responsible for the payment of ad valorem taxes on the Property and the payment of annual premiums for hazard insurance coverage for the Property.

Lessor_____
Lessee_____

Exhibit D

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However, such insurance coverage shall not include coverage on any personal property of Lessee (or any other party) on or about the Property.

6. **Quiet Enjoyment**. Lessor covenants that Lessee shall peacefully and quietly have, hold and enjoy the Property for the agreed term and so long as Lessee is not in default hereunder.

7. **Condition of the Property**. Lessee has inspected and knows the condition of the Property and shall accept the Property in good order and condition on the Commencement Date. Lessee agrees that any and all appliances left on the Property, as of the Commencement Date, shall remain the property of Lessor and shall be accepted in "as is" condition. Lessor shall have no obligation to maintain and/or repair such appliances.

8. **Use of Property**. Lessee hereby agrees to use and occupy the Property exclusively as a private residence only.

9. **Care of Property** and **Improvements**. Lessee agrees to keep the Property, including the building, grounds, appurtenances and personal property in a clean, safe and sanitary condition and in good condition, repair and maintenance. Lessee shall pay (i) for any expense, damage or repair occasioned by the stopping of waste pipes or overflow due to Lessee's actions or lack thereof from bath tubs, wash basins or sinks (ii) for damage to window panes, window shades, curtain rods, wallpaper or any other damage to the interior of the Property due to Lessee's actions or lack thereof (iii) for damage to the exterior of the Property due to Lessee's actions or lack thereof and (iv) for any expense, damage or repair to the personal property. Lessee shall commit and suffer no waste to be committed on the Property. There shall be no change, alterations or improvements of any kind whatsoever upon the Property without the prior written consent of Lessor. Lessor and Lessee hereby agree that any and all changes, alterations or improvements of any kind requested to be made to the Property by Lessee shall first require Lessee to provide Lessor with written plans and specifications regarding the proposed changes, alterations or improvements of any kind upon the Property. In addition, Lessee will provide written confirmation of compliance with any and all local, city, county, state or other jurisdictional requirements related to such changes, alterations or improvements of any kind upon the Property.

10. **Television Antennae or Coaxial Cable**. No television antennae may be installed on the roof of the Property and no coaxial cable television lines may be installed across or below the ground and enter into the Property without the prior written consent of Lessor. Any such installation to which Lessor may consent must be installed and removed only by a licensed television installer. The cost of any such installation shall be solely that of Lessee.

11. **Indemnification of Lessor**. Lessee will indemnify and hold Lessor harmless of and from any loss and damage to any personal property belonging to Lessee or any of Lessee's guests or occupants, or for any injuries to Lessee or any of Lessee's guests or occupants except for any such

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Lessor_____
Lessee_____

loss arising from the gross negligence of Lessor. Lessee is urged, but is not required to, secure Lessee's own insurance against the above casualties or losses.

12. **Damage to or Destruction of Property**. If the Property shall be damaged or destroyed by fire or by the elements or other causes so as to render the Property unfit for occupancy, this Lease Agreement may be terminated, at the option of either Lessor or Lessee, in which event Lessor shall return to Lessee any prepaid and unearned Rent prorated as of the date of such destruction; provided, however, that in the event of partial damage not rendering the Property unfit for occupancy, Lessor shall promptly repair, replace and restore the Property to its former condition and this Lease Agreement shall continue in full force and effect, but Lessee shall in no case be entitled to any compensation, abatement or offset on account of annoyance or inconvenience arising from such damage and the ensuing repairs; provided, however, Lessor shall not be required to expend funds in excess of insurance proceeds actually received in repairing or restoring the Property.

13. **Inspection**. Lessor shall have the right upon reasonable notice and at reasonable hours to enter the Property for inspection and to make such repairs and alterations as may be deemed necessary or desirable by Lessor for the safety and maintenance of the Property.

14. **Holdover by Lessee**. Should Lessee remain in possession of the Property with the consent of Lessor after the natural expiration of this Lease Agreement, a new tenancy from month to month shall be created between Lessor and Lessee which shall be subject to all the terms and conditions hereof but shall be terminable on thirty (30) days' written notice served by either Lessor or Lessee on the other party.

15. **Surrender of Property**. At the expiration of the term of this Lease Agreement, Lessee shall quit and surrender the Property hereby demised in as good state and condition as it was at the commencement of this Lease Agreement, reasonable use and wear thereof and damages by the elements excepted.

16. **Default**. If any default is made in the payment of Rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, this Lease Agreement, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the Property and remove Lessee and all persons therefrom. Further, at Lessor's option, Lessor shall be entitled to bring an action to recover all remaining Rent to be paid under the remainder of the term of this Lease Agreement. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the Lease Agreement shall not result if, within Ten (10) days with respect to the payment of Rent and within Twenty (20) days with respect to a non-monetary breach, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time.

17. **Abandonment**. If at any time during the term of this Lease Agreement Lessee abandons the Property or any part thereof, Lessor may, at Lessor's option, enter the Property by any means

Lessor_____
Lessee_____

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without being liable for any prosecution therefor, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at Lessor's discretion, as agent for Lessee, relet the Property, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option, hold Lessee liable for any difference between the Rent that would be payable under this Lease Agreement during the balance of the unexpired term, if this Lease Agreement had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of re-entry is exercised following abandonment of the Property by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the Property to also have been abandoned, in which Lessor may dispose of all such personal property in any manner Lessor shall deem proper in accordance with the applicable laws and is hereby relieved of all liability for doing so.

18. **Assignment and Subletting**. Lessee shall not assign this Lease Agreement or sublease the Property without the prior written consent of Lessor.

19. **Landlord's Lien**. Lessor shall have a lien on all personal property (except personal property exempt by statute) to secure payment of delinquent Rent and other sums due and unpaid under this Lease Agreement.

20. **Early Termination**. Lessor shall have the right to terminate this Lease Agreement prior to the end of the term provided in paragraph 2 above upon Sixty (60) days written notice to Lessee in the event that Lessor has a bona fide offer to purchase the Property. Provided, however, in the event that Lessor so elects to terminate this Lease Agreement, Lessor shall pay to Lessee the sum of One Thousand and No/100 Dollars ($1000.00) for such early termination.

21. **Captions**. The captions, headings, and arrangements used in this Lease Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

22. **Number and Gender of Words**. Whenever herein the singular number is used, the same shall include the plural where appropriate, and vice versa, and words of any gender shall include each other gender where appropriate.

23. **Notices**. Each notice, demand, request, and other communication required or permitted hereunder shall be in writing and shall be deemed to be delivered in person, if mailed by United States Certified Mail, Return Receipt Requested, Postage Prepaid, or private contract carrier against signed delivery receipt, on the date evidenced by the signed receipt, or the date upon which the Postal Service or carrier certifies that delivery has been refused by the addressee or is otherwise deemed impossible, addressed to the party to be notified at the address stated below.

Lessor_____
Lessee_____

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If to Lessee: Ed Pease
5125 East Old Maple Avenue
Terre Haute, Indiana 47803

If to Lessor: Bob Funk
6300 Northwest Expressway
Oklahoma City, Oklahoma 73132

Each party to this Lease Agreement may at any time designate any other address by giving written notice to the other party of such new address for purposes of notice under this Lease Agreement.

24. **Governing Law**. This Lease Agreement is being executed and delivered in the State of Oklahoma, and the laws of such state shall govern the validity, construction, enforcement, and interpretation hereof and of the obligations, liabilities, rights, remedies, powers and privileges of the parties hereto.

25. **Time of the Essence**. It is expressly agreed by the parties hereto that time is of the essence with respect to this Lease Agreement and all terms and provisions herein.

26. **Entire Agreement**. The Lessee agrees that there are no representations, understandings, stipulations or promises pertaining to this Lease Agreement or the Property which are not incorporated herein. This Lease Agreement constitutes the entire agreement between the Lessor and Lessee and may not be modified or amended except by a written instrument executed by both the Lessor and Lessee.

27. **Binding Effect.** This Lease Agreement shall be binding on the parties hereto and their respective heirs, representatives, successors and assigns.

28. **Severability**. If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Lease Agreement will not be affected thereby. It is the intention of the Lessor and Lessee that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and which shall be legal, valid and enforceable.

29. **Counterpart**. This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Lessor _____
Lessee _____

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IN WITNESS WHEREOF, this Lease Agreement is executed effective the 9 th day of March, 1996.

"LESSEE"

Ed Pease

"LESSOR"

Bob Funk

Lessor_____
Lessee_____

601 OHIO STREET, P.O. BOX 1544
(812) 234-3746

Newlin·Johnson

TERRE HAUTE, INDIANA 47808-1544
FAX (812) 234-1596

November 13, 1996

Mr. James R. Bopp
401 Ohio Street
Terre Haute, IN 47807

Re: Robert Funk Property
1900 Wildwood Lane
Terre Haute, Indiana

Dear Mr. Bopp:

In accordance with your request, I have inspected and appraised the above captioned property. It is my opinion, having no present or contemplated future interest in this property, that the market value as of October 25, 1996, was:

THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000)

Market value is defined in the attached Freddie Mac Form 439.

In accordance with USPAP Standards Rule 2-2, this is a complete appraisal with a summary report attached.

Respectfully submitted,

John S. Newlin

John S. Newlin, MAI
Certified General Appraiser
State of Indiana
License No. CG69200793

adh

Exhibit E

Complete Real Estate Appraisal Services
Residential • Commercial • Industrial • Farm
State Certified Appraisers in Indiana • Illinois • Ohio
FED. ID. #350547030

COLDWELL BANKER

LARRY HELMAN
REALTORS®

400 OHIO STREET
TERRE HAUTE, IN 47807
BUS. (812) 238-2526
FAX (812) 238-2533

October 22, 1996

Mr. James Bopp
401 Ohio Street
Terre Haute, IN
47807

Dear Mr. Bopp,

I am writing this letter to define a sentence that was used in an appraisal I performed on March 5, 1996 for Mr. Ed Pease concerning his real estate commonly known as 1900 North Wildwood, Terre Haute, Indiana. The sentence reads: "This appraisal represents the independent opinion of the appraiser free from any present or expected future interest in the property."

This sentence is commonly used by many appraisers. It is included in the appraisal to inform the person I am doing the appraisal for that I (the appraiser) do not expect anything in return for performing the appraisal and determining the appraisal price. If I were expecting something in return, it might create a conflict of interest on my part in determining the appraisal price. An example would be that I do not expect to list the subject property for sale because I performed the appraisal. My appraisal represents my independent opinion. I have no present or expected future interest in the property.

If you have any further questions, please feel free to contact me.

Sincerely,

Troy D. Helman

Troy D. Helman, CRB

THD:dks

Exhibit F

An Independently Owned and Operated Member of Coldwell Banker Residential Affiliates, Inc.

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COUNSEL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov 19 3 54 PM '96

Complaint of	}	
	}	
	}	
ROBERT F. HELLMANN	}	MUR 4497
	}	
	}	

ANSWER OF RESPONDENT ROBERT A. FUNK

I. Answer

1. As to unnumbered ¶1, Robert F. Hellmann ("Complainant") letter dated September 30, 1996 ("Complaint"), Respondent Funk ("Respondent") **admits** that Complainant, at the time of filing was "the Democrat candidate for the U.S. House of Representatives in the Seventh Congressional District of Indiana." Respondent **avers** that Complainant since has been defeated.

2. As to unnumbered ¶2, Respondent **admits** jurisdiction and **denies** the allegation of *reason to believe*.

3. As to unnumbered ¶3, Respondent has no knowledge of Complainant's beliefs.

4. As to unnumbered ¶4, Respondent **admits** that Respondent Edward A. Pease ("Respondent Pease") at the time of the filing of the Complaint was a candidate as alleged. Respondent **admits** that Respondent Pease on March 8, 1996 agreed to sell his home to Respondent.

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Respondent **avers** that the home is approximately three years old, thus constituting a matter of opinion as to whether it is "a newly built residence. . ." Respondent **denies** the allegation as to the purpose of the transaction. Respondent **avers**, while Respondent Pease may have intended to liquefy his own assets to use a portion of that liquidity for his campaign, Respondent's purpose of the transaction was not "to raise funds" but rather to prevent the ownership of Respondent's mother's homestead from going outside Respondent's family.

5. Respondent **admits** the allegations in unnumbered ¶5.

6. Respondent **admits**, as alleged in unnumbered ¶6, that the property was sold for $350,000.00 but **denies** that the appraisal to which Complainant refers fails to take into account the leasehold interest. Respondent **avers** that the appraisal uses one or many variations of customary appraisal language to assert that the appraiser has no interest in the property. Respondent further **avers** that the appraised fair market value of a dwelling house is a separate determination from the appraised rental value of a dwelling house.

7. Respondent **denies** the allegations of unnumbered ¶7 and **avers** that the rental at fair market value of a property to a candidate results in no contribution to the candidacy of the candidate.

8. As to unnumbered ¶8, Respondent **denies** the allegations which, to the extent intelligible, appear to claim that (1) there is no appraisal of the leasehold value; (2) there is something unlawful and/or unusual about a landlord's payment of realty taxes and casualty

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insurance; and (3) "opportunity cost and direct expenses" of a landlord constitute rational and accepted criteria for valuation of a leasehold.

9. As to unnumbered ¶9, Respondent **admits** that Respondent Pease "remains in possession" in the sense that he has a leasehold interest; **admits** that he leased the property for $72,000.00, or $1,200.00 monthly over five years; **denies** for lack of knowledge how much of Respondent Pease's liquefied assets Respondent Pease used in his own campaign; and **denies** the balance of the allegations.

II. Affirmative Defenses

1. It is lawful for a candidate to liquidate the candidate's own assets and use some or all of such liquidated assets in his campaign. Complainant does not allege otherwise.

2. It is lawful for a candidate to sell, and a third party to purchase, an asset of a candidate, at fair market value, regardless of the purpose or intent of the candidate in selling the candidate's property.

3. It is lawful for a third party to purchase, at fair market value, the asset of a candidate regardless of the purpose of the third-party purchaser or of the candidate-seller.

4. It is lawful for a third party to rent the third party's property to a candidate, at fair market value, regardless of the purpose of the landlord or the candidate-tenant in the rental of the property.

5. An individual makes no contribution to a candidacy by purchasing, at fair market value, an asset of the candidate, regardless of the use of the proceeds from the transaction by the candidate.

6. An individual makes no contribution to a candidacy by renting a property of an individual, at fair market value, to a candidate.

MARION EDWYN HARRISON
Law Offices Marion Edwyn Harrison
107 Park Washington Court
Falls Church, Virginia 22046
703 532-0303 - Telephone
703 532-0300 - Facsimile
Counsel for Mr. Robert A. Funk

Of Counsel:
Sam Hammons, Esquire
Sam Hammons, P.C.
50 Penn Place
Oklahoma City, Oklahoma 73118

November 18, 1996

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COUNSEL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov 19 3 54 PM '96

Complaint of	}	
	}	
ROBERT F. HELLMANN	}	MUR 4497
	}	
	}	

MOTION TO DISMISS OF RESPONDENT ROBERT A. FUNK

I. Introduction

This Matter Under Review began with the filing, shortly before the 1996 general election, of a two-page letter of complaint[1] ("Complaint") from a (subsequently defeated) candidate for Congress running in the Seventh Indiana District against Respondent Edward A. Pease ("Respondent Pease"). The Complaint is against Respondent Pease and against Respondent herein, Mr. Robert A. Funk ("Respondent").

While the Complaint is not a model of clarity, one reasonably may conclude that Complainant alleges that Respondent purchased the home of Respondent Pease "to raise funds for a federal election that is subject to the [Federal Elections Campaign] Act[.]" 26 USC §§431 et seq.

Complainant presumably means to allege that Respondent's purchase, and Respondent Pease's sale, of the Pease home somehow constituted a proscribed political contribution from

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[1] Letter dated September 30, 1996; received by the Federal Election Commission ("FEC") October 7, 1996; election November 5, 1996.

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Respondent to Respondent Pease upon the ground that (1) Respondent did not purchase the property at fair market value and/or (2) Respondent Pease did not rent the property at fair market value.

Complainant does not appear to allege that the fact of purchase and/or the fact of rental in and of itself would constitute a violation of law were each transaction to have been at or substantially at fair market value.

Although the point to be made is somewhat unclear, Complainant implies unlawfulness from the fact, as alleged, that Respondent, as purchaser and landlord, is assuming payment of the realty tax and casualty insurance premium upon the property.

Complainant further alleges that, as a consequence of the two transactions, Respondent has contributed to the campaign of Respondent Pease some sum of money which, depending upon how one attempts to read the Complaint, is either $350,000.00 or $83,480.00.

As his sole evidence, complainant submits page one of the "Purchase Contract;" a piece from the *Terre Haute Tribune Star*, September 19, 1996; and an appraisal from Mr. Troy D. Helman,[2] Coldwell Banker/Larry Helman Realtors, Terre Haute, Indiana, appraising the property at the purchase price of $350,000.00.

II. Argument

Respondent Funk sets forth his argument in the attached Memorandum.

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[2] One notes a potential for confusion of surnames. Complainant is Mr. Robert F. Hellmann. The appraiser whose appraisal Complainant attaches is Mr. Troy D. Helman.

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III. Conclusion

For the reasons set forth in the attached Memorandum and the record as a whole, including the transparent deficiencies in the Complaint, FEC forthwith should dismiss this cause without proceeding to a *reason to believe* finding or otherwise going forward. It is clear that the Complaint, reflecting limited knowledge of the facts and apparently none of the law, filed shortly before the election -- so late that FEC could not act prior to the election -- is merely a publicity ploy, unworthy of serious treatment. The two transactions which are the sole basis of the Complaint were effectuated seven months previously, affording Complainant, or any other citizen, adequate time to investigate the facts and lodge a complaint were the purpose other than an attempt to influence the election.[3]

MARION EDWYN HARRISON
Law Offices Marion Edwyn Harrison
107 Park Washington Court
Falls Church, Virginia 22046
703 532-0303 - Telephone
703 532-0300 - Facsimile
Counsel for Mr. Robert A. Funk

Of Counsel:
Sam Hammons, Esquire
Sam Hammons, P.C.
50 Penn Place
Oklahoma City, Oklahoma 73118

FEC, of course, is not inexperienced in determining last-minute complaints.

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COUNSEL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov 19 3 54 PM '96

Complaint of

ROBERT F. HELLMANN

MUR 4497

MEMORANDUM OF RESPONDENT ROBERT A. FUNK IN SUPPORT OF MOTION TO DISMISS

I. Introduction

There is basis neither in law nor in fact for this publicity-inspired, last-minute, patently inept complaint.

The facts are set forth in Respondent's Answer, Motion to Dismiss and Affidavit (Exhibit A hereto) and in *Attachments One* and *Two* to the Affidavit. Further, an independent response has been filed by Respondent Pease, which undoubtedly adds more factual information.

II. Argument

1. *Fair Market Value.* By strained misuse of the concept of opportunity costs, in the face of undisputed appraisals to the contrary, Complainant contends that neither the purchase transaction nor the rental transaction was at fair market value.

Fair market value is the determinant. 11 CFR §§100.7(a)(1)(iii)(B), 100.8(a)(iv)(B). In these regulations the Federal Election Commission ("FEC") recognizes reality. One only can measure the value of goods or services, whether as part of a contribution to, or as part of expenditures of, a political campaign, in terms of fair market value.

There is no question that a candidate can contribute his own assets to, or utilize his own assets in, his campaign or that the candidate may do so without limitation. *Buckley v Valeo*, 424 US 1, 96 SCt 612 (1976). Although the ramifications of independent expenditures are much discussed,[1] no serious lawyer, scholar or political activist, including Complainant, seriously challenges the lawfulness of the use of one's own funds.[2] The threshold issue, therefore, is not whether Respondent Pease could have utilized his own funds. Likewise, the threshold issue is not whether Respondent Pease could have transmogrified his own funds from an illiquid to a liquid state by the sale of his home.[3]

The threshold question, rather, is whether the transactions at issue were at fair market value. It is beyond serious argument that they were. The only accepted, and acceptable, means of determining the fair market value of real estate, whether for purchase or for rental, is the use of expert appraisals. The appraisals relating to these transactions consistently affirm the utilized values.

---

[1] E.g., Sabato, *PAC POWER*, (WW Norton & Company, 1984) at 183-185; the Federalist Society Symposium, Mayflower Hotel, Washington, D.C., November 15, 1996.

Although some question the fairness of permitting the practice.

Counsel finds no case which so much as discusses the obvious right of a candidate to sell, rent, hypothecate or otherwise lawfully dispose of, lien or obligate his own property.

Complainant assumes, or at least infers, that *opportunity costs* and not appraisals constitute the basis for valuation of real estate as fee or as leasehold. Complainant not surprisingly cites no authority. Real estate is acquired for a number of reasons. As herein, the principal reason need not be an investment purpose. Whatever the motivation, valuation is predicated upon appraisals, which in turn are predicated upon comparables, leasehold or other utilization value, replacement costs or combinations of the foregoing but never upon opportunity costs.[4]

There can be no doubt that Respondent purchased and rented out at fair market value.

2. *Absence Of Campaign Contribution.* It follows that, Respondent's having engaged in no transaction without fair market value, Respondent has made no cash or kind contribution to a campaign. He simply has made it possible -- as theoretically the free market also would have -- for Respondent Pease to convert an illiquid asset into a liquid asset. Respondent has created nothing of monetary value for Respondent Pease nor has he enhanced the monetary value of a Pease asset. He simply has changed the form.

3. *Irrelevance Of Motivation.* Although stopping short of so alleging, Complainant appears to contend that an individual would act unlawfully were the individual to take a lawful act for an helpful motivation -- i.e., lawfully to transmogrify the character of an asset to facilitate a

---

[4] Although one need not address the issue, Complainant's allusion to opportunity costs is incomplete. It is fundamental that an opportunity cost must be balanced by the value, if any, of *appreciation*. Further, Complainant ignores the tax benefit of *depreciation*.

candidate's use of the candidates's asset in the candidate's campaign. There is no such law.[5] Were it unlawful to change the character of an asset to assist in a campaign, as clearly it is not, Respondent yet would have committed no offense because his primary motivation was to maintain the family homestead. Respondent Pease made the decision to liquefy his asset by selling his home. Had Respondent done nothing, Respondent Pease still would have liquefied his asset but the property would have passed outside the family -- precisely what Respondent wanted to, and did, prevent.

III. Conclusion

In the simplest terms, Respondent Pease decided to liquefy an asset. That would have resulted in sale of a property dear to Respondent's heart. Respondent decided to purchase the property to keep it within the family. The purchase and the rental back were at fair market value and lawful. Respondent Pease then proceeded lawfully to do what he lawfully would have done anyway -- to use (upon information and belief) a portion of the proceeds of the sale to assist his campaign.

Further, Respondent acted only after his Oklahoma counsel informally had consulted FEC. Such consultation does not rise to the level of an FEC advisory opinion, upon which one may rely, but fully indicates Respondent's good faith in seeking to act within the law. Because both transactions were at fair market value, he did so.

---

[5] Counsel finds no case in which the issue has been raised, much less adversely adjudicated.

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FEC forthwith should dismiss MUR 4497 without finding *reason to believe* or otherwise going forward.

MARION EDWYN HARRISON
Law Offices Marion Edwyn Harrison
107 Park Washington Court
Falls Church, Virginia 22046
703 532-0303 - Telephone
703 532-0300 - Facsimile
Counsel for Mr. Robert A. Funk

Of Counsel:
Sam Hammons, Esquire
Sam Hammons, P.C.
50 Penn Place
Oklahoma City, Oklahoma 73118

November 18, 1996

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EXHIBIT A

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Nov 25 10 43 AM '96

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WASHINGTON, D.C. 20463

Complaint of	}	
	}	
ROBERT F. HELLMANN	}	MUR 4497
	}	

AFFIDAVIT OF MR. ROBERT A. FUNK

Robert A. Funk, first sworn, deposes and states from his own personal knowledge as follows:

1. I am a Respondent in MUR 4497 and offer this Affidavit in support of the Answer and Motion to Dismiss to be filed by counsel on my behalf.

2. I am a cousin of Edward A. Pease, elected on November 5, 1996 to represent the Seventh Congressional District of Indiana in the U.S. House of Representatives.

3. At issue in this action are allegations relating to my purchase from, and rental to, Mr. Pease of Mr. Pease's home. Mr. Pease had built his home to his own specifications on land which at one time was my mother's homestead, which abuts the property of my aunt and uncle and which is not far from that of other relatives. Mr. Pease from time to time had advised me that he intended

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to live indefinitely in the home, consistent with, and convenient to, his employment as an officer of Indiana State University. The prospect of keeping the property in the family was appealing to me.

4. Mr. Pease changed his career plans and decided to run for Congress when Representative John T. Myers announced his retirement.

5. Mr. Pease advised me that he was allowed to contribute his own money to his campaign and that he was going to do so, the bulk of such money to come from a portion of his equity in his home, which equity he would access by selling the home.

6. I could not bear the thought of the property where my mother grew up leaving the family so I approached Mr. Pease about my purchasing the property. The emotional basis for my decision was buttressed by the sound business judgment that I would have a secure, credit-worthy and responsible tenant in the property for a minimum of five years.

7. Before I proceeded to purchase Mr. Pease's property, I requested my attorney, Sam Hammons, Esquire, to enquire of the Federal Election Commission ("FEC"). Mr. Hammons advised me that his office, on or about March 6, 1996, had so enquired and was orally advised, upon the basis of an hypothetical, that the proposed transactions would be lawful so long as the property were purchased and rented at fair market value. The FEC advisor also suggested that there be obtained an independent appraisal of the property.

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8. Mr. Troy D. Helman of Coldwell Banker in Terre Haute, Indiana rendered an appraisal of $350,000.00 on March 5, 1996 and further valued the present-day fair market rental value at $1,200.00 per month.

9. Relying upon those appraised values, which I consider realistic, I purchased the property for $350,000.00 and leased the property to Mr. Pease for a term of five years at $72,000.00, payable at $1,200.00 monthly. More specifically, on March 8, 1996, I executed a Real Estate Purchase Contract, which Mr. Pease accepted on March 9, 1996. *Attachment One.* Also on March 8, 1996 I executed a Lease Agreement with Mr. Pease. *Attachment Two.* Each such agreement reflects standard, or "boilerplate," language; fully guarantees my rights as purchaser and as landlord; and in no way offers a special benefit to Mr. Pease as seller or as tenant.

10. I am an experienced businessman and I own other property. I always incur costs normally attributed to ownership of property. Thus, I have secured hazard insurance for the property and am responsible for ad valorem taxes as they come due (currently $2,495.42).

11. I own the property free and clear of all but the leasehold interest. Neither an appraiser nor any other person or entity has an interest in the property, other than the leasehold interest of Mr. Pease.

12. My principal business recently has expanded to open a facility in Terre Haute. My

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long-range plans are uncertain. However, no arrangement has been made regarding the disposition or use of the property at the termination of the lease five years hence.

Further Affiant sayeth not.

ROBERT A. FUNK

State of Oklahoma }
}ss
County of Oklahoma }

Subscribed and sworn to before me this 21 day of November, 1996.

Notary Public

My commission expires May 18, 1997

ATTACHMENT ONE

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REAL ESTATE PURCHASE CONTRACT

I, the undersigned Buyer, BOB FUNK, hereinafter referred to as "Buyer," on this 8th day of March, 1996, at Oklahoma City, Oklahoma County, Oklahoma, hereby agree to purchase from the undersigned Seller, ED PEASE, hereinafter referred to as "Seller," and the SELLER agrees to sell to BUYER, the following described real property, to-wit:

(See Exhibit "A" attached hereto)

subject to existing zoning ordinance, restrictions, easements, and mineral rights previously reserved, or conveyed of record, and also subject to encroachments, if any, that might be shown by survey, upon the following terms and conditions ("Property"):

TERMS: BUYER shall pay for the Property the sum of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) payable as follows:

(a) The sum of Twenty Thousand Dollars ($20,000.00) (check) as earnest money, upon acceptance in writing and delivery of this Real Estate Purchase Contract ("Contract") to be paid to SELLER to serve as a down payment towards the purchase of the Property ("Earnest Money").

(b) At closing, IN CASH OR CERTIFIED FUNDS, the further sum of Three Hundred Thirty Thousand and No/100 Dollars ($330,000.00).

CONDITION OF PROPERTY:

(a) On or before the day of closing, SELLER shall furnish a current termite clearance certificate from a licensed company showing the Property free and clear of visible termite infestation or other wood destroying organisms. If termites or other wood destroying organisms are discovered in the process of obtaining such certificate, then SELLER shall pay for the treatment. On or before the day of closing, BUYER shall acknowledge receipt of such termite clearance certificate in writing.

(b) Property Status - BUYER shall have Ten (10) days to inspect the condition of Property and notify the SELLER in writing of BUYER'S approval or disapproval. If BUYER discovers conditions objectionable to BUYER, then this Contract shall terminate and be null and void and the Earnest Money shall be returned to BUYER. BUYER shall have the right to reinspect the Property prior to closing to determine any changes in the condition of the Property. In the event the condition of the Property has changed, ordinary wear and tear excepted, SELLER shall repair the defect or return the condition of the Property to its earlier state. In the event SELLER fails and/or refuses to do same BUYER shall have the right to terminate this Contract and the Earnest Money shall be returned to BUYER.

(c) Until closing, risk of loss to the Property (ordinary wear and tear excepted) shall be upon SELLER. After the closing or transfer of possession, such risk shall be upon BUYER.

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(d) BUYER, by closing, shall be deemed to have accepted the Property, in then existing condition. BUYER is purchasing the Property based on BUYER'S own inspection and NO WARRANTIES expressed or implied by SELLER shall be deemed to survive the closing with reference to the condition of the Property or any fixtures or equipment

(e) Except for the provisions above, SELLER shall deliver the Property in the present condition, ordinary wear and tear excepted

(f) Utilities shall be left on, in SELLER'S name

FIXTURES AND EXTRAS The following items shall remain with the Property after the closing as Property of BUYER at no additional cost to BUYER and shall be considered a part of the purchase price, all wall to wall carpets, all bathroom mirrors, all ceiling fans, direct-wired lighting fixtures, curtains, drapes, curtain rods and other window treatments, all appliances, kitchen stove, washer and dryer; and fireplace accessories

SPECIAL PROVISIONS The parties agree at the closing to execute a Lease identical to Exhibit "B" attached hereto and made a part hereof

TITLE EVIDENCE Marketable fee simple title to the Property shall be conveyed to BUYER by General Warranty Deed in recordable form. Upon closing, the existing abstract of title shall become the property of BUYER

TITLE COMMITMENT Within ten (10) days after execution of this agreement, SELLER will deliver to BUYER a title commitment (the "Title Commitment") for issuance of an ALTA Form B Owner's Title Insurance Policy (the "Title Policy") covering the Property in the amount of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) issued by a title company to be mutually agreed to by BUYER AND SELLER showing marketable fee simple title to the Property to be vested in SELLER together with copies of the instruments, rights-of-way, covenants, restrictions and other conditions, if any, affecting the Property. The expense of the Title Policy shall be paid solely by BUYER. BUYER shall have fifteen (15) days from receipt of Title Commitment to notify SELLER of any objections to title and SELLER shall have until closing date to cure said objections. BUYER preapproves restrictive covenants, platted utilities, airport area regulations, mineral reservations, not located on the Property of record as not being title objections. If SELLER is unable or unwilling to cure any defects within such period, then unless BUYER waives such defects in writing this Contract shall terminate and the EARNEST MONEY returned to BUYER. The Title Policy shall insure against unfiled mechanic's and materialmen's liens

(a) BUYER shall have the right to obtain a survey. In the event the survey discloses any encroachments and/or boundary disputes, such Title Policy shall provide encroachment coverage with exception(s) for matters disclosed by such survey, which exception(s) shall be subject to acceptance by Buyer in writing

(c) In the event a suit for specific performance is instituted, the prevailing party shall have the right to recover all of such party's expenses and costs incurred by reason of such litigation including, but not limited to, attorney's fees, court costs, and costs of suit preparation.

BINDING EFFECT: This Contract, when executed by both SELLER and BUYER shall be binding upon and inure to the benefit of SELLER and BUYER, their respective heirs, legal representatives, successors and permitted assigns. This Contract sets forth the complete understanding of SELLER and BUYER and supersedes all previous negotiations, representations and agreements between them and their agents. This Contract can only be amended, modified, or assigned by written agreement signed by both SELLER and BUYER.

ACCEPTANCE TIME: The foregoing offer is made subject to acceptance in writing hereon by SELLER and the return of an executed copy to the undersigned BUYER on or before 5:00 p.m., March 9th, 1996.

TIME IS OF THE ESSENCE.

DISCLAIMER: It is expressly understood by SELLER and BUYER that SELLER does not warrant the present or future value, size by square footage, condition, structure, or structure systems of the property or any building. This paragraph shall survive the closing.

COUNTERPARTS: This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.

BUYER _____
BOB FUNK

SELLER'S ACCEPTANCE: SELLER accepts the foregoing offer and shall sell the above described Property on the terms and conditions herein stated.

ACCEPTED this 9 day of MARCH, 1996.

SELLER _____
ED PEASE

1996 ml pease realest agm

EXHIBIT "A"

Lot Number One (1) in Robert R. & Joanna R. Pease One Lot Subdivision being a Subdivision of a part of the Northeast quarter of Section 18, Township 12 North, Range 8 West as shown by the recorded plat thereof in Plat Record 28, Page 30, records of the Recorder's Office of Vigo County, Indiana.

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ATTACHMENT TWO

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into this 8th day of March, 1996, by and between Bob Funk (hereinafter collectively referred to as the "Lessor") and Ed Pease (hereinafter referred to as the "Lessee").

WITNESSETH

WHEREAS, the Lessor is the record title holder of certain improved property located at 5125 East Old Maple Avenue, Terre Haute, Vigo County, State of Indiana (formerly known as 1900 North Wildwood, Terre Haute, in Vigo County, State of Indiana), (such improved property being referred to herein as the "Property");

WHEREAS, the Lessor desires to lease the Property to the Lessee; and

WHEREAS, the Lessee desires to lease the Property

NOW, THEREFORE, for good and valuable considerations, the sufficiency and receipt of which are hereby acknowledged, as well as the covenants and promises herein contained, the Lessor and the Lessee hereby agree as follows

1. **The Property**. For and in consideration of the prompt payment of the rent by Lessee as hereinafter provided and the performance by Lessee of the covenants hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property

2. **Term**. The term of this Lease Agreement shall commence on the date of closing of the purchase of the Property by Lessor pursuant to the certain Real Estate Purchase Contract between Lessor and Lessee (the "Commencement Date"), and shall end on April 30, 2001, unless sooner terminated as provided herein

3. **Rent**. The rent for the lease of the Property shall be payable to Lessor at 6300 Northwest Expressway, Oklahoma City, Oklahoma 73132, attention Bob Funk, or such other address that Lessor shall notify Lessee of in writing, in monthly installments of Twelve Hundred Dollars ($1200.00) (hereinafter called the "Rent"), each due and payable in advance and without demand on the first day of each and every month during the term hereof. Any late payment shall accrue interest at the rate of two percent (2%) per month

4. **Utility Charges**. In addition to the Rent, Lessee shall pay all water, sewer, garbage, gas and electric services billed directly to the Lessee for use and occupancy of the Property

5. **Taxes and Insurance**. Lessor shall be responsible for the payment of ad valorem taxes on the Property and the payment of annual premiums for hazard insurance coverage for the Property

Lessor _____
Lessee _____

93047854675

However, such insurance coverage shall not include coverage on any personal property of Lessee (or any other party) on or about the Property.

6. **Quiet Enjoyment**. Lessor covenants that Lessee shall peacefully and quietly have, hold and enjoy the Property for the agreed term and so long as Lessee is not in default hereunder.

7. **Condition of the Property**. Lessee has inspected and knows the condition of the Property and shall accept the Property in good order and condition on the Commencement Date. Lessee agrees that any and all appliances left on the Property, as of the Commencement Date, shall remain the property of Lessor and shall be accepted in "as is" condition. Lessor shall have no obligation to maintain and/or repair such appliances.

8. **Use of Property**. Lessee hereby agrees to use and occupy the Property exclusively as a private residence only.

9. **Care of Property** and **Improvements**. Lessee agrees to keep the Property, including the building, grounds, appurtenances and personal property in a clean, safe and sanitary condition and in good condition, repair and maintenance. Lessee shall pay (i) for any expense, damage or repair occasioned by the stopping of waste pipes or overflow due to Lessee's actions or lack thereof from bath tubs, wash basins or sinks (ii) for damage to window panes, window shades, curtain rods, wallpaper or any other damage to the interior of the Property due to Lessee's actions or lack thereof (iii) for damage to the exterior of the Property due to Lessee's actions or lack thereof and (iv) for any expense, damage or repair to the personal property. Lessee shall commit and suffer no waste to be committed on the Property. There shall be no change, alterations or improvements of any kind whatsoever upon the Property without the prior written consent of Lessor. Lessor and Lessee hereby agree that any and all changes, alterations or improvements of any kind requested to be made to the Property by Lessee shall first require Lessee to provide Lessor with written plans and specifications regarding the proposed changes, alterations or improvements of any kind upon the Property. In addition, Lessee will provide written confirmation of compliance with any and all local, city, county, state or other jurisdictional requirements related to such changes, alterations or improvements of any kind upon the Property.

10. **Television Antennae or Coaxial Cable**. No television antennae may be installed on the roof of the Property and no coaxial cable television lines may be installed across or below the ground and enter into the Property without the prior written consent of Lessor. Any such installation to which Lessor may consent must be installed and removed only by a licensed television installer. The cost of any such installation shall be solely that of Lessee.

11. **Indemnification of Lessor**. Lessee will indemnify and hold Lessor harmless of and from any loss and damage to any personal property belonging to Lessee or any of Lessee's guests or occupants, or for any injuries to Lessee or any of Lessee's guests or occupants except for any such

Lessor_____
Lessee_____

loss arising from the gross negligence of Lessor. Lessee is urged, but is not required to, secure Lessee's own insurance against the above casualties or losses.

12. **Damage to or Destruction of Property**. If the Property shall be damaged or destroyed by fire or by the elements or other causes so as to render the Property unfit for occupancy, this Lease Agreement may be terminated, at the option of either Lessor or Lessee, in which event Lessor shall return to Lessee any prepaid and unearned Rent prorated as of the date of such destruction; provided, however, that in the event of partial damage not rendering the Property unfit for occupancy, Lessor shall promptly repair, replace and restore the Property to its former condition and this Lease Agreement shall continue in full force and effect, but Lessee shall in no case be entitled to any compensation, abatement or offset on account of annoyance or inconvenience arising from such damage and the ensuing repairs; provided, however, Lessor shall not be required to expend funds in excess of insurance proceeds actually received in repairing or restoring the Property.

13. **Inspection**. Lessor shall have the right upon reasonable notice and at reasonable hours to enter the Property for inspection and to make such repairs and alterations as may be deemed necessary or desirable by Lessor for the safety and maintenance of the Property.

14. **Holdover by Lessee**. Should Lessee remain in possession of the Property with the consent of Lessor after the natural expiration of this Lease Agreement, a new tenancy from month to month shall be created between Lessor and Lessee which shall be subject to all the terms and conditions hereof but shall be terminable on thirty (30) days' written notice served by either Lessor or Lessee on the other party.

15. **Surrender of Property**. At the expiration of the term of this Lease Agreement, Lessee shall quit and surrender the Property hereby demised in as good state and condition as it was at the commencement of this Lease Agreement, reasonable use and wear thereof and damages by the elements excepted.

16. **Default**. If any default is made in the payment of Rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, this Lease Agreement, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the Property and remove Lessee and all persons therefrom. Further, at Lessor's option, Lessor shall be entitled to bring an action to recover all remaining Rent to be paid under the remainder of the term of this Lease Agreement. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the Lease Agreement shall not result if, within Ten (10) days with respect to the payment of Rent and within Twenty (20) days with respect to a non-monetary breach, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time.

7. **Abandonment**. If at any time during the term of this Lease Agreement Lessee abandons the Property or any part thereof, Lessor may, at Lessor's option, enter the Property by any means

Lessor _____
Lessee _____

without being liable for any prosecution therefor, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at Lessor's discretion, as agent for Lessee, relet the Property, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option, hold Lessee liable for any difference between the Rent that would be payable under this Lease Agreement during the balance of the unexpired term, if this Lease Agreement had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of re-entry is exercised following abandonment of the Property by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the Property to also have been abandoned, in which Lessor may dispose of all such personal property in any manner Lessor shall deem proper in accordance with the applicable laws and is hereby relieved of all liability for doing so.

18. **Assignment and Subletting**. Lessee shall not assign this Lease Agreement or sublease the Property without the prior written consent of Lessor.

19. **Landlord's Lien**. Lessor shall have a lien on all personal property (except personal property exempt by statute) to secure payment of delinquent Rent and other sums due and unpaid under this Lease Agreement.

20. **Early Termination**. Lessor shall have the right to terminate this Lease Agreement prior to the end of the term provided in paragraph 2 above upon Sixty (60) days written notice to Lessee in the event that Lessor has a bona fide offer to purchase the Property. Provided, however, in the event that Lessor so elects to terminate this Lease Agreement, Lessor shall pay to Lessee the sum of One Thousand and No/100 Dollars ($1000.00) for such early termination.

21. **Captions**. The captions, headings, and arrangements used in this Lease Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

22. **Number and Gender of Words**. Whenever herein the singular number is used, the same shall include the plural where appropriate, and vice versa, and words of any gender shall include each other gender where appropriate.

23. **Notices**. Each notice, demand, request, and other communication required or permitted hereunder shall be in writing and shall be deemed to be delivered in person, if mailed by United States Certified Mail, Return Receipt Requested, Postage Prepaid, or private contract carrier against signed delivery receipt, on the date evidenced by the signed receipt, or the date upon which the Postal Service or carrier certifies that delivery has been refused by the addressee or is otherwise deemed impossible, addressed to the party to be notified at the address stated below.

Lessor_____
Lessee_____

If to Lessee:	Ed Pease 5125 East Old Maple Avenue Terre Haute, Indiana 47803
If to Lessor:	Bob Funk 6300 Northwest Expressway Oklahoma City, Oklahoma 73132

Each party to this Lease Agreement may at any time designate any other address by giving written notice to the other party of such new address for purposes of notice under this Lease Agreement.

24. **Governing Law**. This Lease Agreement is being executed and delivered in the State of Oklahoma, and the laws of such state shall govern the validity, construction, enforcement, and interpretation hereof and of the obligations, liabilities, rights, remedies, powers and privileges of the parties hereto.

25. **Time of the Essence**. It is expressly agreed by the parties hereto that time is of the essence with respect to this Lease Agreement and all terms and provisions herein.

26. **Entire Agreement**. The Lessee agrees that there are no representations, understandings, stipulations or promises pertaining to this Lease Agreement or the Property which are not incorporated herein. This Lease Agreement constitutes the entire agreement between the Lessor and Lessee and may not be modified or amended except by a written instrument executed by both the Lessor and Lessee.

27. **Binding Effect.** This Lease Agreement shall be binding on the parties hereto and their respective heirs, representatives, successors and assigns.

28. **Severability**. If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Lease Agreement will not be affected thereby. It is the intention of the Lessor and Lessee that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and which shall be legal, valid and enforceable.

29. **Counterpart**. This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Lessor _____
Lessee _____

IN WITNESS WHEREOF, this Lease Agreement is executed effective the 8 th day of March, 1996.

"LESSEE"

Ed Pease

"LESSOR"

Bob Funk

Lessor_____
Lessee_____

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	ENFORCEMENT PRIORITY
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

This is the first Enforcement Priority Report that reflects the impact of the 1996 election cycle cases on the Commission's enforcement workload. We have identified cases that are stale which are recommended for dismissal at this time. This is the highest number of cases identified as stale in a single report, and the highest number of stale cases recommended for closure at one time, since the inception of EPS in 1993.

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II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria, resulting in a numerical rating for each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified cases that do not warrant further action relative to other pending matters.[3] Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of this fact, EPS provides us with the

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[3] These cases are: RAD 97L-10 (*Citizens for Randy Borow*); RAD 97L-16 (*Republican State Central Committee of South Dakota*); Pre-MUR 347 (*Producers Lloyds Insurance Company*); Pre-MUR 348 (*Peoples National Bank of Commerce*); Pre-MUR 349 (*Trump Plaza*); Pre-MUR 350 (*Citibank, N.A.*); Pre-MUR 355 (*Feingold Senate Committee*); MUR 4494 (*Georgianna Lincoln*); MUR 4586 (*Friends of Zach Wamp*); MUR 4590 (*Oklahoma Education Association*); MUR 4600 (*San Diego Police Officers Assoc.*); MUR 4612 (*Teresa Doggett for Congress*); MUR 4615 (*Catholic Democrats for Christian Values*); MUR 4616 (*American Legislative Exchange Council*); MUR 4620 (*Eastern Connecticut Chamber of Commerce*); MUR 4622 (*Telles for Mayor*); MUR 4628 (*Gutknecht for Congress*); MUR 4629 (*Janice Schakowsky*); MUR 4636 (*IBEW Local 505*); MUR 4637 (*Dettman for Congress*); MUR 4639 (*Larson for Congress*); MUR 4641 (*Becker for Congress*); MUR 4644 (*Detroit City Council*); MUR 4651 (*Mike Ryan*); MUR 4653 (*Pritzker for Congress*); MUR 4656 (*H. Carroll for Congress*); and MUR 4657 (*Buchanan for President*).

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means to identify those cases which, though earning a higher rating when received, remained unassigned for a significant period due to a lack of staff resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We are recommending the closure of cases based on staleness.[6]

[6] These cases are: MUR 4283 (*Chenoweth for Congress*); MUR 4341 (*Juan Soliz for Congress*); MUR 4402 (*U.S. Representative Helen Chenoweth*); MUR 4435 (*Lincoln for Congress*); MUR 4439 (*UAW*); MUR 4442 (*Lipinski for Congress*); MUR 4444 (*Roberts for Congress*); MUR 4445 (*Randy Tate for Congress*); MUR 4446 (*Clinton/Gore '96 Primary*); MUR 4447 (*Random House, Inc.*,); MUR 4449 (*Clinton Administration*); MUR 4453 (*Mike Ward for Congress*); MUR 4454 (*Ralph Nader*); MUR 4459 (*Clinton/Gore '96*); MUR 4474 (*Salvi for Senate*); MUR 4477 (*BBDO-New York*); MUR 4481 (*Diamond Bar Caucus*); MUR 4485 (*Perot '92 Petition Committee*); MUR 4486 (*Bunda for Congress*); MUR 4495 (*Pennsylvania PACE for Federal Elections*); MUR 4496 (*Norwood for Congress*); MUR 4497 (*Pease for Congress*); MUR 4510 (*Stabenow for Congress*); MUR 4511 (*Bob Coffin for Congress*); MUR 4514 (*Friends for Franks*); MUR 4515 (*Clinton Investigative Commission*); MUR 4521 (*WMAL 630 AM*); MUR 4525 (*Senator Larry Pressler*); MUR 4527 (*Brennan for Senate*); MUR 4536 (*Signature Properties, Inc.*); MUR 4540 (*Tim Johnson for SD*); MUR 4542 (*Dan Frisa for Congress*); MUR 4552 (*Charles W. Norwood*); MUR 4554 (*John Byron for Congress*); MUR 4556 (*Jim Wiggins for Congress*); MUR 4561 (*Jay Hoffman for Congress*); MUR 4564 (National Republican Congressional Committee); MUR 4567 (DNC Services Corp.); MUR 4569 (McGovern Committee); RAD 96L-11 (*New York Republican County Committee*); Pre-MUR 343 (*NRSC*); and Pre-MUR 312 (*Joseph Demio*). The *Demio* case involves fundraising related to former Congresswoman Mary Rose Oakar's 1992 congressional campaign. It was held as a courtesy to the Department of Justice pending resolution of a parallel criminal matter in the District Court for the District of Columbia. Mr. Demio recently entered into a plea agreement with the Department of Justice (on which we were not consulted) in which he agreed, among other things, to waive the statute of limitations regarding civil violations of the FECA. Considering the age of the case and activity, the fact that DOJ has not formally referred this matter to us, and the Commission's continuing resource constraints, dismissal is the appropriate disposition of this matter.

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective November 17, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective November 17, 1997, and approve the appropriate letters in the following matters:

RAD 96L-11	Pre-MUR 312	Pre-MUR 349
	Pre-MUR 343	Pre-MUR 350
RAD 97L-10	Pre-MUR 347	Pre-MUR 355
RAD 97L-16	Pre-MUR 348	

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B. Take no action, close the file effective November 17, 1997, and approve the appropriate letters in the following matters:

MUR 4283	MUR 4495	
MUR 4341	MUR 4496	MUR 4569
MUR 4402	MUR 4497	MUR 4586
MUR 4435	MUR 4510	MUR 4590
MUR 4439	MUR 4511	MUR 4600
MUR 4442	MUR 4514	MUR 4612
MUR 4444	MUR 4515	MUR 4615
MUR 4445		MUR 4616
MUR 4446	MUR 4521	MUR 4620
MUR 4447	MUR 4525	MUR 4622
MUR 4449	MUR 4527	MUR 4628
MUR 4453	MUR 4536	MUR 4629
MUR 4454	MUR 4540	MUR 4636
MUR 4459	MUR 4542	MUR 4637
MUR 4474	MUR 4552	MUR 4639
MUR 4477	MUR 4554	MUR 4641
MUR 4481	MUR 4556	MUR 4644
MUR 4485	MUR 4561	MUR 4651
MUR 4486		MUR 4653
	MUR 4564	MUR 4656
MUR 4494	MUR 4567	MUR 4657

7/97
Date

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document No. X97-77
Enforcement Priority	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 2, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document No. X97-77:

1. Decided by a vote of 5-0 to

   A. Decline to open a MUR, close the file effective December 15, 1997, and approve the appropriate letters in the following matters:

1.	RAD 96L-11	7.	Pre-MUR 347
		8.	Pre-MUR 348
3.	RAD 97L-10	9.	Pre-MUR 349
4.	RAD 97L-16	10.	Pre-MUR 350
5.	Pre-MUR 312	11.	Pre-MUR 355
6.	Pre-MUR 343		

   B. Take no action, close the file effective December 15, 1997, and approve the appropriate letters in the following matters:

1.	MUR 4283	6.	MUR 4442
2.	MUR 4341	7.	MUR 4444
3.	MUR 4402	8.	MUR 4445
4.	MUR 4435	9.	MUR 4446
5.	MUR 4439	10.	MUR 4447

(continued)

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11.	MUR 4449	36.	MUR 4556
12.	MUR 4453	37.	MUR 4561
13.	MUR 4454	38.	MUR 4564
14.	MUR 4459	39.	MUR 4567
15.	MUR 4474	40.	MUR 4569
16.	MUR 4477	41.	MUR 4586
17.	MUR 4481	42.	MUR 4590
18.	MUR 4485	43.	MUR 4600
19.	MUR 4486	44.	MUR 4612
20.	MUR 4494	45.	MUR 4615
21.	MUR 4495	46.	MUR 4616
22.	MUR 4496	47.	MUR 4620
23.	MUR 4497	48.	MUR 4622
24.	MUR 4510	49.	MUR 4628
25.	MUR 4511	50.	MUR 4629
26.	MUR 4514	51.	MUR 4636
27.	MUR 4515	52.	MUR 4637
28.	MUR 4521	53.	MUR 4639
29.	MUR 4525	54.	MUR 4641
30.	MUR 4527	55.	MUR 4644
31.	MUR 4536	56.	MUR 4651
32.	MUR 4540	57.	MUR 4653
33.	MUR 4542	58.	MUR 4656
34.	MUR 4552	59.	MUR 4657
35.	MUR 4554		

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

Attest:

12-4-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Hellman
Hellman for Congress
22 North 5th Street
Terre Haute, IN 47807

RE: MUR 4497

Dear Mr. Hellman:

On October 7, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action in the matter. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 1997. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437(g)(a)(8).

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

Stephen E. Hacket, Treasurer
Pease for Congress
P.O. Box 511
Seelyville, IN 47878

RE: MUR 4497

Dear Mr. Hacket:

On October 15, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against Pease for Congress and you, as treasurer. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 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 Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

James Bopp, Jr.
Bopp, Coleson & Bostrom
P.O. Box 8100
401 Ohio Street
Terre Haute, IN 47808

RE: MUR 4497
Ed Pease

Dear Mr. Bopp:

On October 15, 1996, the Federal Election Commission notified your client of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against your client. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 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 Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1997

Marion Edwyn Harrison, Esq.
107 Park Washington Court
Falls Church, VA 22046

RE: MUR 4497
Robert A. Funk

Dear Mr. Harrison:

On October 15, 1996, the Federal Election Commission notified your client of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against your client. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on December 15, 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 Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4497

DATE FILMED 1/16/98 CAMERA NO. 2

CAMERAMAN EES

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