



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4660

DATE FILMED 10-27-57 CAMERA NO. 2

CAMERAMAN JMN

970147844200



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 8, 1997

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA *RC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: ALEXANDER FOR PRESIDENT, INC. — REFERRAL MATTER

Attached for your consideration is a finding from the Alexander For President, Inc. audit report that meets the criteria for referral for a possible compliance action. It is the only matter that meets the referral criteria and the only non-repayment finding in the audit report. This matter involves the failure to properly pay for the Committee's use of corporate aircraft during the early part of the campaign. The Committee discovered the error and corrected it prior to the audit fieldwork, although the amount was outstanding for a substantial period. The corporate contribution was approximately \$18,000 from two corporations.

Given the Committee's overall level of compliance, the relatively small amount involved, and that the Committee discovered and corrected the non-compliance prior to the audit, I do not believe that pursuing this matter further would represent a prudent use of our scarce Commission resources. If you agree, I would also recommend that the Committee be notified of that decision as soon as possible. It is our understanding that the resolution of this issue is the last matter preventing the Committee from terminating. Naturally, the sooner the Committee can terminate, the sooner it ceases incurring winding down expenses.¹ Further, the Candidate maintains a fund created pursuant to 11 CFR §9034.4(b)(4) which could be liquidated if there is to be no further action on this issue.

Should you have any questions regarding this issue or any other related to this Committee, please contact Joe Stoltz or Joe Swearingen at 219-3720.

¹ At March 31, 1996 the Committee reported \$1,300 owed to it and no debts owed by it.

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III. ALEXANDER FOR PRESIDENT, INC.

A. AUDIT FINDINGS AND RECOMMENDATIONS NON - REPAYMENT MATTERS

1. Apparent Contributions Resulting from Untimely Payments for Travel on Corporate Aircraft

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR §100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

Section 114.9(e) of Title 11 of the Code of Federal Regulations states that a candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization, in the case of travel to a city served by regularly scheduled commercial service, the first class air fare and in the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

A review of travel on corporate aircraft utilized by the Primary Committee identified costs incurred that were not fully paid in advance as required by 11 CFR §114.9(e). All of this travel occurred in late 1994 and early 1995. The portion of the travel costs not paid in advance totaled \$17,618 and involved two corporations; the

Pilot Oil Company, \$11,927, and the Textile Rubber and Chemical Company, \$5,691. All of the charges were outstanding for more than a year.

The Primary Committee's Treasurer explained that the staff person who handled travel in the early days of the campaign misunderstood the requirements of 11 CFR §114.9(e). In a number of instances, only the Candidate's travel expense was paid rather than that of all campaign travelers. The Treasurer further explained that when the underpayments came to his attention, the outstanding balances were calculated and the amounts were paid. No amounts were outstanding at the time of audit fieldwork.

This matter was discussed at a conference at the close of fieldwork and schedules were provided to Primary Committee representatives that showed the calculation of the apparent corporate contribution. In the Exit Conference Memorandum, the Audit staff recommended the Primary Committee submit any comments or documentation it felt might be relevant.

In response, the Primary Committee stated, in part,

"Shortly after its inception (in late 1994 and early 1995), the Primary Committee made use of corporate aircraft for certain campaign-related travel. As is often the case in the initial stages of a presidential campaign, the staff in charge of coordinating campaign-related travel during this early period did not have experience with the Commission's regulations. Yet, in all but one isolated incident, the corporations supplying aircraft were correctly reimbursed in advance for candidate airfare during the start-up period. Unfortunately, the staff person coordinating the travel at the inception of the campaign did not understand the necessity of prepaying for campaign-related passengers other than the candidate, as required by 11 C.F.R. 114.9(e)(1), and thus did not submit advance payments for passengers other than the candidate. During a subsequent review of the flight manifests, the Treasurer discovered that these additional passengers had not been included in the Primary Committee's original advance payments. Immediately upon this discovery, the underpayments were calculated and additional payments were submitted to the two corporations involved. These remedial steps were taken voluntarily by the Primary Committee, not at the direction of the Commission staff. The Primary Committee acknowledges that 11 C.F.R. 114.9 requires reimbursement in advance of first class airfare for a "candidate, candidate's agent, or person traveling on behalf of a candidate." Nevertheless, the Primary Committee respectfully requests that no further action be taken by the Commission for the following reasons:

- (i) The underpayments in question took place during the early stages of the campaign.

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- (ii) Once permanent compliance procedures and personnel were in place, no similar incidents occurred; and
- (iii) Upon discovery of the underpayments, the Primary Committee voluntarily researched and calculated the correct amounts and fully reimbursed the two corporations immediately."

In sum, the Primary Committee voluntarily corrected these early oversights immediately upon their discovery. Of its own accord, it provided to the Audit staff all the schedules which calculated the underpayments of the flights in question.

Further, it is the contention of the Primary Committee that the amount in question pertaining to the late payments to the two corporations is overstated by \$4,611. The \$4,611 represents an itinerary change for a flight dated February 24, 1995, which the Primary Committee contends was paid as soon as the Treasurer received notice of the itinerary change. This would result in a remaining amount of \$13,007. Finally, the Primary Committee states that it paid \$1,392,708 in air travel cost of which late payments of \$13,007 would represent less than 1% of the total amount spent on air travel by the Primary Committee.

The Audit staff acknowledges that the Primary Committee did voluntarily reimburse the underpayments to the corporations in question and did so during the active campaign. In addition, we acknowledge that an itinerary change did arise that prevented the Primary Committee from prepaying for travel on the one trip. However, the Primary Committee did not make payment for this itinerary change until March 1, 1996, which is more than one year after the trip. We feel that based on the amount of time which elapsed before reimbursement, a contribution still occurred and thus, the Primary Committee still received contributions totaling \$17,618.

Further, the Audit staff does not dispute the Primary Committee's amount paid for air travel. However, we do note that this amount represents all air travel including commercial and charter aircraft. The total amount involved for travel on corporate aircraft was only \$81,428. Thus, the contribution amount would represent 22% (\$17,618/\$81,428) of the total amount paid for travel on corporate aircraft.

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FEDERAL ELECTION COMMISSION
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DATE 9/30/97
 PAGE 1

ALEXANDER, ANDREW L

ID #P60003225

ALEXANDER FOR PRESIDENT INC
 TODD EARDENSOHN
 FILING FREQUENCY: QUARTERLY

512 N WASHINGTON STREET

ALEXANDRIA

PRESIDENTIAL
 VA 22314

ID #C00300673

FORM TYPE	RPT TYPE	AI	PGI	REC DATE	PGS	BEG MICRO	COVERAGE DATES	BEG CASH	RECEIPTS	DISBURSE	END CASH	DEBTS BY
MS			M	2/18/97	2	97031841542						
RC	Q1		2	5/27/97	2	97032052167	1/01/97 3/31/97					
3	Q1	N	P	4/15/97	24	97031961219	1/01/97 3/31/97	1099868	51734	792694	358908	0
3	Q1	A	P	6/18/97	2	97032091193	1/01/97 3/31/97	-	-	-	-	-
3	Q2	N	P	7/15/97	14	97032152379	4/01/97 6/30/97	358908	5762	31131	333539	0
TOTAL									57496	823825		

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FEDERAL ELECTION COMMISSION
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DATE 9/30/97
 PAGE 1

ALEXANDER, ANDREW L

ID #P60003225

ALEXANDER AUDIT FUND INC
 TODD EARDENSOHN
 FILING FREQUENCY: QUARTERLY

512 N WASHINGTON STREET

ALEXANDRIA

PRESIDENTIAL
 VA 22314

ID #C00315424

FORM TYPE	RPT TYPE	AI	PGI	REC DATE	PGS	BEG MICRO	COVERAGE DATES	BEG CASH	RECEIPTS	DISBURSE	END CASH	DEBTS BY
MS		M		2/18/97	1	97031843102						
RQ	Q1	S		5/27/97	2	97032052175	1/01/97 3/31/97					
3	Q1	M	G	4/15/97	4	97031961215	1/01/97 3/31/97	94478	0	0	94478	0
3	Q1	A	G	6/18/97	3	97032091195	1/01/97 3/31/97	94478	0	0	94478	0
3	Q2	M	G	7/15/97	4	97032152393	4/01/97 6/30/97	94478	781	0	95259	0
TOTAL									781	0		

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FEDERAL ELECTION COMMISSION
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DATE 9/30/97
 PAGE 1

ALEXANDER, ANDREW L

ID #P0003225

ALEXANDER FOR PRESIDENT INC
 TODD EARDENSOHN
 FILING FREQUENCY: QUARTERLY

512 N WASHINGTON STREET

ALEXANDRIA

PRESIDENTIAL
 VA 22314

ID #C00300673

FORM TYPE	RPT TYPE	AI	PGI	REC DATE	PGS	BEG MICRO	COVERAGE DATES	BEG CASH	RECEIPTS	DISBURSE	END CASH	DEBTS BY
NS			M	2/18/97	2	97031841542						
RO	Q1		2	5/27/97	2	97032052167	1/01/97 3/31/97					
3	Q1	N	P	4/15/97	24	97031961219	1/01/97 3/31/97	1099868	51734	792694	358908	0
3	Q1	A	P	6/18/97	2	97032091193	1/01/97 3/31/97	-	-	-	-	-
3	Q2	N	P	7/15/97	14	97032152379	4/01/97 6/30/97	358908	5762	31131	333539	0
TOTAL									57496	823825		

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

EPS II was created to identify pending cases which, based upon their lower priority, do not warrant further expenditure of resources. The PFESP Docket evaluates each incoming matter using Commission-approved criteria, which results in a numerical rating of each case.

Based upon this review, this Office has identified one matter which does not warrant further action relative to other pending matters. MUR 4660 (Alexander for President) meets the criterion for closure. Accordingly, we recommend that the Commission exercise its prosecutorial discretion and direct closure of this matter. See Attachment 1.

B. Stale Cases

Investigations require greater resources of time and funds when the activity and factual evidence are not current. By focusing our investigative efforts on cases involving recent activity, we more efficiently allocate our limited resources where they can significantly affect the electoral process.

Accordingly, this Office has identified one stale PFESP enforcement matter that we believe does not warrant further investment of Commission resources.

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III. RECOMMENDATION

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

MUR 4660

9/16/97
Date

Lawrence M. Noble
Lawrence M. Noble
General Counsel

Attachments

- 1. Description of low rated matter
- 2. Uncirculated referral materials

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Enforcement Priority System II)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 23, 1997, the Commission decided by a vote of 5-0 to take no action, close the file and approve the appropriate letters in MUR 4660, as recommended in the General Counsel's Report dated September 16, 1997.

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

Attest:

9-23-97
Date

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

Received in the Secretariat: Wed., Sept. 17, 1997 4:03 p.m.
Circulated to the Commission: Thurs., Sept. 18, 1997 11:00 a.m.
Deadline for vote: Tues., Sept. 23, 1997 4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Handwritten notes:
H.W. Baker
11/19/97

October 2, 1997

Todd Eardensohn, Treasurer
Alexander for President, Inc.
512 N. Washington Street
Alexandria, VA 22314

RE: MUR 4660

Dear Mr. Eardensohn:

On July 8, 1997, the Federal Election Commission's Audit Division referred certain matters to the Office of General Counsel involving Alexander for President, Inc. ("the Committee"), and Todd Eardensohn, as treasurer, for possible enforcement action. See Referral Materials. The referral resulted from an audit of the Committee undertaken pursuant to 26 U.S.C. § 9038(a).

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against Alexander for President, Inc., and Todd Eardensohn, 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 the matter on September 23, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact me at (800) 424-9530 or (202) 219-3690.

Sincerely,

Gregory R. Baker
Special Assistant General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4660

DATE FILMED 10-27-57 CAMERA NO. 2

CAMERAMAN JMN

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