FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1180

Date Filmed 9/29/82 Camera No. --- 2

Cameraman GPC

FEDERAL ELECTION COMMISSION

4379(a)(4)(B) documents

routing slips

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

| | | | |
|---|---|---|---|
| ____ | (1) Classified Information | ____ | (6) Personal privacy |
| ____ | (2) Internal rules and practices | ____ | (7) Investigatory files |
| X | (3) Exempted by other statute | ____ | (8) Banking Information |
| ____ | (4) Trade secrets and commercial or financial information | ____ | (9) Well Information (geographic or geophysical) |
| X | (5) Internal Documents | | |

Signed Thomas W. Hofeller

date 9/1/82

FEC 9-21-77

2040323229

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 1982

E. Mark Braden, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1166/1180

Dear Mr. Braden:

On August 12, 1982, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. § 441b and § 441a(d), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

2040352830

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

E. Mark Braden, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1166/1180

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Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| Republican National Committee | ) | |
| | ) | |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Republican National Committee ("Respondent") violated 2 U.S.C. § 441b and 2 U.S.C. § 441a(d) by receiving corporate contributions and making an excessive party expenditure.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. On October 27, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint.

2. In July of 1979, it deposited in its account a check in the amount of $8,705.00 it received from a corporation, namely, the Franklin Mint.

3. On July 22, 1976, it deposited in its account a check in the amount of $1,050.25 it received from a corporation, namely, Acropolis Books, Ltd.

4. On October 23, 1976, it deposited in its operating account a check in the amount of $2,145.00 it received from a corporation, namely, Acropolis Books, Ltd.

5. From January of 1976 through March 31, 1979, it deposited in its operating account $2,032.98 it received from 58 corporations and one labor union.

6. In the 1976 general election, the Respondent made an expenditure in the amount of $14,890.00 on behalf of one David Serotkin, a candidate for Congress in the 12th Congressional district of Michigan, that exceeded by $3,908 the limitations imposed by 2 U.S.C. § 44la(d) on such expenditures.

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 44lb(a).

VI. Respondent violated 2 U.S.C. § 44la(d)(3)(B) in making the expenditures on behalf of David Serotkin.

VII. Respondent will pay a civil penalty in the amount of Five Hundred Dollars ($500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. Respondent agrees that it shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

IX. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

X. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

Aug 13, 1982
Date

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

August 4, 1982
Date

REPUBLICAN NATIONAL COMMITTEE
Respondent's Name

BY: E. Mark Braden
E. Mark Braden

ITS: House Counsel

2 0 4 0 3 5 2 3 3 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

August 16, 1982

Lynda S. Mounts, Esquire
Cadwalader, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166/1180

Dear Ms. Mounts:

On August 12, 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

2049352835

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lynda S. Mounts, Esquire
Cadwalader, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166/1180

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Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1166 |
| The Democratic National Committee | ) | |
| | ) | |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Democratic National Committee violated 2 U.S.C. § 441b(a) by accepting a corporate contribution from the Franklin Mint Corporation.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The respondent is a political committee;

2. On September 8, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint; and

3. On October 3, 1976, it deposited in its account a check in the amount of $10,000 it received from a corporation, namely, the Franklin Mint.

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 441b(a).

VI. Respondent agrees that it shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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August 13, 1982
Date

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

8/4/82
Date

Democratic National Committee
Respondent's Name

BY: Lynda S. Mounts
Lynda S. Mounts

ITS: Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 1982

James P. Mercurio, Esquire
Arent, Fox, Kintner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166/1180

Dear Mr. Mercurio:

On August 12, 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

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Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James P. Mercurio, Esquire
Arent, Fox, Kintner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166/1180

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Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1166/1180 |
| Franklin Mint | ) | |
| Democratic National Committee | ) | |
| Republican National Committee | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 12, 1982, the Commission decided by a vote of 5-0 to take the following actions in MUR 1166/1180:

1. Accept the conciliation agreements as submitted with the August 9, 1982 Memorandum to the Commission.

2. Close the File.

Commissioners Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter; Commissioner Aikens did not cast a vote.

Attest:

8-12-82
Date

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

Received in Office of Commission Secretary: 8-9-82, 2:24
Circulated on 48 hour tally basis: 8-10-82, 11:00

2040352341

August 9, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1166/1180

Please have the attached Memo to the Commission distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Callahan

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SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 AUG 9 P2:24

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 9, 1982

MEMORANDUM

TO : The Commission

FROM : Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

SUBJECT: MUR 1166/1180 - Conciliation Agreements

Attached are conciliation agreements which have each been signed by the attorneys representing the Franklin Mint, the Democratic National Committee, and the Republican National Committee.

The attached agreements contain no changes from the agreements approved by the Commission on July 27, 1982, and a check for the civil penalty imposed by the Commission against the Republican National Committee has been received.

The Office of General Counsel recommends the acceptance of these agreements and the closing of the file.

Attachments

Conciliation Agreements - Three
Notification letters - Three
Photocopy of civil penalty check
(16 pages attached)

0 2 0 4 0 3 5 2 3 4 3

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1166 |
| Franklin Mint Corporation | ) | MUR 1180 |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

On January 28, 1982, the Commission advised Franklin Mint Corporation (hereinafter "Respondent") that the Office of General Counsel was prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

On March 1, 1982, Respondent filed its response to the General Counsel's recommendation in which it stated its position that payments made by it to the Democratic National Committee and the Republican National Committee pursuant to contractual arrangements with these committees under which Respondent had agreed to pay each committee for the use of certain party symbols did not constitute "contributions or expenditures" under 2 U.S.C. § 441b.

On April 20, 1982, the Commission determined that there is probable cause to believe that these payments were "contributions or expenditures" under 2 U.S.C. § 441b, which are defined in that section to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money to any candidate, campaign committee, or political party or organization, in

connection with any election to any of the offices referred to in [the] section."

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

(a) Respondent corporation has for years, as an important part of its business, minted coins and medallions commemorating historical figures, important events, and the like. Such coins and medallions are marketed as collectibles.

(b) In 1972, Respondent had entered into agreements with the national committees of the two major political parties, allowing use of the committees' symbols for commemorative medals depicting the candidates of the two parties in the 1972 Presidential campaign. At Respondent's request for an opinion, the General Accounting Office ruled, in a letter dated August 23, 1972, that advertisements for such commemorative medals did not require certification under Section 104 of the

2

Federal Election Campaign Act; the GAO found that "the over-riding purpose of the advertisement is transparently commercial aimed at selling the medals rather than either of the candidacies" and that "we do not consider that the law was intended to restrict established commercial activities such as this."

(c) In 1976, Respondent similarly entered into identical agreements with the Republican and Democratic National Committees allowing Respondent to use a symbol representing those parties' Presidential campaigns and to represent its commemorative medallions as the official campaign medals. In consideration of Respondent's use of the committees' symbols, Respondent agreed to pay each committee a royalty equal to 15% of sales, with a minimum royalty of $30,000, and to provide a quantity of medals equivalent in retail value to $5,000.

(d) In accordance with the terms of such agreements, Respondent tendered to the Republican National Committee, on October 27, 1976, and in July of 1979, payments in an aggregate amount of $28,705.00, and to the Democratic National Committee, on September 8, 1976 and October 29, 1976, payments in the aggregate amount of $30,000.

V. Pursuant to its statutory and regulatory authority, and in accordance with certain of its previous advisory opinions on

other matters, the Commission has interpreted said payments by Respondent, a corporation, to constitute "contributions or expenditures" to a political committee. Respondent has taken exception to the Commission's interpretation, asserting that such payments constituted consideration pursuant to contracts for Respondent's purchase of property interests of both the Republican and Democratic National Committees for purely commercial purposes.

VI. For purposes of conciliation only, Respondent agrees that it shall not make any payments to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices referred to in 2 U.S.C. § 441b, including, but not limited to payments for the right to use any symbols of the political parties.

VII. This agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding pursuant to 2 U.S.C. § 437g(a)(6)(A), respecting the alleged violation for which probable cause to believe has been found. The Commission may review compliance with this agreement on its own motion, or on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

_____ Date

Charles N. Steele
General Counsel

_____ Date

BY: _____
Kenneth A. Gross
Associate General Counsel

8/4/82 Date

FRANKLIN MINT CORPORATION

BY: James P Muscarin

ITS: Attorney

0204035343

RECEIVED
82 AUG 4 P3:23

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1166
The Democratic National )
Committee )

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Democratic National Committee violated 2 U.S.C. § 441b(a) by accepting a corporate contribution from the Franklin Mint Corporation.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The respondent is a political committee;

2. On September 8, 1976, it deposited in its account a check in the amount of $20,000 it received from a corporation, namely, the Franklin Mint; and

3. On October 3, 1976, it deposited in its account a check in the amount of $10,000 it received from a corporation, namely, the Franklin Mint.

6

V. Respondent contends that it accepted the above-mentioned checks in the context of a bona fide commercial transaction believing such action was permissible under the Act. It is the position of the Commission that the acceptance of the referenced checks constitutes a violation of 2 U.S.C. § 441b(a).

VI. Respondent agrees that it shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

0 2 0 4 0 5 2 3 5 0

Date

Charles N. Steele
General Counsel

Date

BY: Kenneth A. Gross
Associate General Counsel

8/4/82
Date

Democratic National Committee
Respondent's Name

BY: Lynda S. Mounts
Lynda S. Mounts

ITS: Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1166 |
| The Democratic National Committee | ) | |
| | ) | |

CONCILIATION AGREEMENT

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8

2040352851

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2040352303

_____ Date

Charles N. Steele
General Counsel

_____ Date

BY: _____
Kenneth A. Gross
Associate General Counsel

8/4/82 Date

Democratic National Committee
Respondent's Name

BY: Lynda S. Mounts

ITS: Lynda S. Mounts
Counsel

9

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| Republican National Committee | ) | |
| | ) | |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that the Republican National Committee ("Respondent") violated 2 U.S.C. § 441b and 2 U.S.C. § 441a(d) by receiving corporate contributions and making an excessive party expenditure.

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3. On July 22, 1976, it deposited in its account a check in the amount of $1,050.25 it received from a corporation, namely, Acropolis Books, Ltd.

4. On October 23, 1976, it deposited in its operating account a check in the amount of $2,145.00 it received from a corporation, namely, Acropolis Books, Ltd.

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VI. Respondent violated 2 U.S.C. § 441a(d)(3)(B) in making the expenditures on behalf of David Serotkin.

VII. Respondent will pay a civil penalty in the amount of Five Hundred Dollars ($500.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. Respondent agrees that it shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

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2040352

Date

Charles N. Steele
General Counsel

Date

BY: Kenneth A. Gross
Associate General Counsel

August 4, 1982
Date

REPUBLICAN NATIONAL COMMITTEE
Respondent's Name

BY: E. Mark Braden

ITS: House Counsel

12

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1166/1180

Dear Mr. Braden:

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Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

13

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Arent, Fox, Kintner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166/1180

Dear Mr. Mercurio:

On , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

2040357

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lynda S. Mounts, Esquire
Cadwalader, Wickersham and Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1166/1180

Dear Ms. Mounts:

On , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

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12040352359

| VENDOR NUMBER | VENDOR NAME | | | CHECK DATE | CHECK NO |
|---|---|---|---|---|---|
| 001206 | Federal Election Commission | | | 8/4/82 | 46615 |
| INVOICE NO. | INVOICE AMOUNT | ADJUSTMENT | NET AMOUNT | EXPLANATION | |
| FE 08 82 | 500.00 | | 500.00 | Civil penalty fee<br>MUR 1180 | |

# Republican National Committee .

310 First Street Southeast, Washington, D.C. 20003

CHECK NO 46615

68-408
560

BANK OF VIRGINIA - POTOMAC
5205 LEESBURG PIKE
FALLS CHURCH, VA 22041

| DATE | CHECK NUMBER |
|---|---|
| 8/4/82 | 46615 |

Pay Exactly 500 Dollars and no cents

| AMOUNT |
|---|
| $ ***500.00**** |

PAY TO THE ORDER OF

Federal Election Commission
1325 K Street, NW
Washington, DC 20463

AUTHORIZED SIGNATURE

⑈046615⑈ ⑆056004089⑆ 651⑉7307499⑈

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1166 |
| Franklin Mint Corporation | ) | MUR 1180 |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

On January 28, 1982, the Commission advised Franklin Mint Corporation (hereinafter "Respondent") that the Office of General Counsel was prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

On March 1, 1982, Respondent filed its response to the General Counsel's recommendation in which it stated its position that payments made by it to the Democratic National Committee and the Republican National Committee pursuant to contractual arrangements with these committees under which Respondent had agreed to pay each committee for the use of certain party symbols did not constitute "contributions or expenditures" under 2 U.S.C. § 441b.

On April 20, 1982, the Commission determined that there is probable cause to believe that these payments were "contributions or expenditures" under 2 U.S.C. § 441b, which are defined in that section to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money to any candidate, campaign committee, or political party or organization, in

connection with any election to any of the offices referred to in [the] section."

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

(a) Respondent corporation has for years, as an important part of its business, minted coins and medallions commemorating historical figures, important events, and the like. Such coins and medallions are marketed as collectibles.

(b) In 1972, Respondent had entered into agreements with the national committees of the two major political parties, allowing use of the committees' symbols for commemorative medals depicting the candidates of the two parties in the 1972 Presidential campaign. At Respondent's request for an opinion, the General Accounting Office ruled, in a letter dated August 23, 1972, that advertisements for such commemorative medals did not require certification under Section 104 of the

Federal Election Campaign Act; the GAO found that "the over-riding purpose of the advertisement is transparently commercial aimed at selling the medals rather than either of the candidacies" and that "we do not consider that the law was intended to restrict established commercial activities such as this."

(c) In 1976, Respondent similarly entered into identical agreements with the Republican and Democratic National Committees allowing Respondent to use a symbol representing those parties' Presidential campaigns and to represent its commemorative medallions as the official campaign medals. In consideration of Respondent's use of the committees' symbols, Respondent agreed to pay each committee a royalty equal to 15% of sales, with a minimum royalty of $30,000, and to provide a quantity of medals equivalent in retail value to $5,000.

(d) In accordance with the terms of such agreements, Respondent tendered to the Republican National Committee, on October 27, 1976, and in July of 1979, payments in an aggregate amount of $28,705.00, and to the Democratic National Committee, on September 8, 1976 and October 29, 1976, payments in the aggregate amount of $30,000.

V. Pursuant to its statutory and regulatory authority, and in accordance with certain of its previous advisory opinions on

other matters, the Commission has interpreted said payments by Respondent, a corporation, to constitute "contributions or expenditures" to a political committee. Respondent has taken exception to the Commission's interpretation, asserting that such payments constituted consideration pursuant to contracts for Respondent's purchase of property interests of both the Republican and Democratic National Committees for purely commercial purposes.

VI. For purposes of conciliation only, Respondent agrees that it shall not make any payments to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices referred to in 2 U.S.C. § 441b, including, but not limited to payments for the right to use any symbols of the political parties.

VII. This agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding pursuant to 2 U.S.C. § 437g(a)(6)(A), respecting the alleged violation for which probable cause to believe has been found. The Commission may review compliance with this agreement on its own motion, or on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

Aug 13, 1982
Date

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

8/4/82
Date

FRANKLIN MINT CORPORATION

BY: James P Mccurin

ITS: Attorney

0 2 0 4 0 5 2 3 6 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1982

Alphons J. Hackl, President
Acropolis Books, Ltd.
2400 Seventeenth Street, N.W.
Washington, D.C. 20009

RE: MUR 1180

Dear Mr. Hackl:

On May 19, 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to Acropolis Books, Ltd. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

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GCH 7736
82 MAY 13 P 1:00

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| Acropolis Books, Ltd. | ) | |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Probable cause to believe has been found that Acropolis Books, Ltd. ("Respondent") violated 2 U.S.C. § 441b by making a corporate contribution to the Republican National Committee.

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are that the Respondent, a corporation, made royalty payments in the aggregate amount of $3,195.75 to the Republican National Committee on June 22, 1976, and October 23, 1976, respectively.

V. Respondent made a contribution in violation of 2 U.S.C. § 441b(a). However, it is respondent's position that the royalty

payments referred to were made in conformity with an arms length business transaction under which respondent carried out its contractual agreement as stipulated in the author/publisher book contract; not to have paid the stipulated royalty would have subjected respondent to litigation for non-compliance of its agreement with the authors. It is respondent's position that it was never respondent's intention to make a contribution, nor influence an election.

VI. Respondent agrees that it shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

2040357

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

Charles N. Steele
General Counsel

May 20, 1982
Date

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

5-11-82
Date

ACROPOLIS Books Ltd.
Respondent's Name

BY: Stephen Mark

ITS: President

8204030363

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alphons J. Hackl, President
Acropolis Books, Ltd.
2400 Seventeenth Street, N.W.
Washington, D.C. 20009

RE: MUR 1180

Dear Mr. Hackl:

On May , 1982, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to Acropolis Books, Ltd. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Acropolis Books, Ltd. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 19, 1982, the Commission approved by a vote of 5-0 the signed conciliation agreement in the above-captioned matter as submitted with the General Counsel's Memorandum to the Commission dated May 17, 1982.

Commissioners Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter; Commissioner Aikens abstained from voting.

Attest:

5-20-82
Date

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary: 5-17-82, 10:34
Circulated on 48 hour tally basis: 5-17-82, 4:00

Gcc# 7409

ENVELOPES UNLIMITED INC
BOX 6002, 649 NORTH HORNERS LANE, ROCKVILLE, MARYLAND 20850 / 301 424-3300

March 22, 1982

Federal Election Commission
Washington, D.C. 20463

Re: MUR 1180

Attention: Secretary of the Commission

Dear Sir:

As a follow-up to our letter, dated February 10, 1982, I would like to clarify that the 125,000 #9 ivory window envelopes purchased from the Republican National Committee for the amount of $812.50 were excess office supplies that the Republican National Committee had ordered. We, in turn, sold these envelopes to another customer.

If we can be of further assistance, please do not hesitate to ask.

Respectfully yours,

Anthony I. Massiah
Comptroller

AIM:mm

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RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

ENVELOPES UNLIMITED INC.
649 N. HORNERS LANE, ROCKVILLE, MARYLAND 20850

Federal Election Commission
Washington, D.C. 20463
Attention: Secretary of the Commission

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82 MAR 23 P 3:14

Republican
National
Committee

**E. Mark Braden**
House Counsel

**Catherine E. Gensior**
Deputy House Counsel

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OFFICE OF THE
COMMISSION SECRETARY
Scott 73/6
82 MAR 9 P4: 18

March 9, 1982

82 MAR 9 P4:57

Honorable Frank P. Reiche
Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 1180

0 2 0 4 0 3 5 2 3 7 3

Dear Mr. Chairman:

The following summarizes the exchange of correspondence between the Federal Election Commission and the Republican National Committee (RNC) regarding MUR 1180.

On February 26, 1981, the Republican National Committee received a letter from the Chairman of the Federal Election Commission indicating that the Commission, on December 2, 1980, found reason to believe that the Republican National Committee had violated 2 USC §441 b(a). Accompanying that letter was a report on the Commission's findings. On May 15, 1981, the Republican National Committee submitted to the Commission a response disputing the alleged violations.

On February 1, 1982, the Republican National Committee received a letter from the General Counsel of the Federal Elections Commission indicating that the Office of General Counsel was "prepared to recommend that the Commission find probable cause to believe that a violation has occurred." Attached to that letter was a brief stating the position of the General Counsel on the legal and factual issues of MUR 1180.

The Republican National Committee's position upon the issues contained in the General Counsel's brief has remained unchanged from our initial response of May 15, 1981. The General Counsel's brief of January 28, 1982, does not appear to be responsive to many of the arguments submitted by the RNC on May 15, 1981. Because of this fact, I see no justification in restating, in detail, arguments presently before the Commission. Instead, I will attempt to briefly restate the RNC''s position on the recommendations from the Office of General Counsel.

## FRANKLIN MINT

The General Counsel's office recommends that the Commission find probable cause to believe that the RNC violated 2 USC §441 b by accepting corporate contributions from the Franklin Mint Corporation.

Retro-Active Application. In arriving at its conclusion, the General Counsel's office applied guidelines which were announced by the Commission three years following the execution of the underlining agreement between the RNC and Franklin Mint Corporation (See AO 1979-17). The inequity of this retroactive application requires no great illumination. The RNC's reasonable and good faith reliance that the FECA did not prohibit this transaction should isolate it from penalty. Counsel to the Democratic National Committee clearly reached the same conclusion as to the permissibility of the contract since they entered into an identical agreement with Franklin Mint Corporation.

Commercial Transaction. The General Counsel's recommendation ignores the purpose and nature of this contractual transaction. The contract between Franklin Mint and the RNC is simply an arms length commercial transaction. There is no contribution present. The FECA prohibits a corporation from making ". . a contribution or expenditure in connection with any election to any political office." A contribution or expenditure includes ". . any direct or indirect payment, distribution, loan, advance, deposit or gift of money or any services or anything of value . . . to any candidate, campaign, committee or political party or organization in connection with any election to federal office . . " This commercial transaction cannot be considered in connection with any election to federal office. The Franklin Mint had no desire, or intent, to influence any election. The Franklin Mint intended to sell coins. How can any partisan political motive be impugned to Franklin Mint when an identical contract was executed with the Democratic National Committee? The Commission should recognize that its General Counsel's office never attempted even to imply that the transaction between the Republican National Committee and the Franklin Mint Corporation is not a reasonable arms length commercial transaction. If Congress desired to prohibit all commercial activities by political parties, that language would be present in the Act. Nowhere in the Federal Election Campaign Act has Congress expressed a desire to prohibit commercial activities by political parties. The General Counsel's office fails to provide direction to what legislative history it depends on for its interpretation that Congress intended to prohibit any commercial activities by political parties.

## ACROPOLIS BOOKS

The General Counsel's office recommends that probable cause be found that the RNC violated 2 USC §441 b by accepting a corporate contribution from Acropolis Books, Ltd. The arguments presented in opposition to the General Counsel's position on the Franklin Mint issue apply equally to this transaction. In

addition to those arguments, the Commission should be cognizant that the General Counsel's brief fails to recognize the different nature of the agreement underlining this transaction. An examination of the contract between the Republican National Committee, Acropolis Books and the authors of Republican Humor indicates that the RNC is basically in a position of a third-party beneficiary rather than an active participant in this contract. The failure to address this issue makes the General Counsel's recommendation fatally flawed. If the RNC is in the position of a third-party beneficiary, the transfer of funds from Acropolis would be more appropriately characterized as individual contributions of the authors rather than corporate contributions. The RNC received payments which would have customarily been received by the authors. No recommendation which arises from an analysis which fails to recognize this factor should be considered by the Commission.

ENVELOPES UNLIMITED/DATATEL, INC.

The General Counsel's office has recommended that the Commission find probable cause to believe that the RNC violated 2 USC §441 b by leasing time on the RNC's computer equipment to Envelopes Unlimited, Inc., and Datatel, Inc. The RNC was unaware that the Federal Election Campaign Act could, or should, be interpreted in a manner to require it to waste its assets. The computer facilities of the Republican National Committee were paid for by contributions raised under the limitations and restrictions of the Federal Election Campaign Act. To require the Republican National Committee not to utilize this facility to its fullest capacity is to require the Committee to waste the contributions provided to it by its supporters. This failure to properly and reasonably utilize the assets of the committee would be a breach of the RNC's fiduciary responsibilities to its contributors.

The statutory or regulatory basis for the differentiation postulated by the General Counsel's office between leasing and sale of computer equipment is not apparent. The General Counsel's office analysis would indicate that the RNC could sell a computer to a corporation, but could not lease time to a corporation. Their attempt to postulate a difference between these two forms of transactions is ludicrous.

The strained nature of the position can be illustrated by a recent example. In 1981 an attorney from the General Counsel's office of the Commission spent approximately one week at the Republican National Committee photocopying the 1980 long distance telephone records of the Committee. He requested that the RNC permit him to use a photocopying machine owned by the Committee. He agreed to pay for the Commission's use of the RNC's equipment. A lease agreement was not drawn up to memorialize this use of the Committee's equipment. A lease agreement could have been drafted because this transaction involved substantively the Federal Election Commission leasing, on a limited basis, a piece of RNC equipment. Under the General Counsel's analysis in MUR 1180, the conclusion that one must draw is that our receipt from the Federal Election Commission of a check in excess of One Hundred Dollars ($100.00) for the 'use' or lease of the photocopier was a contribution by the Federal Election Commission to the RNC. This illustrates the untenable nature of the position of the General Counsel's office on this issue.

## FIFTY-EIGHT CORPORATIONS AND ONE LABOR UNION

The Office of General Counsel recommends that the Commission find probable cause to believe that the RNC violated 2 USC §441 b by accepting corporate contributions from fifty-eight (58) corporations and one (1) labor union in a total amount of Two Thousand Thirty-two Dollars and Ninety-eight Cents ($2,032.98). The brief presented to the Commission by the Office of General Counsel states: "The Office of General Counsel has only the bold statement contained in RNC records reviewed by the auditors that a sum of money was received from a corporate entity for FEC law seminars or a PAC seminar or a campaign manual." There is nothing unusual in the fact that transactions which, in some cases, are now more than six years old, in amounts ranging from $10.00 to $20.00, do not have extensive documentation. This may reflect one of the reasons for the enactment of 2 USC §445 and is one of the underlying reasons for the Statute of Limitations provisions throughout the U. S. Code.

As indicated in General Counsel's brief, many of these small dollar receipts involve the sale of almanacs, Promises and various newsletter subscriptions. Appendixed to this brief are copies of the items which were sold to corporations. It is self-evident that the sale price of these items does not meet their incremental costs without consideration of developmental costs. The receipt of sums for them was in an effort to defray a limited portion of their cost and to limit distribution to those entities or individuals that had a serious desire. No one with even the slightest political experience can assume that these were developed as fund raising tools. They were developed for distribution to the press, Republican organizations and candidates.

## DAVID SEROTKIN

The General Counsel's office recommends that the Commission find probable cause to believe that the RNC violated 2 USC §441 a(d)(3)(B) by making excessive expenditures on behalf of David Serotkin, candidate for Congress.

This matter arises from an audit of the Republican National Committee covering the period of January 1, 1976, through March 31, 1979. During that time, the Republican National Committee expended millions of dollars in support of hundreds of candidates for federal office. The RNC was, during this period, operating under totally new limitations on its activities in support of candidates for federal office. The methods, procedures and safeguards to insure the Committee's compliance with this law were still in an evolutionary stage. The fact that an audit of the RNC covering this difficult time frame alleges only a single excessive contribution by the RNC to a federal candidate indicates the RNC's desire and efforts to comply fully with the letter and spirit of the FECA. The RNC has made contact with the individual to whom we are alleged to have made the excessive expenditure in an attempt to have funds returned to the RNC. Mr. Serotkin has refused our request and indicates that he now is a Democrat. The de minimis nature of this alleged violation in comparison with the Committee's overall financial activities suggests that no finding of probable cause be made in this matter.

PERIOD OF LIMITATIONS

The RNC believes that the FEC is barred from further proceedings against the RNC in MUR 1180 in connection with any and all instants cited in FEC's notification for reason to believe finding and subsequent materials which occurred on or before February 22, 1978. 2 USC §455.

Very truly yours,

E. Mark Braden

E. Mark Braden

EMB:jd
Enclosures

cc: Charles N. Steele
Joan D. Aikens
Lee Ann Elliott
Thomas E. Harris
Danny Lee McDonald
John Warren McGarry

200733

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6 cc # 7320
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# Republican National Committee

**E. Mark Braden**
House Counsel

**Catherine E. Gensior**
Deputy House Counsel

March 9, 1982

Honorable Frank P. Reiche
Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 1180

Dear Mr. Chairman:

The following summarizes the exchange of correspondence between the Federal Election Commission and the Republican National Committee (RNC) regarding MUR 1180.

On February 26, 1981, the Republican National Committee received a letter from the Chairman of the Federal Election Commission indicating that the Commission, on December 2, 1980, found reason to believe that the Republican National Committee had violated 2 USC §441 b(a). Accompanying that letter was a report on the Commission's findings. On May 15, 1981, the Republican National Committee submitted to the Commission a response disputing the alleged violations.

On February 1, 1982, the Republican National Committee received a letter from the General Counsel of the Federal Elections Commission indicating that the Office of General Counsel was "prepared to recommend that the Commission find probable cause to believe that a violation has occurred." Attached to that letter was a brief stating the position of the General Counsel on the legal and factual issues of MUR 1180.

The Republican National Committee's position upon the issues contained in the General Counsel's brief has remained unchanged from our initial response of May 15, 1981. The General Counsel's brief of January 28, 1982, does not appear to be responsive to many of the arguments submitted by the RNC on May 15, 1981. Because of this fact, I see no justification in restating, in detail, arguments presently before the Commission. Instead, I will attempt to briefly restate the RNC''s position on the recommendations from the Office of General Counsel.

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FRANKLIN MINT

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Retro-Active Application. In arriving at its conclusion, the General Counsel's office applied guidelines which were announced by the Commission three years following the execution of the underlining agreement between the RNC and Franklin Mint Corporation (See AO 1979-17). The inequity of this retroactive application requires no great illumination. The RNC's reasonable and good faith reliance that the FECA did not prohibit this transaction should isolate it from penalty. Counsel to the Democratic National Committee clearly reached the same conclusion as to the permissibility of the contract since they entered into an identical agreement with Franklin Mint Corporation.

Commercial Transaction. The General Counsel's recommendation ignores the purpose and nature of this contractual transaction. The contract between Franklin Mint and the RNC is simply an arms length commercial transaction. There is no contribution present. The FECA prohibits a corporation from making ". . a contribution or expenditure in connection with any election to any political office." A contribution or expenditure includes ". . any direct or indirect payment, distribution, loan, advance, deposit or gift of money or any services or anything of value . . . to any candidate, campaign, committee or political party or organization in connection with any election to federal office . . " This commercial transaction cannot be considered in connection with any election to federal office. The Franklin Mint had no desire, or intent, to influence any election. The Franklin Mint intended to sell coins. How can any partisan political motive be impugned to Franklin Mint when an identical contract was executed with the Democratic National Committee? The Commission should recognize that its General Counsel's office never attempted even to imply that the transaction between the Republican National Committee and the Franklin Mint Corporation is not a reasonable arms length commercial transaction. If Congress desired to prohibit all commercial activities by political parties, that language would be present in the Act. Nowhere in the Federal Election Campaign Act has Congress expressed a desire to prohibit commercial activities by political parties. The General Counsel's office fails to provide direction to what legislative history it depends on for its interpretation that Congress intended to prohibit any commercial activities by political parties.

ACROPOLIS BOOKS

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ENVELOPES UNLIMITED/DATATEL, INC.

The General Counsel's office has recommended that the Commission find probable cause to believe that the RNC violated 2 USC §441 b by leasing time on the RNC's computer equipment to Envelopes Unlimited, Inc., and Datatel, Inc. The RNC was unaware that the Federal Election Campaign Act could, or should, be interpreted in a manner to require it to waste its assets. The computer facilities of the Republican National Committee were paid for by contributions raised under the limitations and restrictions of the Federal Election Campaign Act. To require the Republican National Committee not to utilize this facility to its fullest capacity is to require the Committee to waste the contributions provided to it by its supporters. This failure to properly and reasonably utilize the assets of the committee would be a breach of the RNC's fiduciary responsibilities to its contributors.

The statutory or regulatory basis for the differentiation postulated by the General Counsel's office between leasing and sale of computer equipment is not apparent. The General Counsel's office analysis would indicate that the RNC could sell a computer to a corporation, but could not lease time to a corporation. Their attempt to postulate a difference between these two forms of transactions is ludicrous.

The strained nature of the position can be illustrated by a recent example. In 1981 an attorney from the General Counsel's office of the Commission spent approximately one week at the Republican National Committee photocopying the 1980 long distance telephone records of the Committee. He requested that the RNC permit him to use a photocopying machine owned by the Committee. He agreed to pay for the Commission's use of the RNC's equipment. A lease agreement was not drawn up to memorialize this use of the Committee's equipment. A lease agreement could have been drafted because this transaction involved substantively the Federal Election Commission leasing, on a limited basis, a piece of RNC equipment. Under the General Counsel's analysis in MUR 1180, the conclusion that one must draw is that our receipt from the Federal Election Commission of a check in excess of One Hundred Dollars ($100.00) for the 'use' or lease of the photocopier was a contribution by the Federal Election Commission to the RNC. This illustrates the untenable nature of the position of the General Counsel's office on this issue.

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## FIFTY-EIGHT CORPORATIONS AND ONE LABOR UNION

The Office of General Counsel recommends that the Commission find probable cause to believe that the RNC violated 2 USC §441 b by accepting corporate contributions from fifty-eight (58) corporations and one (1) labor union in a total amount of Two Thousand Thirty-two Dollars and Ninety-eight Cents ($2,032.98). The brief presented to the Commission by the Office of General Counsel states: "The Office of General Counsel has only the bold statement contained in RNC records reviewed by the auditors that a sum of money was received from a corporate entity for FEC law seminars or a PAC seminar or a campaign manual." There is nothing unusual in the fact that transactions which, in some cases, are now more than six years old, in amounts ranging from $10.00 to $20.00, do not have extensive documentation. This may reflect one of the reasons for the enactment of 2 USC §445 and is one of the underlying reasons for the Statute of Limitations provisions throughout the U. S. Code.

As indicated in General Counsel's brief, many of these small dollar receipts involve the sale of almanacs, Promises and various newsletter subscriptions. Appendixed to this brief are copies of the items which were sold to corporations. It is self-evident that the sale price of these items does not meet their incremental costs without consideration of developmental costs. The receipt of sums for them was in an effort to defray a limited portion of their cost and to limit distribution to those entities or individuals that had a serious desire. No one with even the slightest political experience can assume that these were developed as fund raising tools. They were developed for distribution to the press, Republican organizations and candidates.

## DAVID SEROTKIN

The General Counsel's office recommends that the Commission find probable cause to believe that the RNC violated 2 USC §441 a(d)(3)(B) by making excessive expenditures on behalf of David Serotkin, candidate for Congress.

This matter arises from an audit of the Republican National Committee covering the period of January 1, 1976, through March 31, 1979. During that time, the Republican National Committee expended millions of dollars in support of hundreds of candidates for federal office. The RNC was, during this period, operating under totally new limitations on its activities in support of candidates for federal office. The methods, procedures and safeguards to insure the Committee's compliance with this law were still in an evolutionary stage. The fact that an audit of the RNC covering this difficult time frame alleges only a single excessive contribution by the RNC to a federal candidate indicates the RNC's desire and efforts to comply fully with the letter and spirit of the FECA. The RNC has made contact with the individual to whom we are alleged to have made the excessive expenditure in an attempt to have funds returned to the RNC. Mr. Serotkin has refused our request and indicates that he now is a Democrat. The de minimis nature of this alleged violation in comparison with the Committee's overall financial activities suggests that no finding of probable cause be made in this matter.

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PERIOD OF LIMITATIONS

The RNC believes that the FEC is barred from further proceedings against the RNC in MUR 1180 in connection with any and all instants cited in FEC's notification for reason to believe finding and subsequent materials which occurred on or before February 22, 1978. 2 USC §455.

Very truly yours,

E. Mark Braden

E. Mark Braden

EMB:jd
Enclosures

cc: Charles N. Steele
Joan D. Aikens
Lee Ann Elliott
Thomas E. Harris
Danny Lee McDonald
John Warren McGarry



Republican
National
Committee

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Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

GCC# 7310


DAVENPORT & ASSOCIATES, P. C.

ATTORNEYS AT LAW

611 McLEAN OFFICE CENTRE

6845 ELM STREET

MCLEAN, VIRGINIA 22101

(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006


March 8, 1982

Mr. William Taylor
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

2 MAR 8 PM 4:58

Re: Datatel, Inc.
MUR 1180

Dear Mr. Taylor:

Enclosed herewith are three copies of the reply of Datatel, Inc. in the referenced matter. Ten additional copies have been lodged with the Secretary of the Commission this date. If you have any questions regarding same, or wish any additional information, please advise.

Very truly yours,

DAVENPORT & ASSOCIATES, P.C.

David M. Davenport

DMD/bsm

Enclosures

GCC#7310


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1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006


March 8, 1982

Secretary of the Commission
Federal Election Commission
Washington, D.C. 20463

Re: Datatel, Inc.
MUR 1180

Gentlemen:

Enclosed herewith are ten copies of the Reply Brief of Datatel, Inc. for filing in the referenced matter. Three additional copies have been forwarded to Mr. William Taylor, of the Office of General Counsel this date. If you have any questions regarding same, or wish any additional information, please advise.

Very truly yours,

DAVENPORT & ASSOCIATES, P.C.

David M. Davenport

DMD/bsm

Enclosures

COPY

[illegible] Avenue
[illegible], Virginia 22305
[illegible]

DESIGN AND PROCESSING OF MANAGEMENT INFORMATION SYSTEMS

# Datatel Inc.

January 27, 1977

Exhibit A

Mr. Ron Charnock
Republican National Committee
310 1st Street, S.E.
Washington, D.C. 20003

Dear Ron:

As you know, we are now actively looking to lease the 360/40. During our discussion of last Friday, you expressed an interest in the possibility of RNC subleasing the 360/40 from Datatel, along with floor space, power and air conditioning, but excluding maintenance.

The configuration that we are willing to lease under this arrangement is as follows:

1 - 2040 (256K) CPU
1 - 2803 Model II Tape Controller
1 - 1403 N1 Printer
1 - 2540 Card Reader/Punch
1 - 2314 A1 (8 drives) Disk
1 - 2821 I/O Controller
3 - 2401 Model VI Tapes, 800/1600 BPI
1 - 2401 Model III Tapes, 800 BPI

The terms of the lease would be for two (2) years at a cost of $7,500 per month.

As you know, under this kind of arrangement, there would be the distinct possibility of Datatel leasing time from the RNC on the second and third shifts.

We have received a great deal of interest in this machine since we first put it on the market back in the first part of December. Our current plans are to make our final decision for this machine in the early part of February. If you are so inclined to consider

this kind of arrangement we need to hear from you within the next week.

If you have any questions, please do not hesitate to call.

Sincerely,

Paul T. Hawkins
Vice President, Operations
DATATEL, INC.

PTH/slr

2 2 0 4 0 3 5 2 3 7

2 0 4 0 3 5 2 3 8 Exhibit "A"

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# L E A S E  A G R E E M E N T

LEASE AGREEMENT, dated as of February 28, 1977, between Datatel, Inc. (lessor), a Maryland Corporation, having its principal office at 3700 Mount Vernon Avenue, Alexandria, Virginia, and the Republican National Committee ("Lessee"), having its principal office at 310 First Street, Southeast, Washington, D. C.

W I T N E S S E T H:

1. Equipment, Rent and Term. Subject to the terms and conditions hereof, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the computer equipment described in Exhibit A attached hereto (the "Equipment") for a term beginning on March 1, 1977 and ending on October 15, 1978.

2. Method of Payment. Lessee agrees to pay to Lessor, or to Lessor's assignee, the sum of $7,500.00 per month with the first such payment due and payable on the 1st day of March, 1977, and each subsequent payment due and payable on the 1st day of each month thereafter for the term of the lease.

3. Use and Location. Lessee shall cause the Equipment to be operated in accordance with any applicable manufacturer's manuals or instructions, by competent and duly qualified personnel only, and in accordance with applicable

governmental regulations, if any. Lessee shall keep the Equipment at its present location at 3700 Mount Vernon Avenue, Alexandria, Virginia, so long as Lessee retains rights as a tenant to such space. Lessee agrees that it will not change the location of the Equipment without the prior written consent of Lessor, which consent shall not be unreasonably withheld. The costs of any relocation of the Equipment shall be borne by the Lessee.

A. Termination

Datatel, Inc. hereby reserves the right to terminate this Agreement by giving notice to Lessee, consistent with Paragraph 16 of this Agreement, at least 60 days before such termination shall become effective. In the event Lessor shall terminate this Agreement, Lessor hereby expressly agrees to assume all space leased to Lessee under this Agreement, in addition to equipment, materials, services or anything tangible or intangible which is covered by this Agreement, and Lessor further agrees that Lessee's liability hereunder shall cease.

B. Relocation of Equipment

In the event Lessor shall terminate this Agreement under Subparagraph A, above, Lessor expressly agrees that Lessee shall be able, in Lessee's sole discretion, to lease the Equipment specified in this Agreement for a period beginning on the date Lessor terminates this Agreement under Subparagraph A, above, and ending October 15, 1978. Lessor further agrees that such lease shall not be at a monthly rental rate greater than $7,500.00 per month, less $500.00 per month representing Lessor's estimated costs of maintaining said equipment on Lessor's premises.

In the event of termination under this Paragraph and upon negotiation of a new Agreement, Lessor agrees that Lessee may move said Equipment to any other premises which shall, in Lessor's opinion, be adequate for keeping, maintaining and using the Equipment. Lessee agrees to pay all costs attendant on moving the Equipment and putting the Equipment in operation at the new premises. Lessee further agrees to bear the risk of damage to said Equipment while in transit, and maintain said Equipment in the new premises in all manners consistent with the terms of this Agreement.

4. Risk of Loss. During the period the Equipment is in transit or in the possession of Lessee, Lessee shall bear the entire risk of loss, theft, damage or destruction of the Equipment for any cause whatsoever; and no loss, theft, damage or destruction shall relieve Lessee of the obligation to pay rent or of any other obligation under this Lease Agreement. In the event of damage to any item of Equipment, Lessee shall promptly place the same in good repair. If the Equipment is in its entirety lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessor, shall (a) replace same with like Equipment in good repair, or (b) pay to Lessor the aggregate amount of all unpaid monthly rental payments hereunder, provided that such obligations shall be offset by any insurance payment received by Lessor as described in Paragraph 5 hereof.

5. Insurance. Lessee, at its own cost and expense, shall cause to be carried and maintained on the Equipment insurance in such amounts, against such risks, in such form and

with such insurance companies as shall be satisfactory to the Lessor from time to time; provided, however, that the amount of property damage insurance in effect for the Equipment from time to time shall in no event be less than the greater of the full replacement cost of the Equipment or the aggregate amount of all unpaid monthly rental payments hereunder. All insurance policies (including liability policies) shall name both Lessor and Lessee as insureds. Unless Lessor shall otherwise agree in writing, each liability policy shall provide for all losses to be paid on behalf of Lessor and Lessee as their respective interests may appear and each direct damage policy shall provide for all losses to be paid directly to Lessor. Each policy shall expressly provide that such insurance as to Lessor shall not be invalidated by any act, omission or neglect of Lessee. Lessor may apply the proceeds of said insurance to replace or repair the Equipment or to satisfy the obligations of Lessee hereunder. In the event that Lessor does not replace or repair the Equipment within sixty (60) days after receipt of such insurance proceeds, all obligations of Lessee pursuant to this Lease Agreement shall thereafter be terminated. Lessee hereby irrevocably appoints Lessor as the attorney-in-fact of Lessee to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any of said insurance. At the request of Lessor, Lessee shall furnish proof of said insurance. If Lessee fails to procure or maintain said insurance, Lessor shall have the right, but shall not be obligated, to effect such insurance. In the event of such payment by Lessor, Lessee shall repay to Lessor the cost thereof as additional rent hereunder with the next monthly rental payment.

6. Taxes. Lessee shall pay, and indemnify and hold Lessor harmless from, all license and registration fees and all sales, use, personal property and other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon) arising at any time during the period in which the Equipment is leased hereunder, or upon the return of such Equipment to Lessor (but not including any such fees, taxes, levies, imposts, duties, charges or withholdings resulting from the acquisition of the Equipment by Lessor), which are imposed against Lessor by any federal, state or local government or taxing authority upon or with respect to such Equipment or the use of such Equipment by Lessee during the term of this Lease Agreement, unless and to the extent only that any such tax, levy, impost, duty, charge or withholding is being contested in good faith and by appropriate proceedings. Notwithstanding the foregoing, Lessor and its principals shall be solely responsible for their respective income tax liabilities, and Lessee shall have no obligations with respect thereto. In case any report or any return is required to be made with respect to any obligation of Lessee under this Paragraph or arising out of this Paragraph, Lessee shall either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor, or notify in such manner as shall be satisfactory to Lessor. The obligations of Lessee under this Paragraph shall survive the termination of the Agreement. If Lessee fails to make any payment which it is obliged to make pursuant to this Paragraph, Lessor shall have the right, but shall not be obligated, to make such payment. In the event of such payment by Lessor,

Lessee shall repay to Lessor the amount thereof as additional rent hereunder with the next monthly rental payments.

7. Warranty. Lessor warrants that each item of Equipment leased hereunder is in good working order on the date of this Lease Agreement. Lessor shall, in accordance with the terms of this Lease Agreement, cause to be made all necessary adjustments, repairs and replacements necessary to remedy any defect in the Equipment existing on the date of this Lease Agreement. The obligation of Lessor under this Paragraph is limited to repair or replacement of any parts or items of Equipment required to place the Equipment in good working order on the date of this Agreement.

8. Maintenance and Repair; Return of Equipment. Except as provided in Paragraph 7, Lessee, at its own expense, shall keep and maintain, or cause to be kept and maintained, the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear excepted, and will provide or cause to be provided all maintenance and service and all repairs necessary for such prupose. In addition, except as provided in Paragraph 7 , if any parts or accessories forming part of any item of Equipment shall from time to time become worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, Lessee, at its own expense, shall within a reasonable time replace such parts or accessories, or cause the same to be replaced,by replacement parts or accessories which are free and clear of all liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessories replaced. All such replacement parts and accessories shall immediately become the property of Lessor and part of the respective item of Equipment

provided that such addition does not impair value or utility of such item; and any parts or accessories so added to such item, if not required to be added as a replacement as above provided, shall remain the property of Lessee or any other owner thereof and may be removed by Lessee at any time prior to the expiration of this Lease Agreement, provided that such removal does not impair the value or utility of the Equipment and that no Event of Default hereunder shall then have occurred and be continuing. All parts or accessories not so removed shall become the property of Lessor.

In the case of each item of Equipment, upon the expiration of this Lease Agreement or upon the earlier termination of this Lease Agreement upon the occurrence of an Event of Default, Lessee, at its own expense, shall return possession of the Equipment forthwith to Lessor. Upon such return of possession of the Equipment, Lessee agrees that there will be removed from the Equipment any name or other identification of Lessee thereon and that the Equipment will be in the same condition as when delivered to Lessee hereunder, ordinary wear and tear excepted, and free and clear of all liens, encumbrances or rights whatsoever except liens or encumbrances resulting from claims against Lessor or specified in Paragraph 9.

9. Liens and Encumbrances. Lessee shall not directly or indirectly create, incur or assume any mortgage, pledge, lien, attachment, charge, encumbrance or right on or with respect to the Equipment, except (i) the respective rights of Lessor and Lessee as herein provided, (ii) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, (iii) rights of parties to service agreements and

other agreements relating to the use of the Equipment entered into by Lessee in the ordinary course of its business, and (iv) inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent. Lessee shall promptly notify Lessor thereof in writing, and will promptly, at Lessee's expense, cause any such mortgage, pledge, lien, attachment, charge, encumbrance or right not excepted above which may arise at any time to be duly discharged, dismissed and removed as soon as possible, but in any event within 30 days after the existence of same shall have first become known to Lessee.

10. Identification. Lessee shall place on each item of Equipment insignia, plates or other identification of a size acceptable to Lessor and in a conspicuous place satisfactory to Lessor showing Lessor's title to such item.

11. Title and Idenmification. The Equipment is and shall remain personal property irrespective of its manner of attachment to realty or its use. Title to all Equipment leased hereunder shall remain with Lessor or its designee. Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages and liabilities, including attorneys' fees, arising in connection with the use of the Equipment by Lessee.

12. Further Assurances. Lessee shall promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time request in order to more effectively carry out the intent and purpose hereof and to establish and protect the rights, interests and remedies created, or intended to be

created, in favor of Lessor hereby, including without limitation, (i) the filing or recording of this Lease Agreement (or any schedule or amendment hereto), or a financing statement with respect hereto or thereto, in accordance with the laws of any applicable jurisdictions, and (ii) the taking of such further actions as Lessor may deem desirable to fully protect the interests of Lessor hereunder in accordance with the Uniform Commercial Code or other applicable laws. Lessee hereby authorizes Lessor to effect any such filing or recording as aforesaid (including the filing of any such financing statements without the signature of Lessee), and the costs and expenses of Lessor with respect thereto shall constitute additional rent, payable on demand.

13. Default of Lessee. The following events shall constitute events of default (herein called "Events of Default") hereunder: (i) Lessee shall fail to make any monthly rent payment within ten (10) days after the same shall become due; or (ii) Lessee shall fail to make any other payment or to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of twenty (20) days after written notice of Lessee thereof by Lessor; or (iii) any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect; or (iv) Lessee shall become insolvent or bankrupt or make any assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or a receiver shall be appointed for Lessee or for a

substantial part of its property without its consent and shall not be dismissed for a period of thirty (30) days, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee and, if instituted against Lessee, shall not be dismissed for a period of thirty (30) days. Upon the occurence of any Event of Default, and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease Agreement to be in default, and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do one or more of the following with respect to any or all of the Equipment as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(a) Lessor may enter the premises of Lessee and take immediate possession of the Equipment, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise, and, in such event, notwithstanding such termination, Lessor shall be entitled to recover all unpaid monthly rental payments that may have previously accrued; or

(b) Lessor may, without repossessing the Equipment, but without waiving its right so to do, continue to be entitled to receive monthly rental payments as scheduled pursuant to Paragraph 2, and may make such changes in the Equipment as to prevent its use by Lessee during the continuation of the Event of Default; provided that if the Event of Default described in clause (iv) of this Paragraph 13 shall have occurred, the entire aggregate amount of all unpaid monthly rental payments

through the end of the term of this Lease Agreement shall immediately become due and payable by Lessee to Lessor; or

(c) Lessor may avail itself of any other available remedies at law or in equity.

14. Amendment. This Lease Agreement expresses the entire agreement and understanding of the parties which may not be modified except in writing duly executed by the party to be charged with or affected by such modification.

15. Binding Effect. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties thereto.

16. Notices and Payments. Any notice, request, waiver or other communication required or permitted to be given by any party hereunder shall be considered sufficient and delivery thereof shall be deemed complete if delivered in person or mailed by registered or certified mail, postage pre-paid, and addressed to the respective parties at their addresses set forth below or to such other addresses with respect to any party of which such party shall notify the other parties in writing:

If to Lessor:

Datatel, Inc.
3700 Mount Vernon Avenue
Alexandria, Virginia 22305

If to Lessee:

Republican National Committee
Computer Services Division
310 First Street, S.E.
Washington, D.C. 20007

17. Non-Assignability. Neither this Lease Agreement nor any right, title or interest of either party herein shall be assignable, without the express written consent of the other party.

18. Additional Use of Machines. Lessee may, in its discretion, enter into subleases for the use of the equipment demised under this Agreement consistent with Paragraph 17 of this Agreement, provided however, that Lessee shall enter into no such Agreement with any Customer of Lessor without the express, written consent of Lessor. As used herein, "Customer of Lessor" shall mean any Customer who entered into any Agreement for services or equipment with Lessor ~~on~~ AS OF 8/19 MGD or after August 15, 1976, or who enters into any such Agreement with Lessor at any time during the operation of this Agreement.

19. Descriptive Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

20. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first hereinabove mentioned.

DATATEL, INC.

By Erkendrick J, Pres.

By Chmn.

Republican National Committee

**BEFORE THE FEDERAL ELECTION COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | MUR 1180 |
| Datatel, Inc. | ) | |

**DATATEL, INC. REPLY BRIEF**

I. Counter Statement of Facts

This matter arises as a result of an audit of the Republican National Committee ("RNC") performed by the Federal Election Commission, which audit indicated that Datatel, Inc. purchased computer time from the RNC during the audit period in the amount of $6,521.50. The office of the General Counsel has recommended a finding of Probable Cause that Datatel, Inc. violated 2 U.S.C. Sec. 441b by making a contribution to the RNC during the audit period. Datatel, Inc. was not a party of the audit and has not been advised how the sum in question was calculated. For purposes of this brief it will be assumed the amount is correct.

By way of background, Datatel, Inc. is a small closely held company engaged in the business of data processing. Its principal offices are located in Alexandria, Virginia. In the normal course of its business it periodically purchases the use of computer time from parties who offer the same for sale. It negotiates for this time and pays fair market value for it. Datatel, Inc. did purchase computer time on the computer it leased to the RNC. It did so in an arm's length transaction and at fair market value. It did not intend to make a gift or contibution of any kind in violation of the law. From the Commission memorandum and brief received it does not appear that the Commission determined that this purchase was "in conection with a Federal Election." Certainly Datatel did not intend for its payment to be in connection with such, nor did Datatel, Inc. intend in any way to make a political contribution.

Datatel, Inc. entered into a lease agreement for the use of a 360/40 IBM computer, along with related peripheral equipment, and facilites with the RNC on February 27, 1977. A copy of that lease agreement is attached hereto as Exhibit "A" and by this reference made a part hereof. The lease began on March 1, 1977 and ended on October 15, 1978. This lease culminated extended negotiations between the parties. Prior to the lease date, the RNC had purchased computer time from Datatel at its Alexandria facility on a "as needed" basis. During the period prior to the lease Datatel, Inc. would occasionally use this particular computer and equipment to process its overflow work that it could not accomodate on its other computer equipment. When the lease agreement was entered into, the parties contemplated that Datatel, Inc. would have the right to utilize the equipment for its excess work if same were available (particularly during the second and third shifts) and that it would pay to RNC a fair market rate for same. At the time of the lease Datatel, Inc.'s actual requirements were impossible to forecast. Had Datatel, Inc. been able to forecast its requirements, it would have done so and simply reserved computer time to itself and adjusted the lease rate to the RNC. The arrangements entered into was designed to accomplish the same result.

## II. Argument

Datatel, Inc. believes that is has substantiated its contention that its payment for computer time to the RNC is merely a modification of its leasing agreement between the parties and was not a corporate contribution made by Datatel, Inc. to the RNC.

The situation here is clearly and easily distinguished from those in Commission Advisory Opinions 1979-76, or 1979-17, in that the cited situations deal with a plan of fund raising by the RNC, in the one case by selling books and in the other by a credit card promotion. In this case, we do not believe that the action of the RNC was intended as a fund raising plan. The computer time in question was an asset of the

Committee developed in the normal course of its operations and primarily for its own use rather than to sell to others--a situation recognized as distinguishable by the Commission in Adviosry Opinion 1979-76.

The Advisory Opinions we have reviewed are careful to state that they relate "...to the specific factual situation" contained in the request. We believe this is appropriate and fair since otherwise unjust and unintended results could follow. Under the circumstances, and for the reasons set forth hereinabove, it is respectfully requested that the Commission not find Probable Cause to proceed and that the referenced matter be dismissed as to Datatel, Inc.

DATATEL, INC.
By Counsel

March 5, 1982
Date

David M. Davenport
DAVENPORT & ASSOCIATES, P.C.
6845 Elm Street - Suite 611
McLean, Virginia 22101

32040352903

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

TO:

Mr. William Taylor
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

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BEFORE THE
FEDERAL ELECTION COMMISSION

| | | |
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| In the Matter of | ) | MUR 1166 |
| | ) | |
| Franklin Mint Corporation | ) | MUR 1180 |

FRANKLIN MINT'S RESPONSE TO GENERAL COUNSEL'S RECOMMENDATION THAT THE COMMISSION FIND PROBABLE CAUSE THAT A VIOLATION OCCURRED

The General Counsel's office has advised Franklin Mint, by letter and memorandum dated January 29, 1982, that the General Counsel will recommend that the Federal Election Commission ("FEC") find probable cause that Franklin Mint has violated 2 U.S.C. §441b. At issue is whether Franklin Mint's purchase of property interests, for commercial purposes, from the national committees of the major political parties in the 1976 presidential campaign, constitutes a "contribution or other expenditure" to those committees. Although Franklin Mint set forth its position in a letter to the Commission on April 13, 1981, Franklin Mint reiterates herein the reasons why the General Counsel's office should not proceed with its recommendation.

2040350204

BACKGROUND

Franklin Mint is the world's largest private mint. Since its inception, an important part of Franklin Mint's business has been

the minting of coins and medallions commemorating significant events in the nation's history. Over the years, Franklin Mint has minted coins and medallions honoring historical figures, important events and the like, which are marketed as collectibles. Franklin Mint's intent is to have its coined products depict an event which has intellectual, sentimental, historical or other legitimate appeal to collectors. Although the raw material used in making the coins and medallions has intrinsic value, their real value stems from the purchaser's interest in the subject matter depicted (i.e., former presidents, ships, aeronautics, etc.).

In the 1970s, Franklin Mint determined that the national interest in presidential campaigns was such that the coining of medallions depicting the major participants in the presidential elections would be a successful commercial venture. Unlike symbols in the public domain (i.e., a state seal or a ship's design), however, the national committees of the major political parties claim a property right in any symbol represented as being the official symbol of the party. In order to avoid possible liability arising from the unauthorized use of these claimed property rights, Franklin Mint contacted the major political parties of each presidential campaign to negotiate an agreement which would allow Franklin Mint to use the committees' symbols.

In 1972 in order to assure compliance with applicable law, if required, Franklin Mint submitted to the General Accounting Office a proposed advertisement for commemorative medals to be marketed

depicting the candidates of the two major political parties in the 1972 campaign. The GAO was requested to advise whether a certification was required to be furnished to newspapers under Section 104 of the Federal Election Campaign Act, and the Comptroller General's Regulations issued thereunder, before a charge could be made for its advertisements. Certification would have been required if the advertisements were for the benefit of the candidate.

In accordance with Franklin Mint's position that its program was apolitical, the GAO ruled in an August 23, 1972 letter to Franklin Mint that:

> [W]e do not view this particular proposed advertisement as requiring a certification from the candidates of their authorized representatives. It seems to us that the overriding purpose of the advertisement is transparently commercial aimed to selling the medals rather than either of the candidacies of the two candidates. In this circumstance, we do not consider that the law was intended to restrict established commercial activities such as this. We understand that the striking of commemorative medals of this type is a part of the business customarily engaged in by the Franklin Mint.

A copy of the GAO's opinion issued by Deputy Director Thompson is attached hereto.

As a result of negotiations with the Republican National Committee and the Democratic National Committee in 1976, identical agreements were entered into allowing Franklin Mint to use a symbol representing these parties' campaigns. As part of the

agreement, Franklin Mint was permitted to represent the medallions as the official campaign medals. In return for allowing Franklin Mint to use the committees' claimed property right (i.e., the symbols), Franklin Mint agreed to pay each committee, as the owner of the symbol, a royalty equal to 15% of sales, with a minimum royalty of $30,000. The committees were additionally provided a limited quantity of the medals.

## ARGUMENT

### I.

### THE TWO ADVISORY OPINIONS RELIED UPON BY THE GENERAL COUNSEL CONTAIN A CENTRAL ELEMENT LACKING HERE, THE PURPOSEFUL USE OF CORPORATE ASSETS TO PROMOTE THE POLITICAL INTEREST OF ONE MAJOR CANDIDATE OR PARTY.

In Franklin Mint's letter of April 13, 1981, to the FEC, Franklin Mint explained that its program was wholly apolitical. As the affidavit of Franklin Mint's chairman stated:

> Franklin Mint's purpose in entering these arrangements was to earn a profit from the sale of the medals in question. It was not the purpose of Franklin Mint to influence any political election or to contribute to the success of any political party.

The term "contribution or expenditure" is defined in 2 U.S.C. §441b to include:

> ... any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value ... to any candidate, campaign committee, or political party or organization, in connection with any election to ... [Federal] office ...



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A literal reading of the prohibition against "direct or indirect payment [or] distribution ... of anything of value" would make it impossible for political committees to enter into any commercial transaction. Whenever a corporation sells to a political committee office supplies or leases its headquarters, the corporation can be said to be providing the political committee with something of value. Thus, if political committees are to function, commercial transactions cannot be deemed "contributions or expenditures." A sensible construction of Section 441b requires the accommodation of commercial transactions entered into by political committees.

This accommodation requires a construction of the statutory language so that, unless a corporation's business arrangement with a political committee has as its purpose the influencing of a campaign and in fact results in a benefit being given one significant party or candidate, no "contribution" has been made. See Comments of Mr. Hansen, p. 43379 (Nov. 30, 1971) (definition of "contribution" in 441b is aimed at prohibiting "active electioneering directed at general public" by corporations); FEC v. Weinstein, 462 F.Supp. 243 (S.D. N.Y. 1978) (describing narrow purpose for limiting contributions by corporations).

Primarily relying upon two FEC advisory opinions, Advisory Opinion 1979-17 (the "credit card program") and Advisory Opinion

1976-50 (the "tee-shirt program") the General Counsel appears to have rejected this sensible construction of the statute. These opinions, however, are inapposite. In different ways the programs at issue in these opinions had, at least as one of their substantial purposes, the use of corporate assets to promote the political interest of one candidate or major political party to the resulting detriment of another candidate or party. This was not the case in Franklin Mint's program.

In the credit card program the corporation intended expressly to allow the Republican National Committee to use the corporation's mailings as a conduit for the committee's political material. The recipient of the mailing received only the Republican message. Other parties' material was not to be included. The end result was that the recipient of the corporate mailing would have received only material promoting the Republican party. Included in the mailed material could have been not only political messages but requests for contributions. Thus, the corporation was to affirmatively participate in a promotion of one party over another.

Similarly in the tee-shirt program, the "message" which was conveyed was the popular support of Senator Richard Lugar's candidacy for election to the Senate. The visibility of Lugar tee-shirts provided public recognition similar to any advertisement. There is no indication that the corporation in the tee-shirt program manufactured shirts for other candidates. The impression

conveyed in the request for an advisory opinion was that the corporation desired to benefit the Lugar campaign by making the shirts available for sale by Lugar volunteers. In fact, order forms were distributed by Lugar volunteers who clearly did not provide prospective purchasers an opportunity to purchase shirts for other candidates. As was the case in the credit card program, the whole purpose of the program was the giving of a political advantage to one candidate or party over another.

In contrast to these two programs is Franklin Mint's sale of medallions. The symbols on the Franklin Mint coins were not intended to convey a political message or show support for a candidate. The symbols were -- in Franklin Mint's view and undoubtedly in the view of most Franklin Mint collectors -- regarded in much the same way as the many other symbols depicted on Franklin Mint collectibles. More importantly, the advertisements of the coins, unlike the political material in the card program or the order forms carried by the Lugar volunteers, depicted all major participants in the 1976 presidential campaign.

The marketing of the medals certainly was apolitical. The Franklin Mint advertised the coins as collectibles not as political material. As stated in the letter to prior Franklin Mint custsomers attached to Franklin Mint's April 12, 1981 submission to the FEC:

> As you know, many past Presidential Campaign commemoratives are today highly valued by collectors. And, since the 1976 Presidential

> Campaign promises to be one of the most exciting in years, it seems quite likely that the official medals of this campaign will be widely sought after by collectors in the future.

Thus, unlike the card program or the tee-shirt program, no political message was ever conveyed.

In sum, unless there are circumstances which indicate that a payment was made to a political committee for the purpose of influencing an election, there can be no reason to believe that a payment made pursuant to a commercial arrangement is a prohibited contribution.

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II.

THE INTERPRETATION OF SECTION 441b URGED BY THE GENERAL COUNSEL WILL UNCONSTITUTIONALLY DEPRIVE POLITICAL COMMITTEES OF VALUABLE PROPERTY RIGHTS AND IMPERMISSIBILITY INFRINGE UPON FRANKLIN MINT'S RIGHT TO PURSUE ITS LINE OF BUSINESS

The value to Franklin Mint customers of the medals involved in the campaign program was derived in part from the designation of the medals as the "Official Presidential Campaign Medal." The major party's political committees have taken the position that the right to designate memorabilia as "Official" is a property right of the committees. Franklin Mint would not have agreed to pay a royalty to these committees absent an insistence by the committees of payment for the use of such a property interest. Similarly, had Franklin Mint not obtained an agreement from the committees but simply used the "Official" designation, Franklin

Mint could have anticipated that litigation would have ensued. The position of the General Counsel, if adopted by the FEC, would effectively deprive the Committees of all value derived from a valuable property right. There is no statutory or constitutional support for the General Counsel's position.

The General Counsel has not cited any statutory authority for the proposition that Congress intended to deprive political committees of the right to sell assets. The General Counsel's attempt to distinguish between tangible and intangible assets (General Counsel's Brief at p. 6) is without support in the statute, court decisions, or the legislative history. It is an attempt to have the FEC go well beyond the powers it was delegated.

Under the General Counsel's approach to the Franklin Mint program, no major political party can receive payment for use by another of intangible property rights owned by the party, although presumably the committee could sue for unauthorized use. Likewise, the collectors' item industry, of which Franklin Mint is a part, could not utilize a symbol of a political campaign without running the risk of litigation from a political committee (if no payment is made for use of the property interest) or from the FEC (if royalties are paid).

The General Counsel's recommendation, if adopted by the FEC, thus will unconstitutionally deprive the political committees of a

property right and impermissibly interfere with Franklin Mint's right to pursue its line of business.

## CONCLUSION

For the reasons stated above Franklin Mint respectfully submits that its payments to the Democratic and Republican National Committees pursuant to the Presidential Campaign Medal Program in 1976 did not violate 2 U.S.C. §441b.

Respectfully submitted,

James P. Mercurio
Gary S. Marx
Arent, Fox, Kintner, Plotkin
& Kahn
1815 H Street, N. W.
Washington, D. C. 20006

By James P. Mercurio
Attorneys for Franklin
Mint Corporation

Dated: March 1, 1982

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Precedential

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF FEDERAL ELECTIONS

August 23, 1972

Mr. Charles Andes, President
The Franklin Mint
Franklin Center, Pennsylvania 19063

Dear Mr. Andes:

Your firm has submitted to this Office a copy of a proposed advertisement for commemorative medals to be marketed depicting the candidates of the two major political parties in the 1972 Campaign. One medal will bear the image of President Richard M. Nixon and the other Senator George S. McGovern. Our advice was requested whether a certification would be required to be furnished to newspapers under Section 104 of the Federal Election Campaign Act and the Comptroller General's regulations issued thereunder before a charge could be made for the advertisement.

The proposed ad contains a picture of both medals and separate coupons for ordering each from the Mint. A copy of the ad is attached.

Based on our review of the copy and conversations with representatives of your firm, we do not view this particular proposed advertisement as requiring a certification from the candidates or their authorized representatives. It seems to us that the overriding purpose of the advertisement is transparently commercial aimed at selling the medals rather than either of the candidacies of the two candidates. In this circumstance, we do not consider that the law was intended to restrict established commercial activities such as this. We understand that the striking of commemorative medals of this type is a part of the business customarily engaged in by the Franklin Mint.

Sincerely yours,

L. Fred Thompson
Deputy Director

Attachment

*Announcing*

# THE OFFICIAL
# PRESIDENTIAL
# CAMPAIGN MEDAL

*Available only during the 1972 Presidential*

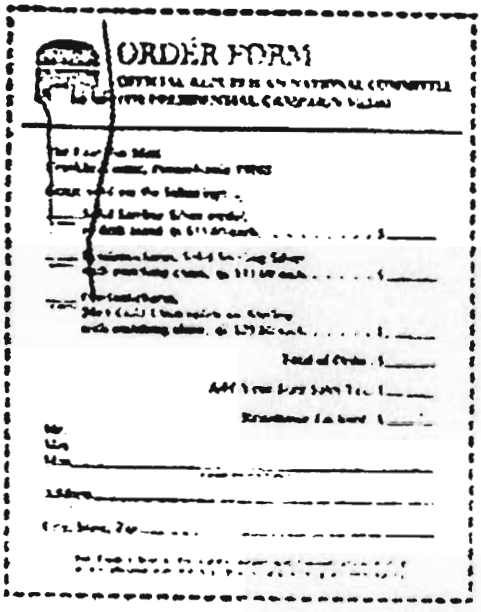
## REPUBLICAN

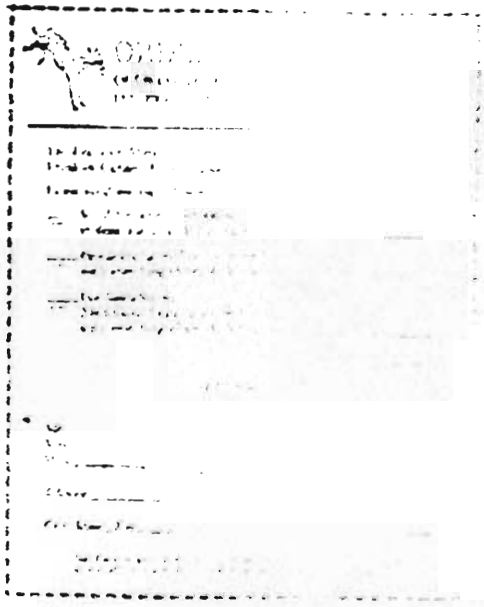
## DEMOCRATIC

Illustration
Nixon
Medal

*The Official Presidential Campaign Medal of the Republican National Committee*

*The Official Presidential Campaign Medal of the Democratic National Committee*



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1982

David M. Davenport, Esquire
611 McLean Office Center
6845 Elm Street
McLean, Virginia 22101

RE: MUR 1180

Dear Mr. Davenport:

This is in reference to your letter dated February 9, 1982, requesting an extension of time to respond to the Office of General Counsel's brief recommending probable cause that your client violated certain provisions of the Federal Election Campaign Act of 1971, as amended. This Office would like to inform you that it is willing to grant you twenty additional days in which to respond to our brief.

We will be looking forward to receiving your brief by March 8, 1982, if not sooner. Should you have any questions, please call William Taylor, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 12, 1982

James P. Mercurio, Esquire
Arent, Fox, Kitner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166 and 1180

Dear Mr. Mercurio:

This is in reference to your letter dated February 5, 1982, requesting an extension of time to respond to the Office of General Counsel's brief recommending probable cause that your client violated certain provisions of the Federal Election Campaign Act of 1971, as amended. This Office would like to inform you that it is willing to grant you until March 1, 1982 to respond to our brief.

We will be looking forward to receiving your brief by March 1, 1982, if not sooner. Should you have any questions, please call William Taylor, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

2040352917

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James P. Mercurio, Esquire
Arent, Fox, Kitner, Plotkin
and Kahn
1815 H Street, N.W.
Washington, D.C. 20006

RE: MUR 1166 and 1180

Dear Mr. Mercurio:

This is in reference to your letter dated February 5, 1982, requesting an extension of time to respond to the Office of General Counsel's brief recommending probable cause that your client violated certain provisions of the Federal Election Campaign Act of 1971, as amended. This Office would like to inform you that it is willing to grant you until March 1, 1982 to respond to our brief.

We will be looking forward to receiving your brief by March 1, 1982, if not sooner. Should you have any questions, please call William Taylor, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 8, 1982

E. Mark Braden, Esquire
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1180

Dear Mr. Braden:

This is in reference to your letter dated February 1, 1982, requesting an extension of time to respond to the Office of General Counsel's brief recommending probable cause that your client violated certain provisions of the Federal Election Campaign Act of 1971, as amended. This Office would like to inform you that it is willing to grant you twenty additional days in which to respond to our brief.

We will be looking forward to receiving your brief by February 21, 1982, if not sooner. Should you have any questions, please call William Taylor, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esquire
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1180

Dear Mr. Braden:

This is in reference to your letter dated February 1, 1982, requesting an extension of time to respond to the Office of General Counsel's brief recommending probable cause that your client violated certain provisions of the Federal Election Campaign Act of 1971, as amended. This Office would like to inform you that it is willing to grant you twenty additional days in which to respond to our brief.

We will be looking forward to receiving your brief by February 21, 1982, if not sooner. Should you have any questions, please call William Taylor, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

GCC# 7/81 RECEIVED

FEB 12 P4:

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R. KEVIN KENNEDY

WILLIAM C. BAUKNIGHT
(COUNSEL)

*ALSO ADMITTED IN D.C.

F.D. RICHARDSON
(1884-1954)
HUGH S. MARSH
(1900-1976)


February 12, 1982

FILE NO.

BY MESSENGER

Office of the General Counsel
Federal Election Commission
Seventh Floor
1325 K Street, N.W.
Washington, D.C. 20463

Re: American Medical Laboratories, Inc.
MUR 1180

Gentlemen:

I enclose herewith three copies of the brief of American Medical Laboratories, Inc. in response to your brief, which was received on January 29, 1982.

Ten copies have been filed on this day in the Office of the Secretary.

Sincerely yours,

Randolph W Church

Randolph W. Church, Jr.

RWC,Jr./dmr
cc: Ira D. Godwin, M.D.
William Taylor, Esquire

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FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR No. 1180

STATEMENT OF AMERICAN MEDICAL LABORATORIES, INC. IN RESPONSE TO GENERAL COUNSEL'S BRIEF

Introduction

By a letter dated February 23, 1981, the Federal Election Commission notified American Medical Laboratories, Inc. ("AML") that the Commission had reason to believe that AML violated 2 U.S.C. §441b(a) when it purchased two disc packs with controller for $11,000.00 from the Republican National Committee ("the RNC") in October of 1978.

AML filed its response on April 8, 1981, denying any wrongdoing and requesting a dismissal of the charges against it. On January 28, 1982, General Counsel filed his brief, recommending "that the Commission find no Probable Cause that American Medical Labroatories, Inc. violated 2 U.S.C. §441b . . . . "

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AML presents the following factual and legal material for the Commission's consideration.

## Factual Background

In 1976, the RNC purchased a 10 megabyte disc pack as part of a Microdata Reality computer system. Sometime thereafter, the RNC purchased an additional 10 megabyte disc pack. (Affidavit of William Fanning, Vice-President of Marketing of Datatel, Inc.).

As the information storage needs of the RNC increased, the two 10 megabyte disc packs became inadequate. Accordingly, the RNC purchased a 150 megabyte disc pack in 1978, which increased seven and a half times its information storage capability. (Affidavit of Ronald Charnock, Director of Computer Services of the RNC).

The 150 megabyte disc pack cannot be used in conjunction with the two 10 megabyte disc packs, as illustrated by the manufacturer's "Configuration Rules:"

The 150 MB disc pack drives cannot be mixed with Royale configurations having 10 MB fixed disc drives and/or 25 MB disc drives. (Attachment No. 1 to Fanning Affidavit).

Thus, the RNC had no further use for the two 10 megabyte disc packs and desired to sell them. (Charnock Affidavit).

A third party, William Fanning of Datatel, Inc., brought the RNC and AML together, knowing that the RNC wanted to sell this equipment and that AML wanted to purchase this type of equipment. (Fanning Affidavit).

In 1978 the manufacturer's price for two new 10 megabyte disc packs with controller was $20,650.00. (Attachment No. 2 of the Fanning Affidavit). Used equipment of this type would have sold in 1978 for at least $13,000.00 - $14,000.00 (Affidavit of David Schraeder, President of Innovative Computers, Inc.). AML paid $11,000.00 for this same equipment. This is considered a commercially reasonable price. (Fanning & Schraeder Affidavits).

AML is still using the two 10 megabyte disc packs with controller today. (Affidavit of C. R. Cumming, Vice-President



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of AML). In purchasing this equipment, AML did not intend to make a contribution.

As to both parties, the transaction was one undertaken for business reasons alone. The price agreed upon was the product of arms-length bargaining.

## Legal Analysis

The Commission found "reason to believe" that AML violated §441b(a) of the Federal Election Commission Campaign Act of 1971 ("the Act"), which provides, in pertinent part, that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. §441b(a).

There is no dispute that the subject transaction occurred. The sole issue to be decided is whether that transaction consitutes a violation of the Act.

### a. Business Purpose

This transaction is not one prohibited by the Act. It was entered into solely for business purposes. Prior to

this transaction the RNC and AML were not in contact with each other. They were brought together in the market place by the computer firm which serviced both accounts. William Fanning of Datatel, Inc. acted, in effect, as an unpaid broker to bring the buyer and seller together in the market-place. The RNC had no further use for the two 10 megabyte disc packs with controller, since its storage needs could only be fulfilled by a 150 megabyte disc pack which, according to the manufacturer itself, could not be used in conjunction with 10 megabyte disc packs. AML needed 10 megabyte disc packs for its normal business operations. It was able to secure this equipment at a favorable price, and it did so.

The nature of "contributions" prohibited by the Act was considered in United States v. Chestnut, 533 F.2d 40, 45-46 (2d Cir.), cert. denied 429 U.S. 829 (1976), where a corporation paid an advertising agency for services rendered to a candidate's campaign committee. In holding that a prohibited contribution had occurred under 18 U.S.C. §610 [the predecessor of 2

U.S.C. §441b], the court observed that the corporation had incurred no obligations of its own to the advertising agency. The corporation simply discharged obligations incurred by the campaign committee in promoting its candidate to the public, thereby making a contribution.

Unlike the payment in Chestnut, AML's $11,000.00 payment satisfied its own obligation -- the indebtedness arising from the purchase of computer equipment which is integral to its daily business operations.

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b. No Contributory Intent

AML had no intention or desire to make a "contribution" to the RNC.

In United States v. Clifford, 409 F.Supp. 1070, 1074 (E.D. N.Y. 1976), the court held that in order to prove a violation of the statutory predecessor of 2 U.S.C. §441b, the Government must show that the defendant intended to influence the election. Intent is a question to be determined by the jury. No jury would conclude, based on the facts of

this case, that AML intended to influence an election when it purchased computer equipment for business purposes at a commercially reasonable price.

c. Not "In Connection With Any Election"

AML's purchase of computer equipment had no connection with any election and does not, therefore, fall within the ambit of the Act.

The legislative motivation for legislation such as 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b] was the necessity for destroying the influence over elections which corporations exercised through financial contributions. United States v. Lewis Food Co., 366 F.2d 710, 713-714 (9th Cir. 1966), citing United States v. Congress of Industrial Organizations, 335 U.S. 106, 113 (1948). One court has observed that the thrust of the Act "is to regulate contributions and expenditures made for the relatively narrow purpose of influencing federal elections." FEC v. California Medical Ass'n., 502 F.Supp. 196, 201 (N.D. Cal. 1980) (emphasis

added). The Act was not, however, designed to frustrate commercially reasonable transactions, such as that between AML and the RNC.

In United States v. Boyle, 482 F.2d 755, 760 (D.C. Cir.), cert. denied 414 U.S. 1076 (1973), the court ruled that in order to establish a violation of 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b], the Government must prove beyond a reasonable doubt that an organization made a contribution or expenditure in connection with a specified federal election for purposes of active electioneering and that the defendant officer consented to the making of the contribution.

And in Miller v. American Telephone & Telegraph Co. 507 F.2d 759, 764 (3rd Cir. 1974), it was held that plaintiffs in a stockholders' derivative action must establish that "the contribution was in connection with a federal election."

Fundamentally, this transaction was a business one. It was not done "in connection with any election," and it

cannot be held to be a violation of the Act. See Ash v. Cort, 350 F.Supp. 227, 231-232 (E.D. Pa.), aff'd 471 F.2d 811 (3rd Cir. 1972), rev'd on other grounds 442 U.S. 66 (1975).

d. The Commission's Excess Equipment Rule

This Commission has consistently recognized the validity of sales by a political committee of its excess equipment. E.g., FEC Advisory Opinions 1981-7 & 1979-76. That exception governs the situation at hand. There is no prohibited corporate contribution where, as here, the asset which is sold has been developed by a political committee in the normal course of operations and primarily for its own use rather than to sell to others. FEC Advisory Opinion 1979-18 (sale of mailing lists to credit card company held not to be prohibited).

The two 10 megabyte disc packs were purchased by the RNC in 1976 for use in its own operation. It was not purchased with the anticipation that it would at some future

time be a fund raising item. Indeed, these disc packs were used for two years by the RNC and were only sold when they could no longer fulfill the needs of the RNC.

Nor was the computer equipment sold by the RNC for "general fund raising purposes." This transaction is clearly distinguishable from a campaign committee's sale of artwork in order to raise money to retire obligations which will be or have been incurred for the purpose of influencing a Federal election. See FEC Advisory Opinions 1980-34 & 1980-136. Here, the equipment was sold for two reasons: (1) it was no longer adequate to fulfill the information storage needs of the RNC, and (2) it had a marketable value and if sold, would help defray the cost of the new, larger equipment purchased by the RNC. The used computer equipment was a capital asset in the hands of the RNC. As this Commission has recognized, political committees have a quasi-fiduciary obligation to manage their assets. FEC Advisory Opinion 1979-17. The RNC was compelled to attempt to sell this excess equipment at a commercailly reasonable price.

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Independent experts in the computer industry believe that the $11,000.00 purchase price was a commercially reasonable one. (Fanning and Schraeder Affidavits). Where the transaction price paid was "no greater than the usual and normal charge for those specific materials, the Commission [has] concluded that no 'contribution' would take place and that the sale would not be prohibited under the Act." FEC Advisory Opinion 1979-24.

Commercially reasonable transactions must be permitted. AML purchased the equipment to facilitate the operation of its own business, and it is still using this equipment today. The transaction was not an intentional disguised contribution.

Nor can this transaction be characterized as an "innocent" or "accidental contribution" which is a technical violation of the Act, even though unintended. To do so would chill every commercial transaction by a political committee and make it impossible for any committee to dispose of any goods

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or equipment -- indeed any property real, personal or mixed -- to any corporation or labor union except by gift. Such an absurd result would clearly constitute an unreasonable restraint on alienation. Dunlop v. Dunlop's Ex'rs., 144 Va. 297, 310, 132 S.E. 351, 354 (1926) (devise to son of absolute fee simple title in both real estate and tangible personal property held to vest in son absolute control and ownership, notwithstanding subsequent condition that he should only receive one-fourth if he sold the property).

A required extension of the view that the transaction constituted a contribution is a finding that a sale of the same equipment back to the RNC by AML would be a contribution since the Act defines "anything of value" as being equivalent to "money." If AML cannot exchange money for equipment with the RNC, neither could it exchange equipment for money. If this situation were to obtain, then every purchase by the RNC of office equipment, paper -- or any item -- from a corporation would be a contribution. As Commissioners

Aikens and Friedersdorf have stated, "It was not the purpose of the Act to preclude bona fide business relationships between political committees and corporations or banks." FEC Advisory Opinion 1979-17 (dissenting opinion).

Surely, the Commission would not seek to require the parties to act in a commercially unreasonable manner by requiring the RNC to retain equipment for which it had no use and AML to forego acquiring equipment which has been, and still is, integral to is business operations. Neither the Act nor the opinions of this Commission support such a result.

General Counsel's Brief

In his brief, the Commission's General Counsel emphasizes two aspects of the present situation in concluding the no violation of the Act has occurred. First, the RNC, as an entity which has the capacity for indefinite existence, will occasionally have obsolete equipment that though no longer of use to it, will have some fair market value. Second, the

computer equipment sold by the RNC to AML was not a fund-raising device. General Counsel concludes that "the sale of excess computer equipment by the RNC and receipt of corporate monies from American Medical Laboratories, Inc. should not be considered as a corporate contribution in contravention of §441b of the Act." AML concurs in these observations. Where an ongoing committee sells equipment which is no longer useful at a price which is no greater than fair market value, the conclusion is inescapable that the purchaser has not made a "contribution" to the committee.

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Conclusion

For the reasons set forth above and for those set forth in General Counsel's brief, AML respectfully requests that the Commission and find no Probably Cause that AML violated 2 U.S.C. §441b and dismiss the charge against it.

American Medical Laboratories, Inc.

By: _____
Counsel

Randolph W. Church, Jr.
Grady K. Carlson
McCANDLISH, LILLARD & CHURCH
A Professional Corporation
4069 Chain Bridge Road
Fairfax, Virginia 22030
(703) 273-2440
Counsel for
American Medical Laboratories, Inc.

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FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I, William Fanning, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, Vice President of Marketing of Datatel, Inc., a corporation engaged in the business of selling computer equipment and services.

2. Both American Medical Laboratories, Inc. (hereinafter referred to as "AML") and the Republican National Committee (hereinafter referred to as "RNC") are customers of Datatel.

3. In 1976, Datatel sold a 10 megabyte (MB) disc drive and pack to the RNC as part of a Microdata Reality computer system. Subsequently, the RNC purchased an additional 10 MB disc making its total disc 20 MB.

4. Thereafter, the RNC purchased a 150 MB disc pack, and I learned that the RNC wanted to sell the two used 10 MB discs with controller in order to help defray the cost of the 150 MB disc upgrade to its system and because the manufacturer's configuration rules do not permit the use of a 150 MB disc with 10 MB discs. (See Attachement No. 1).

5. I learned that AML wanted to buy two 10 MB discs with controller, as it already had a system which it wished to expand.

6. I advised the RNC that AML was in the market for this equipment, and I advised AML that RNC wanted to sell

same.

7. In 1978, the manufacturer's list price for two 10 MB discs with controller was a total of $20,650. (See Attachment No. 2).

8. In my opinion, the purchase price of $11,000.00 for two used 10 MB discs paid by AML in October of 1978 was a commercially reasonable one.

I understand that a false statement or answer to any question in this Affidavit may subject me to penalties for perjury.

W. Fanning
William Fanning

STATE OF VIRGINIA
COUNTY OF Fairfax, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, this the 8th day of April, 1981 by William Fanning.

Sylvia K. Craig
Notary Public

My commission expires: April 7, 1984

**ROYALE™** By Microdata 2 4 0 3 5 2 9 3 9

# PRICE CONFIGURATION

Date

Dealer | Dealer Purchase Order No. | Customer Purchase Order No.

Customer Name | Requested Installation Date

Customer Address (Street, City, State, Zip)

| MODEL | | QUANTITY | PRICE | MONTHLY MAINTENANCE* |
|---|---|---|---|---|
| | **BASE SYSTEM CONFIGURATION** | | | |
| 4016** | "A" Series; CPU, system cabinet, 16KB core, 10MB fixed disc drive, Lodestar™ tape cartridge, Prism™ and port, 120 cps Matrix Printer ..... | _____ | x $35,995 = _____ | 291 = _____ |
| 4017 | "B" Series, CPU, system cabinet, 32KB core, 10MB fixed disc drive, 800 bpi magnetic tape (concurrent), Prism and port ..... | _____ | x 43,875 = _____ | 362 = _____ |
| 4018 | "C" Series; CPU, system cabinet, 32KB core, 25MB disc pack drive, 800 bpi magnetic tape (DMA), Prism and port..... | _____ | x 56,386 = _____ | 517 = _____ |
| 4019 | "D" Series; CPU, system cabinet, 32KB core, 150MB disc pack drive, 800 bpi magnetic tape (DMA), Prism and port..... | _____ | x 101,300 = _____ | 692 = _____ |
| | **MEMORY** | | | |
| 4083 | 16KB core (128KB max) ..... | _____ | x 3,500 = _____ | 54 = _____ |
| | **MASS STORAGE** | | | |
| 4443 | 10MB Disc Controller for up to two drives..... | _____ | x 2,500 = _____ | 25 = _____ |
| 4448 | 10MB Fixed Disc Subsystem, includes 10MB fixed disc, controller for up to two drives, cable and expansion cabinet ..... | _____ | x 11,250 = _____ | 113 = _____ |
| 4449 | 10MB Fixed Disc Drive, includes cable (must have one or three 10MB drives)..... | _____ | x 9,400 = _____ | 88 = _____ |
| 4587 | 25MB Disc Pack Drive Subsystem, includes 25MB disc pack drive, controller for up to four drives, interface and cable ..... | _____ | x 14,600 = _____ | 170 = _____ |
| 4588 | 25MB Disc Pack Drive, includes cable (for use with existing controller) ..... | _____ | x 12,200 = _____ | 80 = _____ |
| 4573 | 2nd 150MB Disc Pack Drive, includes cable ..... | _____ | x 23,700 = _____ | 200 = _____ |
| 4574 | 3rd or 4th 150MB Disc Pack Drive, includes host interface and cable..... | _____ | x 29,600 = _____ | 250 = _____ |
| | **MAGNETIC TAPE** | | | |
| 4281 | Upgrade 800 bpi, concurrent mode, magnetic tape subsystem (model 4017) to 800 bpi DMA magnetic tape subsystem ..... | _____ | x 1,700 = _____ | 15 = _____ |
| 4282 | Upgrade 800 bpi DMA magnetic tape subsystem (model 4018) to 1600 bpi DMA magnetic tape subsystem ..... | _____ | x 1,700 = _____ | 15 = _____ |
| 4283 | 800 bpi, NRZI, 25 ips magnetic tape subsystem (DMA); includes controller/ formatter (1 x 4), tape drive, cabinet and cable ..... | _____ | x 11,000 = _____ | 90 = _____ |

*A discount of 5% is granted when published monthly maintenance charges are prepaid annually.

**Any enhancement to Model 4016 (Series A) configuration necessitates a one-time upgrade charge of $6,000.

77 405

ATTACHMENT NO. 2

## ROYALE™ CONFIGURATION RULES

1. The CPU chassis in the Royale™ Base System configurations (Models 4016, 4017, 4018 and 4019) contains a total of nineteen (19) slots of which four (4) slots are used for the processor. The following chart shows the space required for each base system configuration and the slots available for installation of additional I/O interfaces and core memory.

| MODEL | *SPACE (SLOTS) REQUIRED | SLOTS AVAILABLE |
|---|---|---|
| 4016 | 8 | 11 |
| 4017 | 10 | 9 |
| 4018 | 9 | 10 |
| 4019 | 10 | 9 |

*Includes core memory modules

If the I/O interfaces and core memory modules that are required for the configuration exceed the number of available slots, an I/O Expansion Chassis (Model 4033) and Expansion Cabinet (Model 4023) must be ordered.

2. Each Royale Base System configuration includes a single-bay cabinet which accommodates a magnetic tape drive or up to four (4) tape cartridge drives, the Royale CPU and its options, and up to two (2) 10MB 2400 RPM disc drives. If more than two 10MB drives are required, Model 4448 is required which not only consists of 10MB fixed disc subsystem (controller and drive) but includes an expansion cabinet to accommodate the third drive.

3. **Disc Configuration Rules**

Two 10MB disc drives may operate with one disc controller and a maximum of four (4) 10MB drives (i.e., two disc controllers) are allowed per system. The larger 25MB disc pack drives may be mixed with Royale configurations having 10MB fixed disc drives. The controller for the 25MB drive can accommodate up to four drives. A maximum of eight 25MB disc pack drives (i.e., two disc controllers) are allowed per system. A total of three disc controllers for 10MB or 25MB drives may be included in a Royale system.

*The 150MB disc pack drives cannot be mixed with Royale configurations having 10MB fixed disc drives and/or 25MB disc pack drives. The controller for the 150MB drive can accommodate up to four drives allowing a total of 600MB on the system.*

3 0 4 0 3 5 2 9 4 1

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR No. 1180

I, C. R. Cumming, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, Vice President for Finance of American Medical Laboratories, Inc. ("AML").

2. In October of 1978, AML purchased two used 10 megabyte disc packs with controller from the Republican National Committee ("the RNC") for $11,000.00. This price was substantially less than that being quoted by other sellers for this same equipment.

3. AML became aware of RNC's desire to sell this equipment through William Fanning of Datatel, Inc. Prior to this time, AML was not in contact with the RNC.

4. The two 10 megabyte disc packs with controller were purchased by AML for use in its daily business operations. AML is still using this equipment today and regards it as an integral part of its operation.

5. The $11,000.00 price was one arrived upon after negotiations between the RNC and AML.

6. In purchasing this computer equipment, AML did not intend or desire to make a contribution to the RNC. AML entered into this transaction solely for business reasons.

7. AML has never made a contribution to any political fund or party.

C. R. Cumming

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public, on this the 8th day of April, 1981 by C. R. Cumming, Vice President for Finance of American Medical Laboratories, Inc.

Sylvia K. Craig
Notary Public

My commission expires: April 7, 1984.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I, David Schraeder, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, President of Innovative Computers, Inc., a corporation engaged in the business of selling Microdata computers.

2. I have been active in the computer industry since 1962.

3. I am not employed by, nor do I own stock in, American Medical Laboratories, Inc.

4. It is my opinion that Innovative Computers, Inc. would have sold two used 10 MB disc packs with controller in 1978 for $13,000.00 or $14,000.00. Our prices for used Microdata computer equipment are generally lower than those quoted by other firms in the industry.

5. It is my opinion that the purchase price of $11,000.00 for two used 10 MB disc packs with controller paid by AML in October of 1978 was a commercially reasonable one.

I understand that a false statement or answer to any question in this Affidavit may subject me to penalties for perjury.

David Schraeder

STATE OF VIRGINIA

COUNTY OF Roanoke, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, this the 7th day of April, 1981 by David Schraeder.

Patricia S. Willoughby
Notary Public

My Commission expires: March 2, 1983.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I Ronald Charnock, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, the Director of Computer Services of the Repulican National Committee (hereinafter referred to as "the RNC").

2. In 1978, the RNC purchased one 150 megabite disk drive and pack for its Microdata "Realty" computer system.

3. Having no further use for the existing two 10 megabite disk drive and packs with controller, the RNC advised Datatel, Inc. that it desired to sell this equipment.

4. William Fanning of Datatel informed the RNC that American Medical Laboratories, Inc. (hereinafter referred to as "AML") wanted to purchase this type of equipment.

5. Thereafter, the RNC sold this excess equipment to AML for $11,000.00.

6. The two 10 megabite disk drive and packs with controller were used by the RNC in the normal course of its business, and were replaced only when the business needs of the RNC exceeded the capability of this equipment.

I understand that a false statement or answer to any quesition in this Affidavit may subject me to penalties for perjury.

Ronald Charnock

DISTRICT OF COLUMBIA, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public, on this the _____ day of April, 1981 by Ronald Charnock, Director of Computer Services of the Republican National Committee.

_____
Notary Public

My Commission expires: _____.

RECEIVED
82 FEB 16 P2:00

ENVELOPES UNLIMITED INC.
BOX 6002, 649 NORTH HORNERS LANE, ROCKVILLE, MARYLAND 20850 / 301 424 3300

February 10, 1982

Federal Election Commission
Washington, DC 20463

Re: MUR 1180

Attention: Secretary of the Commission

Dear Sir:

In reviewing the contents of your letter dated January 28, 1982, and the attached General Counsel's brief, it is our believe, after checking our records, that we are not in violation of 2 U.S.C. & 441b.

The amount in question, $812.50, would appear to be payment to the Republican National Finance Committee for purchase of 125,000 #9 ivory window envelopes at $6.50/M.

These envelopes were ordered by another customer - Public Service Research Council - and as the Republican National Finance Committee had these envelopes on hand we purchased them to meet our other customer's needs.

I have enclosed copies of our records and trust that they will help clarify this transaction and help put the matter to rest.

If we can be of further assistance, please do not hesitate to ask our assistance.

Respectfully yours,

Anthony I. Massiah
Comptroller

Enclosures

AIM:j

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Mr. Jay Bruce Mackey
Envelopes Unlimited, Inc.
649 North Home Lane
Rockville, Maryland 20850

RE: MUR 1180

Dear Mr. Mackey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your company violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

7676

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

2204036521740

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Envelopes Unlimited, Inc. )

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to records of the RNC, Envelopes Unlimited purchased, in June of 1976, computer time from theRNC for $812.50. The RNC contends that it owns, as part of its operations, a large, sophisticated computer facility. On occasions when the RNC and other Republican organizations are not using the computer facilities to its fullest extent, the RNC offered (and apparently offers) the use of its facilities for a fee "no greater than the usual and normal charge."

II. Legal Analysis

The sale of computer time by the RNC to Envelopes Unlimited is basically the leasing of the RNC's computer equipment for a specific period of time. Unlike a computer program of all the registered voters in a county or a computer program that selects at random 900 precincts throughout the country, the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business and is not

something created primarily for RNC's own use. The RNC is in the business of politics, and this business would call upon the RNC to keep a record of all public officials in the country, to compile lists of all the registered voters in each political unit throughout the country, and to compile lists of all the registered Republican voters in each of these political units. The RNC is not, however, in the business of selling computer time; its computer equipment is something it purchased from a company that was in the business of selling computer equipment and is not something created by the RNC in the ordinary course of carrying out its business.

The sale of computer time by the RNC cannot be analogized to the sale of excess or obsolete equipment or supplies. Though the RNC, in selling computer time, was selling the use of its equipment at a time when it was not using this equipment, there is no permanent transfer of ownership of the computer equipment by the RNC to Envelopes Unlimited, as there was in the sale of the computer disc packs. Envelopes Unlimited merely obtains the right to use the computer equipment for a period of time.

Because the RNC received corporate funds from Envelopes Unlimited, that could be used for the purposes of influencing a federal election, and because the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business or is the sale of obsolete equipment, it is the opinion of the Office of General Counsel that the receipt

of funds by the RNC from Envelopes Unlimited, a corporation, is in contravention of § 441b of the Act, regardless of whether the RNC did or did not make a profit on the transaction. See Advisory Opinions 1975-15 and 1979-76.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find Probable Cause that Envelopes Unlimited, Inc. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

PAY $812.50 TO REPUBLICAN
NATIONAL FINANCE COMMITTEE FOR
PURCHASE OF 125,000 #9
IVORY WINDOW ENVELOPES AT $6.50/M

SOLD TO PUBLIC RESEARCH
COUNCIL C0143.9

PAID
3/9/76
#5490

402

C-9142

Date In

Date Due As per

MUST

Cust. P.O. 1760

Salesman

Account No. [illegible]

Customer [illegible]

Delivery Creative Printing

5171 Lawrence Pl

Pricing

Cost per M

Plate

Comp

Billing

Job 2043.75

Other

Total 2793.75

Tax 1.75

Total 2795.50

Specifications

1) Type of Envelope [illegible]

Ordered

Supplier

Date

Cost

2) Press Run [illegible]

3) Ink [illegible]

4) Description [illegible]

5) Special Comments [illegible]

PRESSMAN MUST FILL OUT

PRESSMAN [illegible]

HELPER 110,000 [illegible]

RUN [illegible] 125000

DATE 3/2/76

PRESS NO. 1

PROOFED

DELIVERY

PARTIAL

COMPLETE

DELIVERED BY

D 60

9,000 Put P.O. & Duplicate

Copies of Invoice

(1) 1181.25

(2) 613.50

2043.75

[redacted]

Office of the General Counsel
Federal Election Commission
Washington, DC 20463

RECEIVED
7168
82 FEB 16 P2:

# DAVENPORT & ASSOCIATES, P. C.

ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006

82 FEB 16 P4:42

February 9, 1982

Mr. William Taylor
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Datatel Inc. Your File: MUR 1180

Dear Mr. Taylor:

Please be advised this firm represents Datatel Inc. and has received a copy of Mr. Steele's letter and General Counsel's brief in the matter dated January 28, 1982. Same was received by us February 1, 1982.

In accordance with our telephone conversation, I wish to request an additional twenty (20) days in which to file our responsive brief in opposition to the proposed findings of the Commission. The reason for the requested extension is that counsel must be out of town on the west coast for the balance of this week and will not have an opportunity to meet with his clients and prepare responsive documents within the fifteen (15) day period.

If you have any questions regarding this request, please contact Robert J. Davenport of this office.

Thanking you in advance for your consideration and cooperation,

I am,

Very truly yours,

DAVENPORT & ASSOCIATES, P.C.

Robert J. Davenport
for David M. Davenport

DMD/jeh

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 MCLEAN OFFICE CENTRE
6845 ELM STREET
MCLEAN, VIRGINIA 22101

NORTHERN VIRGINIA, VA 220
PM
10 FEB
1982

RETURN RECEIPT REQUESTED

P21 [illegible]
MAIL

Mr. William Taylor
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

102782 RECEIVED
Gen# 7105
82 FEB 5 P12:58

**Arent, Fox, Kintner, Plotkin & Kahn**

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

February 5, 1982

BY HAND

Ms. Marjorie W. Emmons
Secretary
Federal Election Commission
1325 K Street, N.W., 5th Floor
Washington, D. C. 20463

82 FEB 5 P3:26

Re: Franklin Mint Corporation
MUR 1166 and 1180

Dear Ms. Emmons:

We are counsel for Franklin Mint Corporation in the above matters.

We have been advised by letters dated January 28, 1982 (in MUR 1180) and January 29, 1982 (in MUR 1166) that the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. §441b has occurred in each of these matters. Under 11 C.F.R. §111.6 a responsive brief would be due on or before February 15, 1982 in each of these matters.

I respectfully request that the time in which a brief may be filed on behalf of Franklin Mint Corporation in both of these matters be extended to and including March 1, 1982. We are unable to file a responsive brief prior to that date because the member of Franklin Mint's Law Department who has responsibility for this matter within the company must be outside of the United States on other business from February 8 through February 22, 1982.

Thank you for your consideration in this matter.

Sincerely,

James P. Mercurio

JPM:kcm
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006

02 FEB 5 P12:58

Charles N. Steele, Esquire
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D. C. 20463

**Arent, Fox, Kintner, Plotkin & Kahn**

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

10781 RECEIVED
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82 FEB 5 P12:58

James P. Mercurio
(202) 857-6092

February 5, 1982

BY HAND

Ms. Marjorie W. Emmons
Secretary
Federal Election Commission
1325 K Street, N.W., 5th Floor
Washington, D. C. 20463

82 FEB 5 P3:32

Re: Franklin Mint Corporation
MUR 1166 and 1180

Dear Ms. Emmons:

We are counsel for Franklin Mint Corporation in the above matters.

We have been advised by letters dated January 28, 1982 (in MUR 1180) and January 29, 1982 (in MUR 1166) that the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. §441b has occurred in each of these matters. Under 11 C.F.R. §111.6 a responsive brief would be due on or before February 15, 1982 in each of these matters.

I respectfully request that the time in which a brief may be filed on behalf of Franklin Mint Corporation in both of these matters be extended to and including March 1, 1982. We are unable to file a responsive brief prior to that date because the member of Franklin Mint's Law Department who has responsibility for this matter within the company must be outside of the United States on other business from February 8 through February 22, 1982.

Thank you for your consideration in this matter.

Sincerely,

James P. Mercurio

JPM:kcm
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006

RECEIVED

82 FEB 5 P12:58

Thomas Whitehead, Esquire
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D. C. 20463

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Ccc# 7093

ublican
tional
mmittee

Mark Braden
ouse Counsel

atherine E. Gensior
Deputy House Counsel

February 1, 1982

FEB 2 P4:58

Charles N. Steele, General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 1180

Dear Mr. Steele:

This letter is to request from the Commission an extension of time in which to file a brief in response to your letter and brief received on February 1, 1982.

This matter has been under consideration by the Commission for a period in excess of two years. I feel that the fifteen day response period offered in your letter to the Republican National Committee is not adequate for a considered response.

Your prompt reply to this letter with an indication of the Commission's decision on this request will be appreciated.

Very truly yours,

E. Mark Braden

EMB:jd

cc: Roger Allan Moore
General Counsel
Republican National Committee

Republican
National
Committee

8214063

WASHINGTON
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D.C.

U.S POSTAGE
0.20
METER
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Charles N. Steele, General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

BCC# 7091


# BAKER & HOSTETLER

ATTORNEYS AT LAW

815 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

(202) 861-1500

TELECOPIER (202) 857-0010

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 621-0200
TWX 810 421 8375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 228-1541

IN DENVER, COLORADO
500 CAPITOL LIFE CENTER
DENVER, COLORADO 80203
(303) 861-0600

IN ORLANDO, FLORIDA
SUITE CNA TOWER
ORLANDO, FLORIDA 32802
(305) 841-1111

WRITER'S DIRECT DIAL NO.:
(202) 861- 1572


February 2, 1982

Charles N. Steele, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1180

Dear Mr. Steele:

This office represents Civic Services, Inc., respondent in the above-captioned matter. This letter is in response to your letter of January 28, 1982 and the enclosed General Counsel's Brief which recommends that the Federal Election Commission ("FEC") find no probable cause to believe that our client violated 2 U.S.C. §441b by purchasing voter precinct computer lists from the Republican National Committee ("RNC") in March of 1977. We concur with this recommendation for the reasons stated in the General Counsel's Brief and for the reasons stated in our submission of April 24, 1981, which I hereby incorporate by reference.

The General Counsel's Report in support of the recommendation likens our client's transaction with the RNC to "the Bailey-Deardourff sale." General Counsel's Report at 3. We wish to point out for the record that we are unaware of any such "sale," nor of any determination by the FEC on the public record involving such "sale." Consequently we are unable to comment on its factual or legal relevance to our client's case.

We do not intend to file a separate brief on behalf of our client. We reserve all such rights in the event the FEC fails to adopt your recommendation.

Sincerely,

Jan W. Baran

JWB:gh

cc: Roy Pfautch

8204033296 5

Charles N. Steele, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

1180811 RECEIVED

Scott 7022

02 FEB 8 A10:50


LAW OFFICES

**PEABODY, LAMBERT & MEYERS**

A PROFESSIONAL CORPORATION

WASHINGTON, D.C. 20036

TWELFTH FLOOR
CONNECTICUT BUILDING
1150 CONNECTICUT AVENUE, N.W.

TELEPHONE (202) 457-1000
CABLE ADDRESS "EXCELSIOR"
TELEX 897413

ENDICOTT PEABODY
JEREMIAH D. LAMBERT
TEDSON J. MEYERS
CHARLES T. DUNCAN
DAVID J. TAYLOR
MICHAEL W. FABER
JOHN R. FERGUSON
TIMOTHY J. WATERS
JOHN T. SCHELL
CHARLES R. WORK
JOHN A. HODGES
ROBERT H. MORSE
ROBERT A. WARDEN
ROBERT N. JENSEN
COLLISTER JOHNSON, JR.
ROBERT P. VISSER
TIMOTHY L. HARKER
NATHALIE P. GILFOYLE
RONALD J. DOLAN

LAWRENCE WHITE
JEANNE A. CARPENTER
JOHN MARK JANSEN
NANCY MARIE STILES
MICHAEL W. BEASLEY
ROBERT J. MILLER
GLENN R. REICHARDT
JOEL S. WINNIK
WILLIAM D. COSTON
JEFFREY N. MARTIN
ROBERT A. HAZEL
DIANE GILBERT WEINSTEIN
JAY D. PEDELTY
ROBERT C. GODBEY
KATHRYN E. PAULI
JANINE H. COWARD
MYRON L. DALE
IRVIN A. MERMELSTEIN
PETER N. HIEBERT
MARK D. COLLEY
NEIL D. KIMMELFIELD

OF COUNSEL
LEWIS A. RIVLIN
ROBERT C. HACKER
JORGE L. CÓRDOVA, JR.

WRITER'S DIRECT DIAL NUMBER
(202) 457-1019


January 30, 1982

Charles N. Steele
General Counsel
Federal Election Commission
Washington DC 20463

Dear Mr. Steele:

Re: MUR 1180

As counsel to Market Opinion Research, I am pleased with the analysis and recommendation of the Office of General Counsel, and I do not intend to file any further brief in connection with this matter at this time.

Sincerely,

Robert P. Visser

Robert P. Visser

LAW OFFICES
PEABODY, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION
CONNECTICUT BUILDING - TWELFTH FLOOR
1150 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036




Charles N. Steele
General Counsel
Federal Election Commission
Washington DC 20463

102739 Ccc# 7080

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037
202 785-9700
TELEX: 892608 DSM WSH

JUSTIN D. SIMON
DIRECT DIAL
202 828-2211

598 MADISON AVENUE
NEW YORK, N. Y. 10022
212 832-1900

January 29, 1982

FEB 1 20:5 PM '82

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1180

Dear Mr. Steele:

We are in receipt of your letter dated January 28, 1982 in which you have informed us of the General Counsel's recommendation to the Commission that it find no probable cause to believe that a violation has occurred regarding our client, National Direct Mail Services, Inc. We have received a copy of the General Counsel's Brief. We concur entirely with the conclusion in that Brief for the reasons set forth there and in our letter to Mr. William Taylor of your office dated March 18, 1981. I am enclosing a copy of our letter as an appendix hereto.

Thank you for providing us with an opportunity to have our position made clear on the record.

Respectfully,

Justin D. Simon

Justin D. Simon

JDS:ms

Enclosure

cc: William Taylor, Esquire

8204015236

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037
202 785-9700
TELEX: 892608 DSM WSH

JUSTIN D. SIMON
DIRECT DIAL
202 828-2211

595 MADISON AVENUE
NEW YORK, N.Y. 10022
212 832-1900

BY HAND

March 18, 1981

William Taylor, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1180

Dear Mr. Taylor:

I am writing on behalf of our client, National Direct Mail Services, Inc. ("NDMS"), in response to the February 23, 1981 letter of Chairman McGarry. In that letter, Chairman McGarry reported that as a result of a routine audit by the Staff the Commission had issued a Notification of Reason to Believe Finding that NDMS had violated 2 U.S.C. §441b. The matter in issue concerns the purchase of envelopes by NDMS from the Republican National Committee ("RNC") for a total amount of $680.

It is our view that NDMS in no way violated §441b in this matter. Let me briefly outline the reasons for this conclusion. First, neither the FECA nor the regulations of the Commission prohibit any company from engaging in business transactions with a political committee.*/ That being so, the mere fact that a company such as NDMS made a purchase from the RNC in no way forms the basis for a "reason to believe" that §441b was violated. Second, the definition of contribution contained in §431 (and read into §441b(a)), requires that a payment be made "for the purpose of influencing any election for federal office" to constitute a "contribution." The reference to the term "contribution or expenditure" contained in §441(b)(2) merely elaborates on the basic definition of the Act, but does not eliminate the requirement that the payment be made for the purpose of influencing a election for federal office. There is nothing in the Commission's findings which indicates that

*/ See AO 1979-24

the Commission found such a prohibited purpose -- indeed, the Commission noted that its "evidence indicates that the corporation did not realize that they were making a contribution ... but believed they were involved in an arms-length transaction." Based on my discussions with the Staff, there is no evidence of such a prohibited purpose. Accordingly, on the face of the matter, we submit there is no factual basis for any further action by the Commission.

Third, when one probes below the surface, one discovers that there is no conceivable manner in which this transaction could be construed to violate the FECA. The 100,000 envelopes in question were purchased at cost. The envelopes were blank, ivory #7-3/4 with windows and were readily interchangable and usable for a multitude of commercial purposes by NDMS. Prior to their purchase by NDMS, these envelopes were collecting dust in a warehouse and, according to our information, the RNC was faced with one of three choices: 1) paying storage charges for them; 2) discarding them; or 3) selling them. At the time of the purchase, NDMS had another client for whom the envelopes could be used.

As the Commission made clear in Advisory Opinion 1979-24, political committees are allowed to engage in such sales as long as the price received for such goods "is not greater than the usual and normal charges for those specified materials." Since the Commission would have allowed RNC to sell these envelopes for their normal commercial value, a fortiori, they most certainly are allowed to sell excess supplies at cost. This is especially true where, as here, the purchaser has a legitimate commercial use for the items purchased.

The short of it is we do not believe there is any basis for any further action in this matter by the Commission. We remain more than willing to discuss this matter with you further if you have any questions.

Sincerely,

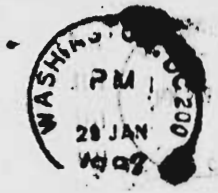
/s/

Justin D. Simon

JDS:ms

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037

82040352971




Charles N. Steel, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

102738 Gcc# 7081


DICKSTEIN, SHAPIRO & MORIN

2101 L STREET, N.W.

WASHINGTON, D.C. 20037

202 785-9700

TELEX: 892608 DSM WSH

JUSTIN D. SIMON
DIRECT DIAL
202 828-2211

598 MADISON AVENUE
NEW YORK, N. Y. 10022
212 832-1900


January 29, 1982

FEB 1 P5:03

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1180

Dear Mr. Steele:

We are in receipt of your letter dated January 28, 1982 in which you have informed us of the General Counsel's recommendation to the Commission that it find no probable cause to believe that a violation has occurred regarding our client, National Direct Mail Services, Inc. We have received a copy of the General Counsel's Brief. We concur entirely with the conclusion in that Brief for the reasons set forth there and in our letter to Mr. William Taylor of your office dated March 18, 1981. I am enclosing a copy of our letter as an appendix hereto.

Thank you for providing us with an opportunity to have our position made clear on the record.

Respectfully,

Justin D. Simon

Justin D. Simon

JDS:ms

Enclosure

cc: William Taylor, Esquire ✓

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037




William Taylor, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

82 03 15 07 3

Memo TO File 2/2/82

From Bill Taylor

SUBJECT MNR 1180 Brief w. the accompanying letter mailed TO Bailey Dear Dourff and Associates Inc.

Please email our Brief and a compangying letter to the address.

Bailey-Dear Dourff + Assoc. Inc
6720 Mc Lean Village Drive
Mc Lean Va 22101

2040527

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Official Business
Penalty for Private Use $300

POSTAGE AND FEES PAID




OGC

Douglas L. Bailey
Bailey, Deardourff and Associates, Inc.
McLean, Virginia 22101

SSC

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RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

82 JAN 28 P4: 21

January 28, 1982

MEMORANDUM

TO : The Commission

FROM : Charles N. Steele
General Counsel

SUBJECT: MUR 1180

Attached for the Commission's review are briefs (10) stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. Copies of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission findings of probable cause to believe and no probable cause to believe were mailed on January 28, 1982 Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Briefs (10)
2. Letters to Respondents

2040352176

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

James P. Mercurio, Esq.
1815 H Street, N.W.
Washington, D.C. 20036

RE: MUR 1180

Dear Mr. Mercurio:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurrred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

2 0 4 0 3 5 3 7 7

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8204035279

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Franklin Mint Corporatiaon )

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On October 27, 1976, the RNC deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (See attachment I), and in July of 1979 deposited in its operating account another check for $8,705.00, both from the Franklin Mint Corporation. 1/ When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol; the RNC provided the Audit staff with a copy of the agreement (See attachment II), which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

---

1/ The second check was received after the audit had been conducted.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. 2/ Any increase in this advertising budget would be subject to the Committee's approval.

d) The RNC would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the RNC's agreement, the Corporation would:

1) Pay the RNC royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the RNC at no charge a quantity of medals with a retail value of $5,000. 3/

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---

2/ On approximately the same date, the Corporation entered into an identical agreement with the Democratic National Committee.

3/ The RNC was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the RNC's records that the medals were received.

f) The RNC would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The RNC agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

## II. Legal Analysis

A. Franklin Mint Royalty

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws

and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission, in its regulations, has recognized that funds of a political committee could be invested and earn income. See 11 CFR § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (Advisory Opinion 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services sold by the committee. See also 11 CFR 100.7(a)(1)(iii)(A) and (B).

The present transaction is, however, similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing

RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties," with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee can produce using certain types of tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise". AO 1979-17, pp. 5 and 6.

In the present transaction, the RNC granted the corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the RNC's campaign symbol and authorized the corporation to make reference to the

the RNC's designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program", supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing the candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transactions, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find Probable Cause that the Franklin Mint violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

21 January 1982
Date

Charles N. Steele
General Counsel

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976

1-23
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Pay
to the order of Republican National Committee $20,000.00

Twenty thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR AMOUNTS
$25,000.00 AND LARGER

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(9)

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

August 11, 1976

Republican National Committee
310 First Street SE
Washington, D.C. 20003

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Republican Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. [illegible]
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

(II 0)

(10)

Your organization agrees to designate the above-described Republican Presidential Campaign medals as the Official Presidential Campaign Medals of the Republican National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Republican National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

day of August, 1976

Republican National Committee, except that we reserve the right to have prior approval of the design.

By: _____

(II (2))

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Mr. Alphons J. Hackl
2400 Seventeenth Street, N.W.
Washington, D.C. 20009

RE: MUR 1180

Dear Mr. Hackl:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your company had violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extentions beyond twenty days.

2040352087

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

2240352293

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Acropolis Books Ltd. )

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On June 22, 1976 and on October 23, 1976, the committee deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books Ltd. (Acropolis). The RNC reported the checks as "refund/rebates" and not as a contribution. When the audit staff inquired about the checks, the RNC explained that it was a royalty payment resulting from an agreement entered into on August 25, 1975 for the sale of a book called REPUBLICAN HUMOR BOOK. The RNC, the publisher and the authors of the book were all parties to the agreement.

The RNC provided the audit staff with a copy of the agreement that contains the following pertinent terms:

g) The publisher (Acropolis) agrees that the retail price of this work will be Four Dollars and Ninety-Five Cents ($4.95) and royalties will be paid to the Authors [Mr. Shabik and Mr. Short] and the Committee [RNC] on the following schedules:

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A. On the sales through the Republican National Committee, a royalty upon all copies of the work sold and paid for in the exclusive territory in Paragraph 1:

(iii) Two Dollars and Twenty-Five Cents ($2.25) per book to the committee, as long as Stephen J. Shubik [author] shall receive thirty (30) cents per book, thereafter Two Dollars and Fifty-Five Cents ($2.55) per book to the committee;

. . .

B. On sale through the normal book trade distribution channels a royalty upon all copies of the work sold and paid for in exclusive territory specified in Paragraph 1:

(iii) One Dollar ($1.00) to the committee (RNC) and One Dollar and Ten Cents ($1.10) after Stephen J. Shubik [author] has recovered his expense.

2040329

## II. Legal Analysis

The transaction between Acropolis and the RNC raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 CFR § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (Advisory Opinion 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services sold by the committee. See also 11 CFR § 100.7(a)(1)(iii)(A) and (B).

The persent transaction is, however, similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion

request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee can produce using certain types of tangible assets

and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, p. 5-6.

In the present transaction, apparently, the RNC granted Acropolis the right to use the name Republican in the title of the book Acropolis published and agreed to help sell the book. In so doing, the Committee, in essence, sold its good will and the reputation to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transactions, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

## III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find Probable Cause that Acropolis Books Ltd. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

8204035299

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Grady Carlson, Esq.
McCandlesh, Lelland, Church and Best
4069 Chain Bridge Road
Fairfax, Virginia 22030

RE: MUR 1180

Dear Mr. Carlson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for yur review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8204035297

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| American Medical Laboratories, Inc. | ) | |
| | ) | |

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to the records of the RNC, American Medical Laboratories, Inc. ("American Medical") purchased in October of 1978 two "disc pacs with controller" from the RNC for $11,000. American Medical and the RNC contend that these disc pacs were part of a Microdata Reality computer system purchased by the RNC from Datatel, Inc. ("Datatel") in 1976. In 1978, as the information storage needs of the RNC increased, the RNC purchased a 150 megabyte disc pac, which substantially increased RNC's information storage capability. According to American Medical and Datatel, a 150 megabyte disc pac cannot be used in conjunction with a 10 megabyte disc pac. Thus, the RNC had no further use for the equipment in question.

II. Legal Analysis

The issue raised by the facts presented in this transaction is basically: what can a national political party, as defined by 2 U.S.C. § 431(14), that is vested with the capacity of continued existence, do with excess or obsolete equipment without violating

§ 441b(b)(2) of the Act? The Commission has addressed the issue of the disposal of excess and obsolete equipment on two prior occasions in Commission Advisory Opinions 1979-24 and 1979-76. The former opinion was given by the Commission to Mr. Ronald Hein, an unsuccessful candidate for Congress in 1978, who in addition to maintaining an ongoing campaign committee under the Act, also maintained an active state campaign committee that under applicable state law could receive corporate contributions. Mr. Hein asked the Commission if his congressional committee could sell excess house signs and a typewriter to his state political committee, which had co-mingled corporte and labor monies, or to a state-registered political action committee, which otherwise did not qualify under federal law for contributions to a federal campaign. The Commission answered that a non-qualified PAC or the state political committee could purchase the excess campaign equipment, the house signs, and typewriter from Mr. Hein's federal committee so long as the price paid for the excess equipment is no greater than the usual and normal charge of those specific materials. The later Advisory Opinion, 1979-76, was issued by the Commission at the request of Mr. Richard B. Dingman, Treasurer of the RSC Campaign Fund ("RSC"). Mr. Dingman sought to determine whether RSC could sell a book, which it intended to publish, to individuals for a profit and to corporations, not at a profit, but to recover its costs, if RSC should be unable to find sufficient individual purchasers of its book. The Commission determined that when

a person transmits money to a political committee - any portion of which is available to be spent for the purpose of influencing a federal election - that person has made a contribution in the full amount of the funds transmitted, regardless of whether RSC made or did not make a profit on the transaction. The Commission then went on to distinguish the situation presented by RSC's request and the situation presented in Advisory Opinion 1979-24, mentioned supra. The Commission did so by holding that AO 1979-24 presented a factual situation where the campaign equipment was originally purchased for and used during the campaign by the campaign committee and, when sold, the proceeds were applied to satisfy the debts of the committee so that it could terminate.

The facts relating to this situation - the sale of computer equipment by the RNC to American Medical Laboratories - are similar to the facts before the Commission in Advisory Opinion 1979-24. The campaign committee of Mr. Hein had excess campaign equipment - house signs and a typewriter - to sell. In the instant case, the RNC had excess computer equipment to sell, which the evidence indicates it sold to American Medical at fair market value. Where the instant case differs from the situation presented to the Commission in Advisory Opinion 1979-24 is in one important area, and that is that the RNC, unlike the Hein's committee, was not selling its excess equipment to pay off its debts and then terminate.

A principal campaign committee of a candidate, by its very nature, contemplates becoming inactive and eventually terminating, either by the candidate deciding to terminate and forming a new political committee or by simply terminating. Except for reporting requirements, pursuant to Section 104.11 of the regulations (11 CFR 104.11), its principal function ceases upon the death or the political inactivity of the candidate. On the other hand, a party committee of a national party, like the Republican Party, has a function quite different from the function of a principal campaign committee, for it is established, not for the purposes of electing one individual to political office, but for the purpose of promoting the aims of the Republican Party, which includes the election of Republicans to public office. Unlike a principal campaign committee, a party committee of a national party, such as the RNC, does not by its very nature contemplate becoming inactive and, unlike a candidate, a national party is vested with the capacity for indefinite existence. Moreover, because of this capacity for indefinite existence, it is highly unlikely that the RNC will terminate in the near future. Nonetheless, it is highly probable that a party committee of a national party will have obsolete equipment or supplies that, though no longer of use to it, will have some fair market value.

In addition to the fact that the 10 megabyte disc pacs were inadequate for the increased needs of the RNC and incapable

of being integrated into the new computer system, it is self-evident that by the very nature of the equipment sold, it was not being sold as a fundraising device. Unlike a book, a jacket, a hat, or any of the items traditionally sold by political committees for the purpose of raising funds, computer equipment is not something that is purchased by a committee solely for the purpose of reselling it to a third party at a profit or to induce a contribution from a third party. Computer equipment is, however, that type of equipment that is originally purchased for and used by a party committee of a national party - The Republican Party. See Advisory Opinion 1976- 76.

For the reasons mentioned above, it is the opinion of the Office of General Counsel that the sale of excess computer equipment by the RNC and receipt of corporate monies from American Medical Laboratories, Inc., should not be considered as a corporate contribution in contravention of § 441b of the Act.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find no Probable Cause that American Medical Laboratories, Inc. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Justin D. Simon, Esq.
2101 L Street, N.W.
Washington, D.C. 20037

RE: MUR 1180

Dear Mr. Simon:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| National Direct Mail Services, Inc. | ) | |
| | ) | |

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to records of the RNC, National Direct Mail Services, Inc. ("National Direct Mail") purchased in 1977 and 1978 100,000 envelopes for $680.00. Both the RNC and National Direct Mail contend that the type of envelope purchased, blanks # 7.3/4 with windows, were the type of envelopes used by National Direct Mail in the normal course of carrying out its business - direct mailing. Furthermore, the RNC had no longer a need or a use for the envelopes in question; thus, they became excess supplies that could be sold or thrown out.

II. Legal Analysis

The issue raised by the facts presented in this transaction is basically: what can a national political party, as defined by 2 U.S.C. § 431(14), that is vested with the capacity of continued existence, do with excess or obsolete equipment without violating § 441b(2) of the Act? The Commission has addressed the issue of the disposal of excess and obsolete equipment on two prior occasions in Commission Advisory Opinions 1979-24 and 1979-76.

The former opinion was given by the Commission to Mr. Ronald Hein, an unsuccessful candidate for Congress in 1978, who in addition to maintaining an open campaign committee under the Act, also maintained an active state campaign committee that under applicable state law could receive corporate contributions. Mr. Hein asked the Commission if his congressional committee could sell excess house signs and a typewriter to his state political committee, which had co-mingled corporate and labor monies, or to a state-registered political action committee, which otherwise did not qualify under federal law for contributions to a federal campaign. The Commission answered that a non-qualified PAC or the state political committee could purchase the excess campaign equipment, the house signs, and a typewriter from Mr. Hein's federal committee so long as the price paid for the excess equipment is no greater than the usual and normal charge of those specific materials. The latter Advisory Opinion, 1979-76, was issued by the Commission at the request of Mr. Richard B. Dingman, Treasurer of the RSC Campaign Fund ("RSC"). Mr. Dingman sought to determine whether RSC could sell a book, which it intended to publish, to individuals for a profit and to corporations, not at a profit, but to recover its costs, if RSC should be unable to find sufficient individual purchasers of its book. The Commission determined that a when a person transmits money to a political committee - any portion of which is available to be spent for the purpose of influencing a federal election - that

person has made a contribution in the full amount of the funds transmitted, regardless of whether RSC made or did not make a profit on the transaction. The Commission then went on to distinguish the situation presented by RSC's request and the situation presented in Advisory Opinion 1979-24, mentioned supra. The Commission did so by holding that AO 1979-24 presented a factual situation where the campaign equipment was originally purchased for and used during the campaign by the campaign committee and, when sold, the proceeds were applied to satisfy the debts of the committee so that it could terminate.

The facts relating to this situation - the sale of computer equipment by the RNC to American Medical Laboratories - are similar to the facts before the Commission in Advisory Opinion 1979-24. The campaign committee of Mr. Hein had excess campaign equipment - house signs and a typewriter - to sell. In the instant case, the RNC had excess computer equipment to sell, which the evidence indicates it sold to American Medical at fair market value. Where the instant case differs from the situation presented to the Commission in Advisory Opinion 1979-24 is in one important area, and that is that the RNC, unlike the Hein's committee, was not selling its excess equipment to pay off its debts and then terminate.

A principal campaign committee of a candidate by its very nature contemplates becoming inactive and eventually terminating, either by the candidate deciding to terminate and forming a new

political committee, or by simply terminating. Except for reporting requirements, pursuant to Section 104.11 of the regulations (11 CFR 104.11), its principal function ceases upon the death or the political inactivity of the candidate. On the other hand, a party committee of a national party, like the Republican Party, has a function quite different from the function of a principal campaign committee, for it is established, not for the purposes of electing one individual to political office, but for the purpose of promoting the aims of the Republican Party, which includes the election of Republicans to public office. Unlike a principal campaign committee, a party committee of a national party, such as the RNC, does not by its very nature contemplate becoming inactive and, unlike a candidate, a national party is vested with the capacity for indefinite existence. Moreover, because of this capacity for indefinite existence, it is highly unlikely that the RNC will terminate in the near future. Nonetheless, it is highly probable that a party committee of a national party will have obsolete equipment or supplies that, though no longer of use to it, will have some fair market value.

In addition to the fact that the envelopes in question were of no use to the RNC, it is self-evident that by the very nature of the goods sold, they were not being sold as a fundraising device. Unlike a book, a jacket, a hat, or any of the items traditionally sold by political committees for the purpose of raising funds, envelopes are not something that are purchased

by a committee solely for the purpose of reselling it to a third party at a profit or to induce a contribution from a third party. Envelopes are, however, that type of goods that are originally purchased for and used by a party committee, such as the RNC, in carrying out its function as the party committee of a national party - The Republican Party. See Advisory Opinion 1976-76.

For the reasons mentioned above, it is the opinion of the Office of General Counsel that the sale of excess envelopes by the RNC and receipt of corporate monies from National Direct Mail Services, Inc. should not be considered as a corporate contribution in contravention of § 441b of the Act.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find no Probable Cause that National Direct Mail Services, Inc. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 28, 1982

William H. Schweitzer
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1180

Dear Mr. Schweitzer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Civic Services, Inc. )

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to the records of the RNC, Civic Services, Inc. (Civic Services), a nationwide polling firm, located in St. Louis, Missouri, purchased 900 precinct lists for a fee of $1,500. Civic Services contends that these precinct lists were needed by it for the purpose of conducting a nationwide poll and that the RNC was the only source of this information willing to sell these lists to Civic Services.

II. Legal Analysis

The receipt of funds by the RNC from Civic Services raises the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides:

> It is unlawful for any . . . corporation whatever . . .to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office].

The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the RNC, since the RNC is receiving funds that will be available for its political purpose. (See Advisory Opinions 1979-76, 1979-17, 1978-46, 1975-15).

According to evidence recently forwarded by Civic Services and the RNC, these lists were part of an RNC computer program of the approximately 180,000 precincts in the country. From this program of 180,000 precincts, 900 precincts were selected at random, and the pertinent information of each precinct drawn from the computer base. Civic Services states that these precinct lists were needed by it for the purposes of conducting a nation-wide poll and that the RNC was the only source of this information willing to sell these lists to Civic Services.

As a result of the additional information mentioned, supra, it appears that these precinct lists were purchased for fair market value by Civic Services in the ordinary course of carrying out

its business - polling. These lists were not created by the RNC for fundraising purposes, but were created in the normal course of RNC's business, which would include keeping a record by precinct of all votes in the country, and primarily for its own use. Like the Bailey-Deardourff sale, this transaction appears to be that type of commercial transaction permitted by the Commission in Advisory Opinions 1979-18 and 1979-24.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find no Probable Cause that Civic Services violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

2040353

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

David M. Davenport, Esq.
611 McLean Office Center
6845 Elm Street
McLean, Virginia 22101

RE: MUR 1180

Dear Mr. Davenport:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

32040355311

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Datatel, Inc. )

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to the records of the RNC, Datatel, Inc. purchased in 1977 and 1978 computer time from the RNC for $6,521.50. The RNC has stated that, at the time, it leased, as part of its operations, a large, sophisticated computer facility that it has on occasion offered, for a fee, computer time to Datatel. Datatel contends that it had a very unique relationship with the RNC in that it owned the computer equipment in question, and that it leased this equipment to the RNC, who in turn sold computer time to Datatel when the computer time was available and Datatel had a need for this time. Datatel had not substantiated, however, this contention and thus it is the opinion of the Office of General Counsel that until datatel can substantiate its contention that this transaction should be treated as a sale of computer time by the RNC to datatel.

II. Legal Analysis

The sale of computer time by the RNC to a vendor is basically the leasing of the RNC's computer equipment for a specific period of time. Unlike a computer program of all the registered voters

in a county or a computer program that selects at random 900 precincts through the country, the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business and is not something created primarily for RNC's own use. The RNC is in the business of politics, and this business would call upon the RNC to keep a record of all public officials in the country, to compile lists of all the registered voters in each political unit throughout the country, and to compile lists of all the registered Republican voters in each of these political units. The RNC is not, however, in the business of selling computer time; its computer equipment is something it purchased from a company that was in the business of selling computer equipment and is not something created by the RNC in the ordinary course of carrying out its business.

The sale of computer time by the RNC cannot be analogized to the sale of excess or obsolete equipment or supplies. Though the RNC in selling computer time was selling the use of its equipment at a time when it was not using this equipment, there is no permanent transfer of ownership of the computer equipment by the RNC to a vendor. The vendor merely obtains the right to use the computer equipment for a period of time.

Because the RNC received corporate funds from Datatel that could be used for the purposes of influencing a federal election, and because the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business

or is the sale of obsolete equipment, it is the opinion of the Office of General Counsel that the receipt of funds by the RNC from Datatel, a corporation, is in contravention of § 441b of the Act, regardless of whether the RNC did or did not make a profit on the transaction. See Advisory Opinions 1975-15 and 1979-76. Should Datatel be able, however, to substantiate its contention that it was merely buying computer time on a computer it leased the RNC, then in the opinion of the Office of General Counsel, this transaction would be basically a modification of the original terms of the leasing contract between the RNC and Datatel, and would not result in a corporate contribution being made by Datatel or received by the RNC.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find Probable Cause that Datatel, Inc. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

8204035017

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Mr. Jay Bruce Mackey
Envelopes Unlimited, Inc.
649 North Home Lane
Rockville, Maryland 20850

RE: MUR 1180

Dear Mr. Mackey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your company violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8204035019

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Envelopes Unlimited, Inc. )

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to records of the RNC, Envelopes Unlimited purchased, in June of 1976, computer time from theRNC for $812.50. The RNC contends that it owns, as part of its operations, a large, sophisticated computer facility. On occasions when the RNC and other Republican organizations are not using the computer facilities to its fullest extent, the RNC offered (and apparently offers) the use of its facilities for a fee "no greater than the usual and normal charge."

II. Legal Analysis

The sale of computer time by the RNC to Envelopes Unlimited is basically the leasing of the RNC's computer equipment for a specific period of time. Unlike a computer program of all the registered voters in a county or a computer program that selects at random 900 precincts throughout the country, the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business and is not

something created primarily for RNC's own use. The RNC is in the business of politics, and this business would call upon the RNC to keep a record of all public officials in the country, to compile lists of all the registered voters in each political unit throughout the country, and to compile lists of all the registered Republican voters in each of these political units. The RNC is not, however, in the business of selling computer time; its computer equipment is something it purchased from a company that was in the business of selling computer equipment and is not something created by the RNC in the ordinary course of carrying out its business.

The sale of computer time by the RNC cannot be analogized to the sale of excess or obsolete equipment or supplies. Though the RNC, in selling computer time, was selling the use of its equipment at a time when it was not using this equipment, there is no permanent transfer of ownership of the computer equipment by the RNC to Envelopes Unlimited, as there was in the sale of the computer disc packs. Envelopes Unlimited merely obtains the right to use the computer equipment for a period of time.

Because the RNC received corporate funds from Envelopes Unlimited, that could be used for the purposes of influencing a federal election, and because the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business or is the sale of obsolete equipment, it is the opinion of the Office of General Counsel that the receipt

of funds by the RNC from Envelopes Unlimited, a corporation, is in contravention of § 441b of the Act, regardless of whether the RNC did or did not make a profit on the transaction. See Advisory Opinions 1975-15 and 1979-76.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find Probable Cause that Envelopes Unlimited, Inc. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

2204036530122

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Douglas L. Bailey
Bailey, Deardourff and Associates, Inc.
McLean, Virginia 22101

RE: MUR 1180

Dear Mr. Bailey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| Bailey-Deardourff and Associates, Inc. | ) | |
| | ) | |

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to the records of the RNC, Bailey-Deardourff and Associates, Inc. ("Bailey-Deardourff") purchased from the RNC computerized precinct voter analysis lists ("PIP lists") for $750.00.

II. Legal Analysis

The receipt of funds by the RNC from Bailey-Deardourff raises the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides:

> It is unlawful for any . . . corporation whatever . . .to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal] office.

8204035021

The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the RNC, since the RNC is receiving funds that will be available for its political purpose. (See Advisory Opinions 1979-76, 1979-17, 1978-46, 1975-15).

As a result of the additional evidence presented by both the RNC and Bailey-Deardourff, the Office of General Counsel is of the opinion that the arms length commercial transaction entered into between the RNC and Bailey Deardourff is within the category of commercial activity previously permitted by the Commission in Advisory Opinion 1979-18 and in Advisory Opinion 1979-76. A PIP list is an asset created by the RNC in the normal course of its operations, which includes the analyzing of the basic political unit, namely, the precinct, and is developed, nor for fundraising purposes, but primarily for the RNC's own use.

## III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find no Probable Cause that

Bailey-Deardourff violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 January 1982
Date

Charles N. Steele
General Counsel

2204033025

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Robert P. Visser, Esq.
Peabody, Rivlin, Lambert and Meyers
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1180

Dear Mr. Visser:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| Market Opinions Research, Inc. | ) | |
| | ) | |

GENERAL COUNSEL'S BRIEF

I. Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

According to the records of the RNC, Market Opinions Research, Inc. ("Market Opinions") purchased for $800.00 a sample list of voters. Market Opinions and the RNC contend that the list in question was a sample list of registered Republicans for 28 California counties that Market Opinions used for the purposes of conducting a study of registered Republicans in the state of California for a client. Moreover, both the RNC and Market Opinions contend that this list had been developed by the RNC in the normal course of its operations and had been compiled primarily for its own use.

II. Legal Analysis

It appears that the commercial transaction entered into between the RNC and Market Opinions is within the category of commercial activity previously permitted by the Commission in Advisory Opinions 1979-18 and 1979-76. The sample lists in question sold by the RNC are that type of list that a major political

party would compile and maintain, namely, county lists of all registered members of the party. It is a list that the RNC would compile and maintain in the normal course of its business and would not be produced for the purpose of being sold to raise campaign funds. It is the type of list that a polling firm retained by a Republican gubernatorial candidate would need to conduct its business of polling Republican voters. Moreover, there is no evidence to indicate that the price charged by the RNC was other than fair market value. Thus, it is the opinion of the Office of General Counsel that given the additional information recently supplied to us, this transaction is within the category of permissible commercial activity.

III. Recommendation

The Office of General Counsel recommends, for the above-mentioned reasons, that the Commission find no Probable Cause that Market Opinions Research, Inc. violated 2 U.S.C. § 441b by making a contribution to the Republican National Committee.

28 Jan 1982
Date

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

E. Mark Braden, Esq.
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1180

Dear Mr. Braden:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, 2 U.S.C. § 434(b)(2), 2 U.S.C. § 434(b)(3) and 2 U.S.C. § 441a(d), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| The Republican National Committee | ) | |
| | ) | |

GENERAL COUNSEL'S BRIEF

Statement of Facts

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On October 27, 1976, the RNC deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (See attachment I), and in July of 1979 deposited in its operating account another check for $8,705.00, both from the Franklin Mint Corporation. 1/ When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol; the RNC provided the Audit staff with a copy of the agreement (See attachment II), which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's

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1/ The second check was received after the audit had been conducted.

campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. 2/ Any increase in this advertising budget would be subject to the Committee's approval.

d) The RNC would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the RNC's agreement, the Corporation would:

1) Pay the RNC royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the RNC at no charge a quantity of medals with a retail value of $5,000. 3/

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2/ On approximately the same date, the Corporation entered into an identical agreement with the Democratic National Committee.

3/ The RNC was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the RNC's records that the medals were received.

f) The RNC would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The RNC agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

On June 22, 1976 and on October 23, 1976, the committee deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The RNC reported the checks as "refund/rebates" and not as a contribution. When the audit staff inquired about the checks; the RNC explained that it was a royalty payment resulting from an agreement entered into on August 25, 1975 for the sale of a book called THE REPUBLICAN HUMOR BOOK. The RNC, the publisher and the authors of the book were all parties to the agreement.

The RNC provided the audit staff with a copy of the agreement (See attachment III), that contains the following pertinent terms:

g) The Publisher [Acropolis] agrees that the retail price of this work will be Four Dollars and Ninety-Five Cents ($4.95) and royalties will be paid to the Authors [Mr. Shabik and Mr. Short] and the Committee [RNC] on the following schedules:

A. On the sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory in Paragraph 1:

. . .

(iii) Two Dollars and Twenty-Five Cents ($2.25) per book to the committee, as long as Stephen J. Shubik [author] shall receive thirty (30) cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the committee;

. . .

B. On sale through the normal book trade distribution channels a royalty upon all copies of the Work sold and paid for in exclusive territory specified in Paragraph 1:

. . .

(iii) One Dollar ($1.00) to the committee (RNC) and One Dollar and Ten Cents ($1.10) after Stephen J. Shubik [author] has recovered his expense.

From January of 1976 through March of 1979, the RNC deposited into its operating account funds in the amount of $24,206.48 it received from sixty-six corporations and one labor organization. The most outstanding receipts are as follows:

a) Civic Services Incorporated: $1500 (precinct lists);

b) Datatel Inc.: $6,521.50 (computer time);

c) Envelopes Unlimited: $812.50 (computer services);

d) National Direct Mail Service, Inc.: $680.00 (envelopes);

e) Market Opinion Research, Inc.: $800.00 (list sample);

f) Bailey Deardourff and Associates, Inc.: $750.00 (Pips listings);

g) American Medical Laboratories, Inc.: $11,100.00 (disc parts with controller).

For the 1976 Congressional election, the RNC set up approximately 800 telephone banks ("phone banks") throughout the country for the purpose of identifying voters who would vote for certain selected Republican candidates. In October of 1977, the RNC filed an amended report listing the amounts it expended on each of the candidates it selected for help. On behalf of one candidate for Congress, Mr. David Serotkin, the RNC expended $14,890.00 pursuant to 2 U.S.C. §441a(d) and in doing so exceeded the 1976 2 U.S.C. §441a(d) limitations by $3,908.

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## Legal Analysis

I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. §441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. §441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from §441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 CFR §103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (Advisory Opinion 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services sold by the committee. See also 11 CFR §100.7(a)(1)(iii)(A) and (B).

The present transaction is, however, similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name,

the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties," with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. §441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee can produce using certain types of tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pp. 5 and 6.

In the present transaction, the RNC granted the corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the RNC's campaign symbol and authorized the corporation to make reference to the RNC's designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of §441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing the candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. §441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established

collectors, thereby advancing funds and contributing valuable services to the Committee in violation of §441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transactions, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. §441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

II. The Acropolis Books Ltd., Royalty Payment

The RNC listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the RNC, Acropolis, and the two authors of the book on August 25, 1975, whereby the RNC would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK.

In section I of the report, we analyzed that the Franklin Mint royalty payments were a corporate contribution; that analysis fits

the situation here. Moreover, the contract entered into by the RNC, the authors of the book, and the publisher, Acropolis Books Ltd., specifically requires the publisher to pay the RNC a sum certain for each copy of the book sold. The funds in question came directly from Acropolis Ltd., a corporation, pursuant to an agreement among the above-mentioned parties and not from the personal funds of either of the authors of the book. Thus, it is the opinion of the Office of General Counsel that funds received by the RNC from Acropolis Books Ltd. represent the receipt of corporate funds in violation of 2 U.S.C. §441b.

III. Sale of Goods and Services by The RNC

From January 1976 through March 1979, The RNC deposited in its operating account funds in the amount of $24,206.48 it received from some sixty-six corporations and one labor union.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. §441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. §441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office].

The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the RNC, since the RNC is receiving funds that will be available for its political purpose. (See Advisory Opinions 1979-76, 1979-17, 1978-46, 1975-15.)

In entering the finding of Reason to Believe, the Commission did so only against those corporations making the most substantial payments to the RNC. Because of additional evidence presented by the RNC, and most particularly by the respective corporate entities, it is incumbent upon the Office of General Counsel to analyze each transaction separately; it must be added, that this additional information was not available to the Commission auditors during this audit.

(1) Bailey, Deardourff and Associates, Inc. ("Bailey Deardourff") purchased from the RNC computerized precinct voter analysis lists ("PIP lists") for $750.00. According to evidence presented by the RNC and Bailey Deardourff, these lists were purchased for fair market value by Bailey Deardourff in the ordinary course of carrying out its business of political consulting. Moreover, these lists were created by the RNC in the normal course of carrying out its operations and primarily for its own use, rather than for sale to others.

As a result of the additional evidence presented by both the RNC and Bailey Deardourff, the Office of General Counsel is of the opinion that the arms length commercial transaction entered into between the RNC and Bailey Deardourff is within the category of commercial activity previously permitted by the Commission in Advisory Opinion 1979-18. In this opinion, the Commission held that the Federal Election Commission's Former Employees Committee ("FEC-FEC") could sell its contributor lists and no contribution would result from this sale, so long as the purchase price did not exceed the usual and normal charge for such a list and the list was developed by the committee in the normal course of its operations rather than to sell to others. Also see AO 1979-76. A pip list is an asset created by the RNC in the normal course of its operations, which includes the analyzing of the basic political unit, namely, the precinct, and is developed, not for fundraising purposes, but primarily for the RNC's own use.

(2) Civic Services, Inc. ("Civic Services"), a nationwide polling firm, located in St. Louis, Missouri, purchased 900 precinct lists for a fee of $1500. According to evidence recently forwarded by Civic Services and the RNC, these lists were part of an RNC computer program of the approximately 180,000 precincts in the country. From this program of 180,000 precincts, 900 precincts were selected at random, and the pertinent information of each precinct drawn from the computer base. Civic Services contends that these precinct lists

were needed by it for the purposes of conducting a nationwide poll and that the RNC was the only source of this information willing to sell these lists to Civic Services.

As a result of the additional information mentioned, supra, it appears that the facts relating to this situation are similar to the transaction between Bailey Deardourff and the RNC. Apparently, these precinct lists were purchased for fair market value by Civic Services in the ordinary course of carrying out its business - polling. These lists were not created by the RNC for fundraising purposes, but were created in the normal course of RNC's business, which would include keeping a record by precinct of all votes in the country, and primarily for its own use. Like the Bailey Deardourff sale, this transaction appears to be that type of commercial transaction permitted by the Commission in Advisory Opinions 1979-18 and 1979-24.

(3) Market Opinions Research, Inc. ("Market Opinions"), a nationwide polling organization involved in political market research, was retained by a Republican gubernatorial candidate in the state of California in 1976 for the purposes of conducting a study of registered Republicans in California. According to both the RNC and Market Opinion Research, Market Opinion Research purchased for $800 a sample list of registered Republicans for 28 California counties. Moreover, both respondents contend that this list had been developed by the RNC in the normal course of its operations and had been compiled primarily for its own use.

As with Bailey Deardourff and Civic Services, it appears that the commercial transaction entered into between the RNC and Market

Opinions is within the category of commercial activity previously permitted by the Commission in Advisory Opinions 1979-18 and 1979-24. The sample lists in question sold by the RNC are that type of list that a major political party would compile and maintain, namely, county lists of all registered members of the party. It is a list that the RNC would compile and maintain in the normal course of its business and would not be produced for purpose of being sold to raise campaign funds. It is the type of list that a polling firm retained by a Republican gubernatorial candidate would need to conduct its business of polling Republican voters. Moreover, there is no evidence to indicate that the price charged by the RNC was other than fair market value. Thus, it is the opinion of the Office of General Counsel that given the additional information recently supplied to us, this transaction, like the other transactions mentioned, supra, is within the category of permissible commercial activity.

(4) American Medical Laboratories, Inc. ("Americal Medical") purchased in October of 1978 from the RNC two 10 megabyte disc pacs with controller for $11,000. According to information recently supplied by American Medical, these disc pacs were part of a Micro-data Reality computer system purchased by the RNC from Datatel, Inc. ("Datatel") in 1976. In 1978, as the information storage needs of the RNC increased, the RNC purchased a 150 megabyte disc pac, which substantially increased RNC's information storage capability. According to American Medical and Datatel, Inc., the company that originally sold the equipment in question to the RNC, a 150 megabyte disc

pac cannot be used in conjunction with a 10 megabyte disc pac. Thus, the RNC had no further use for the equipment in question.

The issue raised by the facts presented in this transaction is basically: what can a national political party, as defined by 2 U.S.C. §431(14), that is vested with the capacity of continued existence, do with excess or obsolete equipment without violating §441b(b)(2) of the Act? The Commission has addressed the issue of the disposal of excess and obsolete equipment on two prior occasions in Commission Advisory Opinions 1979-24 and 1979-76. The former opinion was given by the Commission to Mr. Ronald Hein, an unsuccessful candidate for Congress in 1978, who in addition to maintaining an ongoing campaign committee under the Act, also maintained an active state campaign committee that under applicable state law could receive corporate contributions. Mr. Hein asked the Commission if his congressional committee could sell excess house signs and a typewriter to his state political committee, which had co-mingled corporate and labor monies, or to a state-registered political action committee, which otherwise did not qualify under federal law for contributions to a federal campaign. The Commission answered that a non-qualified PAC or the state political committee could purchase the excess campaign equipment, the house signs, and a typewriter from Mr. Hein's federal committee so long as the price paid for the excess equipment is no greater than the usual and normal charge of those specific materials. The latter advisory opinion, 1979-76, was issued by the Commission at the request of Mr. Richard B. Dingman,

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Treasurer of the RSC Campaign Fund ("RSC"). Mr. Dingman sought to determine whether RSC could sell a book, which it intended to publish, to individuals for a profit and to corporations, not at a profit, but to recover its costs, if RSC should be unable to find sufficient individual purchases of its book. The Commission determined that when a person transmits money to a political committee - any portion of which is available to be spent for the purpose of influencing a federal election - that person has made a contribution in the full amount of the funds transmitted, regardless of whether RSC made or did not make a profit on the transaction. The Commission then went on to distinguish the situation presented by RSC's request and the situation presented in Advisory Opinion 1979-24, mentioned supra. The Commission did so by holding that AO 1979-24 presented a factual situation where the campaign equipment was originally purchased for and used during the campaign by the campaign committee and, when sold, the proceeds were applied to satisfy the debts of the committee so that it could terminate.

The facts relating to this situation - the sale of computer equipment by the RNC to American Medical Laboratories - are similar to the facts before the Commission in Advisory Opinion 1979-24. The campaign committee of Mr. Hein had excess campaign equipment - house signs and a typewriter - to sell. In the instant case, the RNC had excess computer equipment to sell, which the evidence indicates it sold to American Medical at fair market value. Where the instant case differs from the situation presented

to the Commission in Advisory Opinion 1979-24 is in one important area, and that is that the RNC, unlike the Hein's committee, was not selling its excess equipment to pay off its debts and then terminate.

A principal campaign committee of a candidate by its very nature contemplates becoming inactive and eventually terminating, either by the candidate deciding to terminate and forming a new political committee or by simply terminating. Except for reporting requirements, pursuant to Section 104.11 of the regulations (11 CFR 104.11), its principal function ceases upon the death or the political inactivity of the candidate. On the other hand, a party committee of a national party, like the Republican Party, has a function quite different from the function of a principal campaign committee, for it is established, not for the purposes of electing one individual to political office, but for the purpose of promoting the aims of the Republican Party, which includes the election of Republicans to public office. Unlike a principal campaign committee, a party committee of a national party, such as the RNC, does not by its very nature contemplate becoming inactive and, unlike a candidate, a national party is vested with the capacity for indefinite existence. Moreover, because of this capacity for indefinite continuance, it is highly unlikely that the RNC will terminate in the near future. Nonetheless, it is highly probable that a party committee of a national party will have obsolete equipment or supplies that, though no longer of use to it, will have some fair market value.

In addition to the fact that the 10 megabyte disc pacs were inadequate for the increased needs of the RNC and incapable of being integrated into the new computer system, it is self-evident that by the very nature of the equipment sold, it was not being sold as a fundraising device. Unlike a book, a jacket, a hat, or any of the items traditionally sold by political committees for the purpose of raising funds, computer equipment is not something that is purchased by a committee solely for the purpose of reselling it to a third party at a profit or to induce a contribution from a third party. Computer equipment is, however, that type of equipment that is originally purchased for and used by a party committee, such as the RNC, in carrying out its function as the party committee of a national party - The Republican Party. See Advisory Opinion 1979-76.

For the reasons mentioned above, it is the opinion of the Office of General Counsel that the sale of excess computer equipment by the RNC and receipt of corporate monies from American Medical Laboratories, Inc., should not be considered as a corporate contribution in contravention of §441b of the Act.

(5) National Direct Mail Services, Inc. ("National Direct Mail") purchased in 1977 and 1978 100,000 envelopes for $680. According to both the RNC and National Direct Mail, the type of envelope purchased, blanks #7.3/4 with windows, were the type of envelope used by National Direct Mail in the normal cause of carrying out its business - direct mailing. Furthermore, the RNC had no longer a need or a use for the envelopes in question; thus they became excess supplies that could be sold or thrown out.

In section III(4) of the brief, we analyzed that the sale of obsolete computer equipment by the RNC to American Medical Laboratories, Inc. did not result in the receipt of a corporate contribution by the RNC; that analysis fits the situation here.

(6) Envelopes Unlimited, Inc. ("Envelopes Unlimited") in June of 1976 purchased computer time from the RNC for $812.50. According to the RNC, it owns, as part of its operations, a large sophisticated computer facility. On occasions when the RNC and other Republican organizations are not using the computer facilities to its fullest extent, the RNC offered (and apparently offers) the use of its facilities for a fee "no greater than the usual and normal charge."

The sale of computer time by the RNC to Envelopes Unlimited is basically the leasing of the RNC's computer equipment for a specific period of time. Unlike a computer program of all the registered voters in a county or a computer program that selects at random 900 precincts throughout the country, the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business and is not something created primarily for RNC's own use. The RNC is in the business of politics, and this business would call upon the RNC to keep a record of all public officials in the country, to compile lists of all the registered voters in each political unit throughout the country, and to compile lists of all the registered Republican voters in each of these political units. The RNC is not, however, in the business of selling computer time; its

computer equipment is something it purchased from a company that was in the business of selling computer equipment and is not something created by the RNC in the ordinary course of carrying out its business.

The sale of computer time by the RNC cannot be analogized to the sale of excess or obsolete equipment or supplies as discussed in sections III(4) and III(5) above. Though the RNC in selling computer time was selling the use of its equipment at a time when it was not using this equipment, there is no permanent transfer of ownership of the computer equipment by the RNC to Envelopes Unlimited, as there was in the sale of the computer disc pacs to American Medical Laboratories. Envelopes Unlimited merely obtains the right to use the computer equipment for a period of time.

Because the RNC received corporate funds from Envelopes Unlimited that could be used for the purposes of influencing a federal election, and because the sale of computer time is not the sale of something created by the RNC in the normal course of carrying out its business or is the sale of obsolete equipment, it is the opinion of the Office of General Counsel that the receipt of funds by the RNC from Envelopes Unlimited, a corporation, is in contravention of §441b of the Act, regardless of whether the RNC did or did not make a profit on the transaction. See Advisory Opinions 1975-15 and 1979-76.

(7) Datatel, Inc., purchased in 1977 and 1978 computer time from the RNC for $6,521.50. According to the RNC, at the time, it leased, as part of its operations, a large sophisticated computer facility. On occasions when the RNC and other Republican

organizations were not using the computer facilities to their fullest extent, the RNC offered, for a fee, computer time to Datatel. Datatel contends that it had a very unique relationship with the RNC in that it owned the computer equipment in question, and that it leased this equipment to the RNC, who in turn sold computer time to Datatel when the computer time was available and Datatel had a need for this time. Datatel has not substantiated, however, this contention and, thus, it is the opinion of the Office of General Counsel that the analysis in section III(6) of this brief, where we analyzed that the sale of computer time by the RNC to Envelopes Unlimited in return for the receipt of corporate funds was in contravention of §441(b) of the Act, fits the situation here. Should Datatel be able to substantiate its contention that it was merely buying computer time on a computer it leased to the RNC, then in the opinion of the Office of General Counsel, this transaction would be basically a modification of the original terms of the leasing contract between the RNC and Datatel, and would not result in a corporate contribution being made by Datatel or being received by the RNC.

(8) In addition to the specific transactions mentioned above, the RNC sold goods and services to an additional 58 corporations and one labor union for a total of $2,032.98. Because of the fact that the individual transactions were, for the most part, under $50, the 58 corporations and one labor union were not made parties to this matter. Nonetheless, though the 58 corporations were not cited as

respondents, the Commission did enter a reason to believe finding against the RNC for the receipt of funds from the 58 corporations and one labor union.

In 1976, it appears that the RNC conducted two seminars, one titled "FEC Law Seminar" and the other titled "PAC Seminar." The records of the RNC show that the following corporations paid anywhere from $10 to $35 in connection with these seminars. These corporations are as follows:

1) Plonski Agency of Jersey City, NJ - $10;

2) Hansen, Barrett and Maxwell, Inc. of Salt Lake City, UT - $20;

3) The LTV Corp. of Dallas, TX - $20;

4) Mid American Dairymen, Inc. of Springfield, MO - $10;

5) Convenient Ind. of America, Inc. of Louisville, KY - $10;

6) United Airlines of Chicago, IL - $10;

7) The Bendix Corp. of Southfield, MO - $10;

8) Southern Association Dairyford Man, Inc. of Richmond, VA - $10;

9) International Paper Co. of Washington, D.C. - $20;

10) Simpson Timber Co. of Seattle WA - $10;

11) National Association of Mutual Insurance Agents of Washington, D.C. - $10;

12) Alton Box Board Co. of Alton, IL - $10;

13) American Petroleum Inst. of Washington, D.C. - $10;

14) Kansas City Life Insurance Company of Kansas City, MO - $30; and

15) Business Planning Service of Artland, NY - $10.

In addition one company - The Yankee Book Peddler of the state of New Hampshire - purchased in 1978 a company manual for $19.50 from the RNC. The Office of General Counsel has only the bald statement contained in the RNC records reviewed by the auditors that a sum of money was received from a corporate entity for "FEC Law Seminar" or a "PAC Seminar" or a "Campaign Manual." Though it is within the normal course of operations for a political committee of a national party, such as the RNC, to conduct seminars for the purposes of educating potential candidates and party activists, the respondent has failed to offer any evidence that would establish that the seminars in question or the campaign manuals in question were developed primarily for the RNC's own purposes of educating potential candidates and party activists rather than to sell to others. See Advisory Opinions 1979-18, and 1979-76. Also see AO 1975-87. Absent any evidence showing this, and absent any evidence establishing that the goods sold were excess goods or equipment, see AO 1979-24, it is the opinion of the Office of General Counsel that RNC received from each corporate entity a contribution in contravention of 2 U.S.C. §441b.

Of the remaining goods and services sold by the RNC to corporate entities in the aggregate amount of $1812.98, many of the individual transactions involve the sale of "Almanacs," "Promises" (a book), "newsletter subscriptions," and assorted items. Immediately above, we analyzed that the sale of goods and services, absent any showing that the goods and services were

developed primarily for the RNC's own purposes, and absent any showing that the goods sold were excess goods or equipment, resulted in the receipt of a corporate contribution by the RNC in contravention of 2 U.S.C. §441b; that analysis fits the situation here.

IV. 2 U.S.C. §434(b) Violations

In addition to the Commission's finding of reason to believe for the receipt of corporate contributions by the RNC, the Commission cited the RNC for violating 2 U.S.C. §434(b) - failure to list the contributions in question as contributions on the RNC's reports, pursuant to 2 U.S.C. §434(b). Because of the fact that the respondents have supplied us with information not previously available and because of the fact that the nature of the violation is of such a technical nature - the receipt of the funds in question was reported as "refunds/rebates" rather than the receipt of a contribution - it is the opinion of the Office of General Counsel that the Commission find no probable cause that the RNC violated 2 U.S.C. §434(b) except for the receipt of contributions from the Franklin Mint, Envelopes Unlimited, Datatel, and the 58 corporations and one labor union. Furthermore, even as to the receipt of corporate contributions from the above-mentioned corporate entities, the Office of General Counsel recommends that the Commission take no further action in regards to the RNC's violation of 2 U.S.C. §434(b).

V. Contribution to Mr. David Serotkin

In accordance with the provisions of §441a(d) of the Act, which holds in pertinent part:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party . . . may make expenditures in connection with the general election campaign of candidates for federal office subject to the limitations contained in paragraph (2) and (3) of this subsection.

The RNC set up approximately 800 telephone banks ("phone banks") throughout the country for the purpose of identifying voters who would vote for certain selected Republican candidates. One of the candidates selected for help was Mr. David Serotkin, a candidate for Congress in the 12th Congressional district of Michigan. In October of 1977, the RNC filed an amended report listing the amounts it expended on each of the candidates it selected for help. On this report, the RNC allocated $14,890 of the cost of running the phone banks to Mr. Serotkin's campaign. By allocating $14,890 to Mr. Serotkin's campaign, the RNC exceeded the expenditure limitation imposed by 2 U.S.C. §441a(d)(3)(B) (after being adjusted for inflation, this limitation was in 1976 $10,910) by $3,908 and thus violated 2 U.S.C. §441a(d).

Recommendations

The Office of General Counsel recommends for the above-mentioned reasons that the Commission find:

1) Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from the Franklin Mint;

2) Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from Acropolis Books, Ltd.;

3) No Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate controbution from Bailey, Deardourff and Associates, Inc.

4) No Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from Civic Services, Inc.;

5) No Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from Market Opinion Research;

6) No Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from American Medical Laboratories, Inc.;

7) No Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from National Direct Mail Services, Inc.;

8) Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from Envelopes Unlimited, Inc.;

9) Probable Cause that the RNC violated 2 U.S.C. §441b by accepting a corporate contribution from Datatel, Inc.;

10) Probable cause that the RNC violated 2 U.S.C. §441b by accepting corporate contributions from 58 corporations and one labor union;

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11) No Probable Cause that the RNC violated 2 U.S.C. § 434(b) by failing to list receipt of corporate contributions except for the receipt of contributions from the Franklin Mint, Envelopes Unlimited, Datatel, and the 58 corporations and one labor union. Furthermore, even as to receipt of corporate contributions from the above-mentioned corporate entities, take no further action.

12) Probabale Cause that the RNC violated 2 U.S.C. § 441a(d)(3)(B) by making excessive expenditures on behalf of Mr. David Serotkin, a candidate for Congress.

28 January 1982
Date

Charles N. Steele
General Counsel

Attachments
1. Checks - I
2. Agreement - II
3. Agreement - III

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19608

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

Date October 8, 1976 1-23/210

Pay
to the order of Republican National Committee $20,000.00

Twenty thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR AMOUNTS $25,000.00 AND LARGER

⑈019608⑈ ⑆0210⑈0023⑆ 022 06 483⑈

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FRANKLIN MINT CORPORATION
FRANKLIN CENTER PENNSYLVANIA 19091

August 11, 1976

Republican National Committee
310 First Street SE
Washington, D.C. 20003

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Republican Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. [illegible]
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

(II)10

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Your organization agrees to designate the above-described Republican Presidential Campaign medals as the Official Presidential Campaign Medals of the Republican National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Republican National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

day of August, 1976

Republican National Committee, except that we reserve the right to have prior approval of the design.

By: _____

II (2)

AUG 26 1975 108 (31)

# AUTHORSHIP, PUBLICATION AND PROMOTION AGREEMENT

AGREEMENT made this 25th day of August, 1975, between Stephen J. Skubik, whose address is 1725 DeSales Street, NW, Washington, D.C. 20036; and Hal E. Short, whose address is 1522 K Street, NW, Washington, D.C. 20005 (Authors): the Republican National Committee, 310 First Street, SE, Washington, D.C. (Committee); and Acropolis Books, Ltd., 2400 17th Street, NW, Washington, D.C. (Publisher):

WITNESSETH

In consideration of the mutual covenants herein contained the parties agree as follows:

HE GRANT ND THE ERRITORY

1. The Authors hereby grant and assign to the Publisher and its successors, representatives and assignees, during the full term of the copyright and all renewals thereof, the full, sole and exclusive right to print, publish and sell under its own name:

REPUBLICAN HUMOR

(hereinafter called the Work) which title may be changed only by mutual consent in writing.

HE ARRANTY

2. The Authors represent and guarantee to the Publisher that they are the sole authors of the said Work, that they are the owners of all the rights granted to the Publisher hereunder, that the said Work is original, has not been previously published in book form, and is not in the public domain; that it contains no libelous, obscene or other unlawful matter; and that it in no wise infringes upon the copy right or violates the right of privacy or any other right of any person or party whatsoever, and they agree to hold the Publisher harmless against any recovery finally sustained in any suit which may be brought or had against the Publisher, by reason of a

(III)

...of the proprietary rights of the Republican Party, or because of any libelous, obscene or other unlawful matter contained in the said Work.

THE MANUSCRIPT

3. The Authors agree to deliver a completed manuscript copy of the said Work, ready for typing, containing works and cartoons equivalent to 195 pages of printed material, not later than the 15th of October, 1975. If the Authors fail to deliver such copy by said date the Publisher may terminate this agreement by giving written notice to the Authors to such effect. The Publisher and Authors may, by mutual consent in writing, establish a new deadline for delivery.

PUBLICATION OF THE WORK

4. The Publisher shall, upon receipt of a manuscript, have the right and sole discretion to reject the Work for any reason, or to request changes or additions to it. The Authors may refuse to make any such changes or additions to it, and in such event this agreement shall be terminated. The Publisher shall within three months after the Authors have delivered a complete and satisfactory manuscript, publish said Work at its own expense and in such style and manner as it deems best suited to the sale thereof, and advertise and promote the sale thereof as and to the extent it deems best. The Publisher will use all customary means to promote and market the Work throughout the United States.

The expenses for which the Publisher shall be responsible, in addition to all others involved in publication, distribution, and promotion, include: artist's fees; costs of editing, typing, collating, proofreading and make-up by the person or persons engaged by the Authors; secretarial and mailing services supplied by the Committee to obtain material for the book and subsequently to help promote within the Republican Party the sale of the book. The artist's fees and editing, typing, collating, proofreading, and make-up costs will

...ch fees and costs to be considered advances against the royalties. The secretarial and mailing services supplied by the Committee will be ~~reimbursed by the Publisher by delivering one book for each three dollars of expenses incurred, such expenses to be~~ charged against the promotional expenses as per Paragraph 10.

THE COPYRIGHT

5. The Publisher, upon first publication of the Work, agrees to apply for copyright in the name of Stephen J. Skubik in the United States of America and under the Universal Copyright Convention ~~in the exclusive territory specified in Paragraph 1~~, and to imprint the copyright notice required by law in each copy of the Work. Stephen J. Skubik, using forms acceptable to the Publisher, agrees to furnish the Publisher promptly with any authorization or other document necessary to carry out the provisions hereof.

The Publisher shall, upon the termination of the first term, make timely application for renewal of copyright under then existing United States Copyright Law.

USE OF COPYRIGHT MATERIAL

6. If the Work includes excerpts of materials presently under copyright, the Authors, using forms acceptable to the Publisher, will obtain written permission from the owners of such copyrights to print the excerpts.

ADDITIONAL MATERIAL

7. The Authors agree to prepare and deliver, along with the manuscript: Title page, preface or foreword, table of contents and/or index, and complete and final copy for all illustrations properly prepared for reproduction.

PRINTERS PROOFS

8. The Publisher shall furnish the Authors with a proof of the Work which, except for such reasonable changes in styling as are required by the Publisher,

conform to the completed manuscript as submitted by the Authors, unless changed by mutual consent. The Authors agree to return such proof to the Publisher with their corrections within ten days of the receipt thereof by them.

ROYALTIES, AND SHARE OF PROCEEDS

9. The Publisher agrees that the retail price of this Work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors and the Committee on the following schedules:

A. On sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

i) Thirty Cents ($0.30) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) Two Dollars and Twenty-five Cents ($2.25) per book to the Committee, as long as Stephen J. Skubik shall receive Thirty (30) Cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the Committee;

iv) All orders from the Committee and Republican organizations shall be accompanied by check for the full retail price.

B. On sales through the normal book trade distribution channels, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

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i) Ten Cents ($0.10) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) One Dollar ($1.00) to the Committee, and One Dollar and Ten Cents ($1.10) after Stephen J. Skubik has recovered his expenses.

C. The following shall be considered as subsidiary rights: sales to book clubs, publications by another publisher, publication of the Work in a ~~paperbound or~~ cheap edition, A.S.H. serial rights before and after book publication, dramatic and/or motion picture rights, translations, digests, abridgements, selections, anthologies, and mechanical, visual (such as microfilm and microprint), or sound

[illegible] television and broadcasting), and adaptations of said Work for commercial use. Subsidiary rights to publish are to be arranged by mutual consent of the Authors, Publisher and the Committee. The division of receipts from the sale of subsidiary rights shall be Forty percent (40%) to the Committee, Thirty percent (30%) to the Publisher and Thirty percent (30%) to the Authors, i.e., Ten percent (10%) to Hal Short, Twenty percent (20%) to Stephen J. Skubik until his out-of-pocket costs of creating the book are recovered, then his 20% will be added to the Committee. All compensation from sales of the Work under this Paragraph shall be excluded from the computation of the royalties payable under Paragraph (A) above AND PARAGRAPH (B) and shall be computed and shown separately in reports from the Publisher and/or Authors.

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D. No royalties shall be payable on free copies furnished to the Authors or to the Committee, or on copies for review, sample, or other similar purposes.

TION 10. The Authors will take the Work to the national print, T. V., and radio press for maximum publicity including talk shows, known comedians, etc. The Committee will bulletin all state, county, and city Republican Committee officials, and in addition will publicize the Work through State Republican publications, Young Republicans, Women's Federation, etc. One Dollar ($1.00) per book sold by the Publisher (under the provisions of Paragraph 9A) shall be remitted by the Publisher to the Committee to cover these promotional expenses of the Authors and the Committee, on sales made through the National Committee but not on sales through normal book distribution channels referred to in Paragraph 9B. The Committee shall be the final judge of the legitimacy and necessity of promotional expenses and shall reimburse such expenses from this promotional fund. [illegible] of such fund shall be credited to the Committee as additional royalties under this agreement.

11. The Publisher agrees to present to each Author 100 copies of the Work and to the Committee 1,000 copies of the Work for promotional purposes, such costs to be charges against the promotion fund as per Paragraph 10.

at $1.15 per Copy. — A.S.H.

'S 12. The Publisher will report on the sale of

TS the Work in February and July of each year for the six month period ending the prior December 31 and June 30 respectively on sales to the Committee, and in March and September on sales made through trade channels. With each report of sales, the Publisher will make settlement for any balance of royalties due.

ATION 13. a) In the event that the Work shall at any

ION time be out of print, the Authors may give notice thereof

TS to the Publisher and in such event the Publisher shall declare

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within sixty days in writing whether or not he intends to bring out a new printing of the Work within six months. Failure to reprint the Work within six months after receipt of the Authors' notice shall cause all rights herein granted to revert to the Authors at the expiration of said period without further notice.

b) If the Publisher shall, during the existence of this agreement, default in the making of payment as herein provided; if the Publisher shall fail to comply with or fulfill with other terms and conditions hereof; or in the event of bankruptcy, this agreement shall terminate and the rights granted herein to the Publisher shall revert to the Authors and Committee. In such event all payments theretofore made to the Authors and Committee shall belong to the Authors and Committee without prejudice to any other remedy which the Authors and Committee may have.

c) Upon the termination of this agreement for any cause, all rights granted to the Publisher revert to the Authors and Committee for their use at any time, and

originally furnished by the Authors. The Authors shall have the right in such instance to purchase the plates, if any exist, from the Publisher at their metal value, and any or all of the remaining sheets or copies at a price not to exceed 50% of the manufacturing costs, exclusive of overhead.

CONFLICTING PUBLICATION

14. The Authors agree that during the term of this agreement they will not, without the written permission of the Publisher, publish or permit to be published any material in book or pamphlet form, based on the material in the Work, which is reasonably likely to interfere with its sale.

INSOLVENCY

15. If a petition in bankruptcy should be filed by or against the Publisher, or if it shall be judged insolvent by any court, or if the Publisher shall liquidate its business for any cause whatsoever, this agreement shall

terminate automatically and without notice, and all rights granted hereunder shall thereupon revert to the Authors and to the Committee.

ARBITRATION

16. Any controversy or claim arising out of this agreement or the breach thereof, with the exception of a failure to pay royalties, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then obtaining, and judgement upon any award may be entered in the highest court of the forum, State or Federal, having jurisdiction. Such arbitration shall be held in the City of Washington, D.C., unless otherwise agreed by the parties.

This agreement shall be construed and interpreted according to the laws of the District of Columbia, and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives.

WAIVER

17. A waiver of any breach of any of the terms or conditions of this agreement by any of the parties thereto, shall neither be deemed a waiver of any repetition of such

of this agreement; shall be valid or binding unless it shall be in writing, and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals at Washington, District of Columbia, the day and year first written above.

BY: Carleen Maitland, Pres.
Acropolis Books Ltd.
2400 17th St. N.W. Washington D.C.
PUBLISHER

BY: [signature]
1725 Decatur St N.W.
Washington D.C.
AUTHOR

BY: [signature]
310 - 1st St SE
Washington D.C.
REPUBLICAN NATIONAL COMMITTEE

BY: [signature]
1 15th St. N.W.
WASH. D.C.
AUTHOR

III (4)

January 28, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1180

Please have the attached Memo and Briefs distributed to the Commission on an informational basis. Thank you.

Attachment

cc: Taylor

8204035070

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

E. Mark Braden, Esq.
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 1180

Dear Mr. Braden:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, 2 U.S.C. § 434(b)(2), 2 U.S.C. § 434(b)(3) and 2 U.S.C. § 441a(d), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

3204035307 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Douglas L. Bailey
Bailey, Deardourff and Associates, Inc.
McLean, Virginia 22101

RE: MUR 1180

Dear Mr. Bailey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8204056017

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Robert P. Visser, Esq.
Peabody, Rivlin, Lambert and Meyers
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 1180

Dear Mr. Visser:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

James P. Mercurio, Esq.
1815 H Street, N.W.
Washington, D.C. 20036

RE: MUR 1180

Dear Mr. Mercurio:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurrred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

8204035017

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

3204035307 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Mr. Alphons J. Hackl
2400 Seventeenth Street, N.W.
Washington, D.C. 20009

RE: MUR 1180

Dear Mr. Hackl:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your company had violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extentions beyond twenty days.

8204053077

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

3204935373

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Grady Carlson, Esq.
McCandlesh, Lelland, Church and Best
4069 Chain Bridge Road
Fairfax, Virginia 22030

RE: MUR 1180

Dear Mr. Carlson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for yur review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8204053170

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Justin D. Simon, Esq.
2101 L Street, N.W.
Washington, D.C. 20037

RE: MUR 1180

Dear Mr. Simon:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

William H. Schweitzer
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1180

Dear Mr. Schweitzer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Act, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

David M. Davenport, Esq.
611 McLean Office Center
6845 Elm Street
McLean, Virginia 22101

RE: MUR 1180

Dear Mr. Davenport:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your client had violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond twenty days.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

2749535378

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1982

Mr. Jay Bruce Mackey
Envelopes Unlimited, Inc.
649 North Home Lane
Rockville, Maryland 20850

RE: MUR 1180

Dear Mr. Mackey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that your company violated 2 U.S.C. § 441b, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible). The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement.

Should you have any questions, please contact William Taylor at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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100321

RECEIVED

81 APR28 A10:32


BAKER & HOSTETLER

ATTORNEYS AT LAW

815 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

(202) 861-1500

TELECOPIER (202) 857-0010

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 621-0200
TWX 810 421 8375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 228-1541

IN DENVER, COLORADO
500 CAPITOL LIFE CENTER
DENVER, COLORADO 80203
(303) 861-0600

IN ORLANDO, FLORIDA
250 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 841-1111

WRITER'S DIRECT DIAL NO.:
(202) 861-1531


April 24, 1981

Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

Attention: William E. Taylor

Re: Matter Under Review 1180

Dear Sir:

Enclosed is a submission by Civic Service Inc. for the purpose of demonstrating that no further action should be taken against it in Matter Under Review 1180.

Very truly yours,

William H Schweitzer

William H. Schweitzer

WHS:gh
Encls.

cc: Roy Pfautch

81 APR 28 P1:14

GENERAL COUNSEL
OFFICE OF THE
RECEIVED

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81 APR28 A10:31

FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

| | |
|---|---|
| In Re CIVIC SERVICE, INC. | Matter Under Review 1180 |

RESPONDENT CIVIC SERVICE INC.'S SUBMISSION FOR THE PURPOSE OF DEMONSTRATING THAT THE FEDERAL ELECTION COMMISSION'S FINDING OF REASON TO BELIEVE HAS NO BASIS IN FACT OR LAW AND THAT NO FURTHER ACTION SHOULD BE TAKEN AGAINST IT

## PRELIMINARY STATEMENT

Respondent Civic Service, Inc. ("Civic Service"), by its counsel, hereby submits the following information and affidavits for the purpose of demonstrating to the Federal Election Commission ("FEC") that its finding of "reason to believe" has no basis in fact or law and that no further action should be taken against Civic Service in Matter Under Review ("MUR") 1180. Civic Service respectfully requests that the FEC dismiss MUR 1180.

## FACTS

On April 2, 1981, Civic Service received a letter dated March 30, 1981 from John Warren McGarry, Chairman of the FEC, and a document entitled Notification of Reason to

Believe. Chairman McGarry advised Civic Service that the FEC had found reason to believe that Civic Service had violated 2 U.S.C. § 441b(a) by making a corporate contribution of $1500 to the Republican National Committee ("RNC") in May, 1977.

Civic Service is a polling firm located in St. Louis, Missouri. See Affidavit of Roy Pfautch, president of Civic Service, ("Pfautch Affidavit") at 2-3. It has both commercial and association clients. Pfautch Affidavit at 4.

In 1977, Civic Service was retained by a client to conduct a nationwide poll. After consultation with its consultants, in particular Dr. Daniel Nimmo at the University of Tennessee, Civic Service decided to base the poll on precincts rather than census tracts. Since census tracts do not constitute every area of the nation, a survey based on such tracts is not as complete as a survey based on precincts. Pfautch Affidavit at 5.

The initial step in the process was to obtain a random listing comprising 900 of the approximately 180,000 precincts in the fifty states and the District of Columbia. Mr. Roy Pfautch ("Pfautch"), president of Civic Service, contacted the United States Department of Commerce, Bureau of the Census ("Bureau") and was advised that the Bureau had begun constructing such a list but cancelled the project

before its completion. The Bureau suggested that a precinct list could be purchased from either CBS-Polls or the Republican National Committee. Pfautch Affidavit at 6.

Pfautch contacted CBS-Polls which declined to sell its list but referred Pfautch to the RNC. Pfautch Affidavit at 7. Pfautch talked to employees of the RNC's Computer Services Division. They agreed to sell Civic Service a random computer generated listing consisting of a list of 900 precincts. Pfautch Affidavit at 8; Affidavit of Ron Charnock ("Charnock Affidavit") at 3-4. In mid-February, 1977, the RNC sent the precinct list to Civic Service and billed Civic Service $1,500.00 for the list. See Exhibits 1-2. On March 18, 1977, Civic Service paid the RNC in full. See Exhibit 3.

The price charged by the RNC constituted fair market value for the precinct list. Pfautch Affidavit at 10; Charnock Affidavit at 4. At no time did Civic Service intend to make a political contribution to the RNC. Pfautch Affidavit at 10. The only relationship that Civic Service had with the RNC was that of a commercial buyer-seller relationship. Pfautch Affidavit at 10.

## ARGUMENT

### CIVIC SERVICE DID NOT MAKE A POLITICAL CONTRIBUTION TO THE RNC

A) The purchase of a precinct list by a corporation from a political committee is not

a contribution under the Federal Election Campaign Act of 1971, as amended.

Contributions by a corporation to a "campaign committee, or a political party or organization" are prohibited by the Federal Election Capaign Act of 1971, as amended ("FECA"). 2 U.S.C. § 441b(a) and 441b(b)(2). For purposes of the prohibition on corporate contributions, contribution is defined as "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any . . . campaign committee, or political party or organization in connection with any election to any [federal] office . . . ." 2 U.S.C. § 441b(b)(2).

Civic Service is a corporation organized under the laws of the State of Missouri. Pfautch Affidavit at 3. Its principal business includes conducting polls and analyzing polling data for commercial and assciation clients. Pfautch Affidavit at 4.

In 1977, a client retained Civic Service to conduct a national poll for it. In order to conduct the poll, Civic Service had to obtain certain precinct lists. The only willing seller of such lists was the RNC. Pfautch Affidavit at 5-8.

Civic Service paid fair market value for the list. Pfautch Affidavit at 10; Charnock Affidavit at 4. The sale

of the list was an arm's length business transaction and the price was the usual and normal charge. Charnock Affidavit at 4. Also, the price paid by Civic Service was not above or below the usual and normal charge. See Advisory Opinion 1979-18, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5405.

The FEC decided in two advisory opinions that the sale of contributor lists by an organization such as the RNC is not a contribution by the purchaser to the political committee as long as the purchase price is the usual and normal charge for the list. See Advisory Opinion 1979-17, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5416 at 10,443; Advisory Opinion 1979-18, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5405. A precinct list is also a computer generated list which is maintained for the purpose of identifying voters in election districts. It clearly is analogous to a contributor list and, therefore, should fall within the exception created by the above-mentioned advisory opinions.

B) The payment by Civic Service is not a contribution because it was not made in connection with a federal election.

Civic Service's payment for the list did not constitute a contribution under FECA because the payment was not made in connection with any election to federal office. Pfautch Affidavit at 10; 2 U.S.C. § 441b(b)(2). The RNC did not solicit a political contribution from Civic Service nor did it intend the payment for the list to be a political

contribution. Charnock Affidavit at 6. The purchase was a commercial transaction not prohibited by FECA.

The General Counsel's Office in the Notification of Reason to Believe attached to Chairman McGarry's letter concedes that Civic Service "did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction." The General Counsel further states: "Moreover, if the RNC had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b." Surely, Civic Service cannot be found in violation of FECA because the RNC deposited its payment for a precinct list in a political rather than a commercial account when Civic Service did not intend to make a contribution in connection with any election to federal office.

WHEREFORE, Civic Service respectfully moves the FEC: (a) to find that its finding of "reason to believe"

has no basis in fact or law; (b) to find that no further action should be taken against Civic Service; and (c) to dismiss MUR 1180.

Respectfully submitted,

William H. Schweitzer

Jan W. Baran

Jan W. Baran
BAKER & HOSTETLER
818 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 861-1500

2WHS3G

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FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

| | | |
|---|---|---|
| IN RE CIVIC SERVICE, INC. | ) | Matter Under Review 1180 |

AFFIDAVIT

COUNTY OF ST. LOUIS )
) ss:
STATE OF MISSOURI )

Roy Pfautch for his affidavit deposes and says:

1. I have personal knowledge of the facts contained herein and am competent to testify thereto.

2. I am and was in February and March, 1977 the president of Civic Service, Inc. ("Civic Service").

3. Civic Service is a corporation organized under the laws of the State of Missouri. Its principal place of business is St. Louis, Missouri.

4. Civic Service's business includes conducting polls and analyzing polling results for commercial and association clients. These clients include corporations, associations and political action committees.

5. In 1977, Civic Service was retained by a client to conduct a nationwide poll. After consultation with one of Civic Services's consultants, Dr. Daniel Nimmo at the University of Tennessee, Civic Service decided to base the poll on precincts rather than census tracts. The reason for this choice was that since census tracts do not constitute every area of the nation, a survey based on such tracts is not as complete as a survey based on precincts.

6. In order to conduct such a poll based on precincts, Civic Service needed to obtain a random listing comprising 900 of the approximately 180,000 precincts in the fifty states and the District of Columbia. Initially, I contacted the United States Department of Commerce, Bureau of the Census ("Bureau") and was advised that the Bureau had begun constructing such a list but cancelled the project before its completion. The Bureau suggested that a precinct list could be purchased from either CBS-Polls or the Republican National Committee ("RNC").

7. I contacted CBS-Polls and was advised that they would not sell their list. CBS-Polls referred me to the RNC.

8. I then talked to employees of the RNC's Computer Services Division. They agreed to sell Civic Service a

random listing consisting of 900 precincts. The charge for such a list was $1,500. I agreed on behalf of Civic Service to purchase such a list for $1,500.

9. In mid-February, 1977, the RNC sent the precinct list to Civic Service and billed Civic Service $1,500. On March 18, 1977, Civic Service paid the RNC in full for the list.

10. At no time did Civic Service make or intend to make a contribution to the RNC in connection with an election to federal office. The price charged by the RNC constituted fair market value and was the usual and normal charge for such a list. The relationship between Civic Service and the RNC was that of a commercial buyer and seller.

Roy Pfautch

Subscribed and sworn to before me this 23rd day of April, 1981.

NOTARY PUBLIC STATE OF MISSOURI
MY COMMISSION EXPIRES DEC 26 1981

Helen B. Ahlersmeyer
Notary Public

FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

| | | |
|---|---|---|
| In Re CIVIC SERVICE, INC. | ) | Matter Under Review 1180 |

AFFIDAVIT

DISTRICT OF COLUMBIA ) ss.

Ron Charnock for his affidavit deposes and says:

1. I have personal knowledge of the facts contained herein and am competent to testify thereto.

2. In 1977, I worked in the Republican National Committee's ("RNC") Computer Services Division.

3. The Computer Services Division compiled, among other things, lists of the 180,000 precincts in the United States. The RNC from time to time sold these lists to various firms who used such lists in taking polls.

4. In February, 1977, the RNC sold a precinct list containing the names of 900 precincts to Civic Service, Inc. ("Civic Service"). The price charged for this list was the usual and normal price charged by commercial vendors and constituted fair market value for the list.

5. The RNC billed Civic Service $1,500 for the list and Civic Service paid this bill in full.

DISTRICT OF COLUMBIA

6. The RNC did not solicit a political contribution from Civic Service nor did it intend the payment for the list to be a political contribution.

Ron Charnock

Subscribed and sworn to before me this 22nd day of April, 1981.

Notary Public

My Commission Expires October 14, 1985

8204035098

Republican
National
Committee.

EXHIBIT 1

February 18, 1977

Mr. Roy Pfautch
Suite 300, 408 Olive
St. Louis, MO 63102

Dear Roy:

Enclosed please find the first set of computer generated samples. We will be forwarding the remainder of the computer generated information within the next 24 hours.

I think you'll find this format will be easier to work with, however, if you have any questions on either the theory or the actual data, please don't hesitate to give me a call.

Thanks again for your patience.

Sincerely,

Ron Charnock
Deputy Director
Computer Services

RC:fb

Encls:

EXHIBIT 2

Republican
National
Committee.

March 15, 1977

INVOICE #760302

Civic Service, Inc.
Suite 300, 408 Olive
St. Louis, MO 63102

Attention: Roy Pfautch

---

Precinct Sample of United States $1,500.00

Make check payable to: Republican National Committee
Attention: Computer Services

3/16/77

EXHIBIT 3

March 18, 1977

Mr. Murray Dickman, Director
Computer Services
Republican National Committee
310 First Street, Southeast
Washington, D. C. 20003

Dear Murray:

Many thanks for all your help with our nationwide research project in terms of obtaining a random list of precincts. We do appreciate your help and cooperation. You might be interested to know that Matt Reese was unable to obtain such a listing from the Democratic National Committee, which does not maintain such material, and, hence, we are doubly grateful for your resources.

I have enclosed a check in the amount of $1,500.00 representing payment, in full, of your invoice dated March 15, 1977 (Inv. #760302).

Again, our thanks and best wishes to you and your fine team!

Sincerely,

Roy Pfautch

enclosure

0240315-01

AKER & HOSTETLER
3 CONNECTICUT AVE., N. W.
ASHINGTON, D. C. 20006

8 2 0 4 0 3 5 3 1 0 2

81 APR 26 AM 9:31

Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

ATTENTION: William E. Taylor

CERTIFIED
No. 805551

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 30, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Service Company
Cities Services Building
Tulsa, Oklahoma 74102

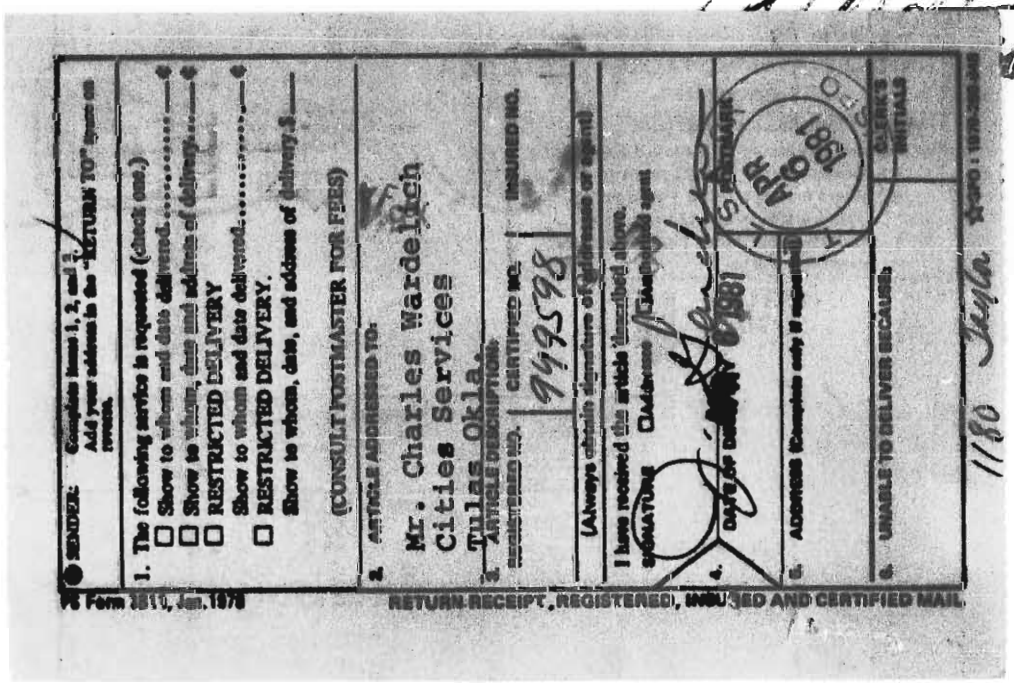
Re: MUR 1180

Dear Mr. Wardelich:

This is to advise you that, as a result of information received from your company and after conducting a further investigation, the Commission has determined that its finding of reason to believe of December 2, 1980 was entered into in error; naturally this office regrets that such an error was made. We apologize for any inconvenience this may have caused. Accordingly the file in this matter, as it pertains to your company, has been closed. Should you wish to submit any factual or legal material to appear on the public record, please do so within 10 days.

If you have any questions, please call William E. Taylor at (202) 523-4529.

Sincerely,



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Service Company
Cities Services Building
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

This is to advise you that, as a result of information received from your company and after conducting a further investigation, the Commission has determined that its finding of reason to believe of December 2, 1980 was entered into in error; naturally this office regrets that such an error was made. We apologize for any inconvenience this may have caused. Accordingly the file in this matter, as it pertains to your company, has been closed. Should you wish to submit any factual or legal material to appear on the public record, please do so within 10 days.

If you have any questions, please call William E. Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040351041

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 30, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald L. Ivers, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Ivers:

This is to inform you that the Commission's finding of reason to believe that Cities Services Co. violated 2 U.S.C. § 441b by making a corporate contribution was made in error. In addition, on March 27 , 1981, the Commission found reason to believe that Civic Services Inc. of St. Louis, Missouri violated 2 U.S.C. § 441b by making a corporate contribution to your client.

To set the record straight in this matter, the Commission would like to take this opportunity to list those corporations cited by the Commission in this matter as having violated 2 U.S.C. § 441b. They are as follows:

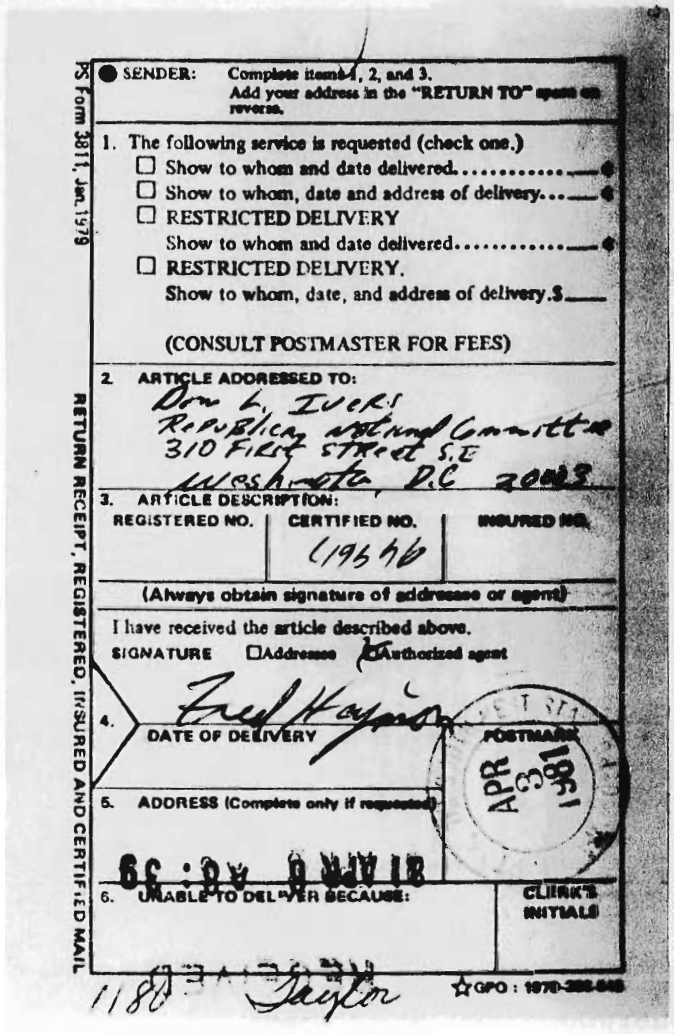
1) The Franklin Mint Corporation;
2) Acropolis Books Ltd.;
3) Market Opinion Research Co.;
4) American Medical Laboratories, Inc.;
5) National Direct Mail Services, Inc.;
6) Bailey, Duerdouff and Associates, Inc.;
7) Envelopes Unlimited, Inc.;
8) Datatel Incorporated; and
9) Civic Services Inc.

Should you have any questions, please call William E. Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040535105



PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered.....
- ☐ Show to whom, date and address of delivery.....
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered.....
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Don L. Ivers
Republican National Committee
310 First Street S.E
Washington, D.C 20003

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | C19546 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐Addressee ☒Authorized agent

Fred Hayes

4. DATE OF DELIVERY

POSTMARK
APR 3 1981

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

1180 Taylor

☆GPO : 1979-288-848

C 2 2 4 0 3 3 3 1 0 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald L. Ivers, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

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To set the record straight in this matter, the Commission would like to take this opportunity to list those corporations cited by the Commission in this matter as having violated 2 U.S.C. § 441b. They are as follows:

1) The Franklin Mint Corporation;
2) Acropolis Books Ltd.;
3) Market Opinion Research Co.;
4) American Medical Laboratories, Inc.;
5) National Direct Mail Services, Inc.;
6) Bailey, Duerdouff and Associates, Inc.;
7) Envelopes Unlimited, Inc.;
8) Datatel Incorporated; and
9) Civic Services Inc.

Should you have any questions, please call William E. Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 30, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roy Pfautch
Civic Services Inc.
314 North Broadway
St. Louis, Missouri 63102

Re: MUR 1180

Dear Mr. Pfautch:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 27, 1981, found reason to believe that the Civic Services Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case, at (202) 523-4529.

Sincerely,

John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure

2 0 4 0 3 5 1 0 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roy Pfautch
Civic Services Inc.
314 North Broadway
St. Louis, Missouri 63102

Re: MUR 1180

Dear Mr. Pfautch:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on , found reason to believe that the Civic Services Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case, at (202) 523-4529.

Sincerely,

Enclosure

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Civic Services Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Civic Services Inc. (Civic Services) in the amount of $1,500.00 for precinct lists purchased by Civic Services from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office]. . .

The funds received by the R.N.C. from Civic Services in May of 1977 are contributions made by Civic Services to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b.

2040353110

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 1180 |
| Civic Services Inc. | ) | |
| Cities Services Company | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 27, 1981, the Commission decided by a vote of 5-1 to take the following actions regarding MUR 1180:

1. Inform Cities Services of the fact that the Commission's finding of reason to believe of December 2, 1980, was entered in error.

2. Find reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b(a) for making a corporate contribution to the Republican National Committee.

3. Send the letters attached to the Memorandum to the Commission, dated March 24, 1981.

4. CLOSE THE FILE as to Cities Services.

Commissioners Harris, McGarry, Reiche, Thomson and Tiernan voted affirmatively; Commissioner Aikens dissented.

Attest:

3/27/81
Date

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary: 3-24-81, 2:51
Circulated on 48 hour vote basis: 3-25-81, 11:00

March 24, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1180

Please have the attached Memo distributed to the Commission on a 48 hour tally basis. Thank you.

6204035341-2

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 MAR 24 P2: 51

March 24, 1981

MEMORANDUM

TO: THE COMMISSION

FROM: CHARLES N. STEELE
GENERAL COUNSEL

SUBJECT: MUR 1180

On December 2, 1980, the Office of General Counsel presented its First General Counsel's report to the Commission in the above-referenced matter. Section IV of this report (p. 9) lists funds received by the Republican National Committee (R.N.C.) from various corporations for the sale of goods and services including Cities Services Company (Cities Services). On this date, the Commission found reason to believe that Cities Services violated 2 U.S.C. § 441b(a) by making a contribution to the Republican National Committee and Cities Services was so notified.

Recently, it has come to our attention that, as a result of a transcribing error made during the audit, Cities Services was listed erroneously as the corporation making the $1,500.00 contribution in question; when in fact, the corporation that actually made this contribution was Civic Services Inc. of St. Louis, Missouri. Thus, it is the the Office of General Counsel's recommendation that the Commission inform Cities Services Company of this error and find reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b(a) by making a corporate contribution.

RECOMMENDATION

1. Inform Cities Services of the fact that the Commission's finding of reason to believe of December 2, 1980, was entered in error.

2. Find reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b(a) for making a corporate contribution to the Republican National Committee.

3. Send the attached letters.

4. Close file as to Cities Services.

Attachments
1. Letter to Cities Services
2. Letter and notification to Civic Services
3. Letter to RNC.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Service Company
Cities Services Building
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

This is to advise you that, as a result of information received from your company and after conducting a further investigation, the Commission has determined that its finding of reason to believe of December 2, 1980 was entered into in error; naturally this office regrets that such an error was made. We apologize for any inconvenience this may have caused. Accordingly the file in this matter, as it pertains to your company, has been closed. Should you wish to submit any factual or legal material to appear on the public record, please do so within 10 days.

If you have any questions, please call William E. Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Civic Services Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Civic Services Inc. (Civic Services) in the amount of $1,500.00 for precinct lists purchased by Civic Services from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office]. . .

The funds received by the R.N.C. from Civic Services in May of 1977 are contributions made by Civic Services to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b.

2040353115

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald L. Ivers, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Ivers:

This is to inform you that the Commission's finding of reason to believe that Cities Services Co. violated 2 U.S.C. § 441b by making a corporate contribution was made in error. In addition, on , 1981, the Commission found reason to believe that Civic Services Inc. of St. Louis, Missouri violated 2 U.S.C. § 441b by making a corporate contribution to your client.

To set the record straight in this matter, the Commission would like to take this opportunity to list those corporations cited by the Commission in this matter as having violated 2 U.S.C. § 441b. They are as follows:

1) The Franklin Mint Corporation;
2) Acropolis Books Ltd.;
3) Market Opinion Research Co.;
4) American Medical Laboratories, Inc.;
5) National Direct Mail Services, Inc.;
6) Bailey, Duerdouff and Associates, Inc.;
7) Envelopes Unlimited, Inc.;
8) Datatel Incorporated; and
9) Civic Services Inc.

Should you have any questions, please call William E. Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2204035315

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: MARCH 12, 1981

SUBJECT: OBJECTION - MUR 1180 - Memorandum to the Commission dated 3-12-81; Received in OCS 3-12-81, 12:38

The above-named document was circulated on a 48 hour vote basis at 4:00, March 12, 1981.

Commissioner Tiernan submitted an objection at 4:43, March 12, 1981.

This matter will be placed on the Executive Session Agenda for Tuesday, March 17, 1981.

Withdrawn

2040317

March 12, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1180

Please have the attached Memo distributed tothe Commission on a 48 hour tally basis. Thank you.

3204035311 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 MAR 12 P12: 38

MEMORANDUM

March 12, 1981

TO: THE COMMISSION

FROM: CHARLES N. STEELE
GENERAL COUNSEL

SUBJECT: MUR 1180

On December 2, 1980, the Office of General Counsel presented its First General Counsel's report to the Commission in the above-referenced matter. Section IV of this report (p. 9) lists funds received by the Republican National Committee (R.N.C.) from various corporations for the sale of goods and services including Cities Services Company (Cities Services). On this date, the Commission found reason to believe that Cities Services violated 2 U.S.C. § 441b(a) by making a contribution to the Republican National Committee and Cities Services was so notified.

Recently, it has come to our attention that, as a result of a transcribing error made during the audit, Cities Services was listed erroneously as the corporation making the $1,500.00 contribution in question; when in fact, the corporation that actually made this contribution was Civic Services Inc. of St. Louis, Missouri. Thus, it is the the Office of General Counsel's recommendation that the Commission inform Cities Services Company of this error and find reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b(a) by making a corporate contribution.

RECOMMENDATION

1. Inform Cities Services of the fact that the Commission's finding of reason to believe of December 2, 1980, was entered in error.

2. Find reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b(a) for making a corporate contribution to the Republican National Committee.

3. Send the attached letters.

4. Close file as to Cities Services.

Attachments
1. Letter to Cities Services
2. Letter and notification to Civic Services

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Civic Services Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Civic Services Inc. (Civic Services) in the amount of $1,500.00 for precinct lists purchased by Civic Services from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office]. . .

The funds received by the R.N.C. from Civic Services in May of 1977 are contributions made by Civic Services to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Civic Services Inc. violated 2 U.S.C. § 441b.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Service Company
Cities Services Building
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

This is to advise you that, as a result of information received from your company and after conducting a further investigation, the Commission has determined that its finding of reason to believe of December 2, 1980 was entered into in error. Accordingly the file in this matter as it pertains to your company has been closed. Should you wish to submit any factual or legal material to appear on the public record, please do so.

If you have any questions, please call William E. Taylor at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2024035121

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roy Pfautch
Civic Services Inc.
314 North Broadway
St. Louis, Missouri 63102

Re: MUR 1180

Dear Mr. Pfautch:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on , found reason to believe that the Civic Services Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional informaiton which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case, at (202) 523-4529.

Sincerely,

Enclosure

2040531222

GC#4448

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: APRIL 8, 1981

SUBJECT: REFERRAL OF LETTER FROM DAVENPORT AND ASSOCIATES, P.C. REGARDING MUR 1180, Letter dated April 8, 1981

The attached letter regarding the above-named matter was received in Chairman McGarry's office and then forwarded to the Secretary of the Commission. It is provided for your action.

Attachment:
Letter (Hand-Delivered)

0040354123

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

RECEIVED
1981 APR 10 PM 1
FEDERAL ELECTION COMMISSION

William E. Taylor, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

81 APR 8 P2:15

HAND-DELIVERED

Mr. John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

6820448

DAVENPORT & ASSOCIATES, P.C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006

RECEIVED
GENERAL COUNSEL
81 APR 8 P5:12

April 8, 1981

HAND-DELIVERED

81 APR 8 P3:26

Mr. John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: FEC File No. MUR 1180

Dear Mr. McGarry:

This firm represents Datatel, Inc., of 3700 Mount Vernon Avenue, Alexandria, Virginia, in regard to the referenced matter.

We have received and reviewed a copy of your letter dated February 23, 1981 to Mr. Kendrick, Chairman of our client. That letter states that on December 2, 1980 the Commission found reason to believe that Datatel, Inc. had violated 2 U.S.C. §441b(a). The enclosed memorandum indicates that this conclusion was based upon records of the Republican National Committee ("R.N.C.") which show that the R.N.C. received $6,521.50 from Datatel, Inc. for the sale of computer time by the R.N.C. to Datatel. The memorandum does not state the date(s) or time period involved. To the best of our knowledge, Datatel was not a party to that inquiry.

The memorandum summarily concludes that this alleged payment constitutes an illegal contribution by Datatel, Inc. to the R.N.C. and cites several Commission Advisory Opinions in support of its conclusion. We disagree and object to that conclusion.

Datatel, Inc. is a small closely held company engaged in the business of data processing. Its principal offices are located in Alexandria, Virginia. In the normal course of its business it periodically purchases the use of computer time from parties who offer the same for sale. It negotiates for this time and pays fair market value for it. Datatel did purchase some excess computer time from the R.N.C. It did so in an arm's length transaction and at fair market value. It did not intend to make

a gift or contribution of any kind in violation of the law. From the Commission memorandum received it does not appear that the Commission determined that this purchase was "in connection with a Federal election." Certainly Datatel did not intend for its payment to be in connection with such.

The Commission has found in its memorandum that "the corporation [Datatel] did not realize they (sic) were making a contribution in contravention of 2 U.S.C. §441b, but believed they (sic) were involved in an arm's length business transaction." We assert that our client in fact was involved in an arm's length business transaction. The situation here is clearly and easily distinguished from those in Commission Advisory Opinions 1979-76, or 1979-17, in that the cited situations deal with a plan of fund raising by the Republican National Committee, in the one case by selling books and in the other by a credit card promotion. In this case, we do not believe that the action of the R.N.C. was intended as a fund raising plan. The computer time in question was an asset of the Committee developed in the normal course of its operations and primarily for its own use rather than to sell to others--a situation recognized as distinguishable by the Commission in Advisory Opinion 1979-76.

Lastly, the Commission memorandum states that Datatel, Inc. would not have liability if the R.N.C. had earmarked any funds received and placed same in a separate account used for exempted activities. While this suggestion might provide a satisfactory resolution of the matter for the R.N.C., it provides little help for Datatel, Inc., since it has no control over the R.N.C.'s use or depositing of funds.

The Advisory Opinions we have reviewed are careful to state that they relate "...to the specific factual situation" contained in the request. We believe this is appropriate and fair since otherwise unjust and unintended results could follow. Under the circumstances, and for the reasons set forth hereinabove, it is respectfully requested that the referenced matter be dismissed as to Datatel, Inc.

Very truly yours,

DAVENPORT & ASSOCIATES, P.C.

David M. Davenport

DMD/mab
cc: William E. Taylor, Esq.
Federal Election Commission
Mr. Earl G. Kendrick, Jr., Chairman
Datatel, Inc.
Donald Ivers, Esq.

LAW OFFICES
PEABODY, RIVLIN, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION
CONNECTICUT BUILDING - TWELFTH FLOOR
1150 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

RECEIVED
81 MAY 19 A10:18

BY HAND DELIVERY

William E. Taylor, Esquire
Federal Election Commission
1325 K Street NW
Washington DC 20463

RECEIVED
GCC#4716
81 MAY 19 A10:18

LAW OFFICES
PEABODY, RIVLIN, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION
WASHINGTON, D.C. 20036

TWELFTH FLOOR
CONNECTICUT BUILDING
1150 CONNECTICUT AVENUE, N.W.

TELEPHONE (202) 457-1000
CABLE ADDRESS: "EXCELSIOR"
TELEX 89741 3

ENDICOTT PEABODY
LEWIS A. RIVLIN
JEREMIAH D. LAMBERT
TEDSON J. MEYERS
CHARLES T. DUNCAN
DAVID J. TAYLOR
MICHAEL W. FABER
JOHN R. FERGUSON
TIMOTHY J. WATERS
JOHN T. SCHELL
PETER B. ARCHIE
CHARLES R. WORK
JOHN A. HODGES
ROBERT H. MORSE
ROBERT A. WARDEN
ROBERT N. JENSEN
COLLISTER JOHNSON, JR.
JOHN LOCKIE
ROBERT P. VISSER
TIMOTHY L. HARKER
NATHALIE P. GILFOYLE
RONALD J. DOLAN

LAWRENCE WHITE
JEANNE A. CARPENTER
JOHN MARK JANSEN
NANCY MARIE STILES
MICHAEL W. BEASLEY
ROBERT J. MILLER
GLENN R. REICHARDT
JOEL S. WINNIK
WILLIAM D. COSTON
RALPH A. SIMMONS
JEFFREY N. MARTIN
ROBERT A. HAZEL
DIANE GILBERT WEINSTEIN
JAY D. PEDELTY
ROBERT C. GODBEY
KATHRYN E. PAULI
JANINE H. COWARD
MYRON L. DALE

OF COUNSEL
JORGE L. CÓRDOVA, JR.

WRITER'S DIRECT DIAL NUMBER
(202) 457-1019

May 18, 1981

81 MAY 19 P1:53

BY HAND DELIVERY

William E. Taylor, Esquire
Federal Election Commission
1325 K Street NW
Washington DC 20463

Dear Mr. Taylor,

Re: MUR 1180

Reference is made to Chairman McGarry's letter dated February 23, 1981, wherein he stated that the Federal Election Commission ("Commission") has found reason to believe that Market Opinion Research ("MOR") violated 2 U.S.C. §441b(a). The basis of the Commission's finding is contained in a Report enclosed with Chairman McGarry's letter which indicates that the records of the Republican National Committee ("RNC") reflect that the RNC received funds from MOR in the amount of $800 for a sample list purchased by MOR from the RNC. The Report concludes that the funds received by the RNC from Market Opinion are "contributions" made by Market Opinion to RNC even if the contributors received something for value. Based upon our discussions and a review of the relevant facts of law several things are readily apparent.

First, it appears that this transaction is a minor part of a rather extensive Commission investigation into contested business dealings among various corporations and labor unions with the RNC during the 1976 campaign. MUR 1180 forms only one small part of the larger investigation and is based merely upon a review of the Committee's books, which have identified a payment by MOR to the RNC above a threshhold dollar amount. There are no other facts and circumstances to support the Reason to Believe finding of the Commission.

2040353129

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81 MAY 19 A10:18

PEABODY, RIVLIN, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION



Second, it is clear from a reading of the Advisory Opinions cited by the Commission in its own Report that this proceeding must be dismissed as to MOR. The transaction was clearly an ordinary and normal business transaction arived at following arms-length negotiation between RNC and MOR.

The facts relating to this situation are quite simple. MOR sought to purchase a list of California Republican County Chairmen in certain counties in connection with a business project they had undertaken. MOR is, of course, a noted national polling organization involved in political market research on behalf of candidates, political parties and committees. An authorized official of MOR has advised me that the company had been retained at that time to conduct a study of registered Republicans in the State of California on behalf of a Republican gubernatorial candidate running in the 1976 primary campaign. Accordingly, in order to conduct their survey on behalf of their client, they contacted the RNC in order to obtain a sample list of registered California republicans in 28 counties. The RNC agreed to sell such a list to MOR. The list had been developed by the RNC in the normal course of its operations and had been compiled primarily for its own use rather than for resale. The value of the list was determined in accordance with normal commercial practice regarding the sale of lists within the polling community and that transaction merely constituted a lawful commercial transaction which was valued at the usual and normal charge.

Moreover, the instant case did not involve a situation in which a committee was seeking to increase its cash flow or intended to involve the participation of corporations in fundraising activities on behalf of the political committee. It did not involve the sale of items which were specifically acquired or developed for general fundraising purposes -- such as the sale of books or contributor lists. As noted above, the California Republican lists sample was an asset, the value of which was developed by the Committee in the normal course of its operations. These lists were acquired by the RNC primarily for its own use rather than to sell to others. At the request of a bona fide Republican marketing organization, which sought the list for a specific business purpose, the RNC agreed to sell such list sample to MOR at the usual and normal rate. I have been assured by representatives of MOR that the amount paid represented the fair market value for such a list of names at that time and the RNC has confirmed that they assume the bill they issued was figured at average prices at that time.

RECEIVED
81 MAY 19 A10:18

PEABODY, RIVLIN, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION



Neither the Act nor Commission Regulations prohibits political committees from engaging in ordinary and normal business practices. The Commission's Regulations allow any lawful commercial transaction between political committees and corporations as long as these transactions are valued at their usual and normal charge (see 11 C.F.R. §100.4(a)(1)(iii)). In fact, the Commission has specifically approved the the commercial sale of membership lists by a political committee. (Advisory Opinion 1979-18)

In sum, it appears that the fears raised is the descenting opinion of Vice Chairman Friedersdorf and Commissioner Aikens in Advisory Opinion 1979-17 were well founded and that MOR has been caught up in a "dragnet" of circumstance surrounding an internally generated review and audit of the books and records of the RNC. There is no foundation in either law or fact for concluding that MOR has made any contribution to the RNC by the purchase of a sample mailing list for a bona fide business purpose at a usual and normal charge.

MOR has already expended considerable time, effort and money in attempting to review the facts and circumstances surrounding this transaction which occurred many years ago. The purpose of the Act is not to impede or adversely affect normal business operations of companies involved in the political process with either parties, candidates or pollsters. When an error of this magnitude is made, I believe that it is important that the situation be rectified as quickly as possible. Accordingly, I respectfully request that this proceeding be dismissed immediately as to MOR.

If you have any further questions, please do not hesitate to telephone me.

Sincerely,

Robert P. Visser

Robert P. Visser

cc: R. Teeter
M. Lukens

0204935731

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GCC# 4684
81 MAY 18 A 9:35

# Republican National Committee

**Donald L. Ivers**
House Counsel

**E. Mark Braden**
Deputy House Counsel

May 15, 1981

Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

RE: MUR 1180

Dear Mr. Steele:

Enclosed is our response to your letter of February 23, 1981, regarding MUR 1180.

If you have further questions concerning our response, please do not hesitate to contact me.

Very truly yours,

E. Mark Braden

E. Mark Braden
House Counsel

EMB:jd

Enclosures

cc: Chairman Richard Richards

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FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION

(Complainant)

v.

REPUBLICAN NATIONAL COMMITTEE

(Respondent)

81 MAY 18 P12:01

RE: MUR 1180

The Republican National Committee, by and through counsel, in response to the above-captioned, internally generated MUR, states as follows:

1. Complainant is barred from further proceedings against this respondent in this case in connection with any and all incidents cited in Complainant's Notification of Reason to Believe Finding and Subsequent Materials which occurred on or before February 22, 1978. 2 USC Section 455.

2. Complainant, in addressing the issue presented by transactions pursuant to a contractual agreement between the Republican National Committee and Franklin Mint Corporation, dated August of 1976, relies, for its finding that the income received by the Republican National Committee pursuant to that agreement constitutes contributions in violation of 2 USC Section 441b(a), upon an advisory opinion rendered by complainant on July 19, 1979. Advisory Opinion 1979-17. Such reliance is inappropriate in that AO 1979-17 set out guidelines which did not exist prior to that time and which are contrary to the letter and spirit of the Federal Election Campaign Act of 1971, as amended. Likewise, complainant's reliance upon Advisory Opinions 1976-50 and 1978-46 is inappropriate. Advisory Opinion 1976-50 deals with a situation involving contributions to candidates and not a situation involving the generation of income from "non-exempt functions" - taxable income. Advisory Opinion 1978-46, also relied upon by complainant deals with a State Party Convention involving, in part, federal candidates, and not a commercial transaction entered into for the purpose of generating income from "non-exempt functions" - taxable income.

3. Complainant relies upon the same support with respect to the contractual relationship between the Republican National Committee and Acropolis Books, Ltd., as it does for its position with respect to the relationship between the Republican National Committee and Franklin Mint Corporation. Counsel for respondent has reviewed the agreement between the authors of the book in question, REPUBLICAN HUMOR, Acropolis Books, Ltd., and the Republican National Committee. A copy of that contract is attached hereto as Exhibit A. A careful reading of that contract reveals significant differences between the terms of that particular agreement and the terms of the agreement between the Republican National Committee and Franklin Mint Corporation. It would appear from the terms of the contract, that the Republican National Committee is placed more in the position of a third party beneficiary than in the position of a party to the contract in that, under the terms of the agreement, it is to receive royalties that would usually accrue to the individual authors, Stephen J. Skubik and Hal E. Short, if the

Republican National Committee were not a party to the agreement. Therefore, amounts received by the Republican National Committee pursuant to the terms of this agreement would constitute individual contributions rather than corporate contributions. Alternatively, of course, the Republican National Committee, as a party to the contract, lends much more than merely its "good will and the reputation of its national leadership to promote a commercial enterprise." Under the terms of the agreement, the Republican National Committee is to assist in obtaining material for the book and to assist in promoting sales of the book within the Republican Party. In return for these services, the Republican National Committee is to receive payment in the form of royalties. Neither of the positions discussed here is meant to diminish respondent's reliance upon the statute of limitations in this particular instance since the contract was entered into and the income received prior to February 22, 1978. Should complainant persist in its reliance upon the same support in connection with this instance as relied upon in connection with the transaction between the Republican National Committee and Franklin Mint Corporation, respondent would then incorporate into this paragraph, by reference, its arguments as set forth in the preceding paragraph.

4. Complainant, in its Notification of Reason to Believe Finding, states that the Republican National Committee "deposited into its operating account funds in the amount of Twenty-four Thousand Two Hundred Six Dollars and Forty-eight Cents ($24,206.48) it received from sixty-six corporations and one labor organization." The initial Notification of Reason to Believe Finding contained no further support for this bald allegation and, in fact, failed to list any of the "sixty-six corporations and one labor organization" allegedly involved in the matter. Counsel for respondent was initially advised that that information would be unavailable to him due to the "confidential nature" of proceedings in connection with a Matter Under Review. However, having, apparently, reconsidered that position, General Counsel, on March 5, 1981, and again on March 30, 1981, condescended to supply respondent with a list of alleged corporate contributors. From this list, General Counsel has seen fit to cite nine corporate entities, charging them with violations of 2 USC Section 441b. The corporate entities are as follows:

(1) The Franklin Mint Corporation
(2) Acropolis Books, Ltd.
(3) Market Opinion Research Company
(4) American Medical Laboratories, Inc.
(5) National Direct Mail Services, Inc.
(6) Bailey, Deardourffand Associates, Inc.
(7) Envelopes Unlimited, Inc.
(8) Datatel, Incorporated
(9) Civic Services, Inc.

5. Counsel for respondent will address the situation with respect to each of the corporate entities in the order in which they are listed above:

(1) Franklin Mint Corporation - See discussion in preceding paragraph #2.

(2) Acropolis Books, Ltd. - See discussion in preceding paragraph #3.

(3) Market Opinion Research - Market Opinion Research is alleged to have made an illegal corporate contribution to the Republican National Committee by purchasing a copy of the REPUBLICAN ALMANAC from the Republican National Committee in 1977, for the sum of Fifteen Dollars ($15.00). Market Opinion Research is also accused of having made an illegal corporate

contribution in February, 1978, by purchasing a computer list for the sum of Eight Hundred Dollars ($800.00). The REPUBLICAN ALMANAC has been published by the Republican National Committee since 1973 and was developed by the Committee in the normal course of its operations, primarily for its own use and for the use of Party members, and was not specifically acquired or developed for general fund raising purposes. See Advisory Opinion 1979-76. The list purchased by Market Opinion Research is, likewise, an asset, the value of which was developed by the Committee in the normal course of its operations, primarily for its own use rather than for sale to the public. The Republican National Committee is a rather large purchaser of lists, but does not now and has not in the past engaged in the practice of selling its lists on a commercial basis. See AO 1979-76. Thus, an RNC list such as that purchased by Market Opinion Research Company would not be identical or "analogous to a 'membership list commonly offered or used commercially.'" See AO 1979-18.

(4) American Medical Laboratories, Inc. - American Medical Laboratories is charged with having made an illegal corporate contribution to the Republican National Committee by purchasing from the Republican National Committee computer hardware for the sum of Eleven Thousand Dollars ($11,000.00). This transaction involved arms length negotiations for the sale of computer hardware at a price "no greater than the usual and normal charge for those specific materials." See AO 1979-24. This transaction occurred at a time when the Republican National Committee was in the process of purchasing a new computer and found that it had on hand computer components that were either unnecessary for, or not compatible with, the new computer. Therefore, a purchaser for those components was sought.

(5) National Direct Mail Services, Inc. - National Direct Mail Services, Inc., is charged with having made a corporate contribution in the amount of Fifteen Dollars ($15.00) as a result of the purchase of a copy of the REPUBLICAN ALMANAC and for having purchased, on two occasions, envelopes in the amount of Two Hundred Dollars ($200.00) and Four Hundred Eighty Dollars ($480.00). The transaction with National Direct Mail Services, Inc., with respect to the REPUBLICAN ALMANAC is identical to the transaction entered into with Market Opinion Research Company with respect to this publication. Respondent's position with respect to that transaction is set forth in the discussion of the similar transaction involving Market Opinion Research. With respect to the purchase of envelopes, it should be noted that National Direct Mail Services, Inc., has, for a number of years, contracted with the Republican National Committee to perform direct mail functions. National Direct Mail Services, Inc., also performs direct mail functions for many other clients. In connection with the transactions involved herein, National Direct Mail Services, Inc., developed a requirement for a special type of envelope in connection with the preparation of a mailing on behalf of a client other than the Republican National Committee. When National Direct Mail Services, Inc., contacted their envelope supplier, they were advised that the Republican National Committee had, on hand, a supply of that type of envelope and that that supply was in excess of the needs of the Republican National Committee. Therefore, National Direct Mail Services, Inc., contacted the Republican National Committee and purchased from them the excess envelopes at the same price that was paid to the supplier by the Republican National Committee. This was, thus, a purchase of excess materials at a price "no greater than the usual and normal charge for those specific materials." See AO 1979-24.

(6) Bailey, Deardourff & Associates, Inc., and Bailey, Deardourff & Eyre, Inc. - Bailey, Deardourff is charged with having made an illegal corporate contribution in the amount of Eighty-five Dollars ($85.00) as a result of the purchase of information developed in the normal course of the business of the Republican National Committee, another in the amount of Fifty Dollars ($50.00) for the purchase of a precinct list and yet another in the amount of Seven Hundred Fifty Dollars ($750.00) for the purchase of a computerized listing known as a "PIPS," Precinct Information Priority System, computerized precinct information developed by the Republican National Committee in the normal course of its operations and primarily for its own use, rather than for sale to others. See AO 1979-76.

(7) Envelopes Unlimited, Inc. - Envelopes Unlimited is charged with having made an illegal contribution in the amount of Eight Hundred Twelve Dollars and Fifty Cents ($812.50) having paid that amount for "computer services." The Republican National Committee owns, as part of its normal operations, a large and sophisticated computer facility. On occasion, that computer facility is not utilized to its fullest extent by the Republican National Committee and other Republican organizations. Therefore, in an effort to make maximum utilization of a sophisticated and expensive facility, the Republican National Committee will offer the use of its facility to other organizations, much as it would offer left over campaign materials, etc., to other organizations at fees "no greater than the usual and normal charge for those specific materials [computer time, etc.]." See AO 1979-24. To do otherwise would be wasteful and could subject the Chairman of the Republican National Committee to censure for poor management practices. The Chairman has fiduciary obligations to the Republican National Committee. The failure of the Chairman to properly and reasonably utilize the assets of the Committee could be considered a breach of his responsibilities and could subject him to personal liability. Under the theory apparently being propounded by complainant's office of General Counsel, any political committee having excess assets, regardless of their nature, will be required either to sell them to private individuals, contribute them to charity or waste them. Few private individuals have a need for excess materials developed by the Republican National Committee or for computer time. The Republican National Committee does, on occasion, provide some services to charitable organizations, but the demand for such services by charitable organizations is rare. To waste those assets is, at minimum, poor management and possibly a serious breach of a legal responsibility.

(8) Datatel, Inc. - Datatel is charged with having made illegal corporate contributions to the Republican National Committee in the amounts of Four Hundred Twenty-two Dollars and Fifty Cents ($422.50), Three Hundred Seventy-five Dollars and Fifty Cents ($375.50), Nine Hundred Eighty-nine Dollars and Ninety Cents ($989.90), Nine Hundred Forty-six Dollars and Eighty Cents ($946.80), Twelve Hundred Fifty-Five Dollars and Eighty Cents ($1,255.80), Twenty-five Hundred Thirty-one Dollars and Fifty Cents ($2,531.50), and Three Hundred Ninety Dollars ($390.00). In all instances, these payments were made for computer time considered by the Computer Services Division of the Republican National Committee to be excess or left-over and provided to Datatel, Inc., at a price "no greater than the usual and normal charge." See AO 1979-24.

(9) Civic Services, Inc. - Civic Services, Inc., is charged with having made an illegal corporate contribution in the amount of One Thousand Five Hundred Dollars ($1,500.00), the amount paid for the purchase of precinct lists, a computerized listing developed by the Republican National Committee in the normal course of its operations and primarily for its own use rather than for sale to others. See AO 1979-76.

Respondent's review of the entire listing of alleged corporate contributors to the Republican National Committee reveals that those corporations cited by complainant are representative of the types of transactions or relationships involved throughout the entire list. Therefore, with respect to those cited as well as to those other corporations listed, respondent would admit receipt of the funds indicated but denies that any funds received were in the form of contributions. Funds received in connection with the transactions listed were, rather than contributions, income from non-exempt functions as provided for and permitted under Section 527 of the Internal Revenue Code. The funds were received, reported to the Federal Election Commission as other than contributions and taxes, as required by the Internal Revenue Code, were paid on the amounts received. All funds received were the result of attempts to apply sound business management principals to a large and relatively sophisticated organization. The result was the production of taxable income which was duly recorded and reported. None of this was done with an intent on the part of any of the organizations involved, including the Republican National Committee, to circumvent the Federal Election Campaign Act.

Respondent respectfully requests that MUR 1180 be dismissed without further action.

Respectfully submitted,

E. Mark Braden

E. MARK BRADEN, House Counsel
Republican National Committee

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# AUTHORSHIP, PUBLICATION AND PROMOTION AGREEMENT

AGREEMENT made this 15th day of August, 1975, between Stephen J. Skubik, whose address is 1725 DeSales Street, NW, Washington, D.C., and Hal E. Short, whose address is 1522 K Street, NW, Washington, D.C. (Authors): the Republican National Committee, 310 First Street, SE, Washington, D.C. (Committee); and Acropolis Books, Ltd., 2400 17th Street, NW, Washington, D.C. (Publisher):

WITNESSETH

In consideration of the mutual covenants herein contained the parties agree as follows:

THE GRANT AND THE TERRITORY

1. The Authors hereby grant and assign to the Publisher and its successors, representatives and assignees, during the full term of the copyright and all renewals thereof, the full, sole and exclusive right to print, publish and sell under its own name:

REPUBLICAN HUMOR

(hereinafter called the Work) which title may be changed only by mutual consent in writing.

THE WARRANTY

2. The Authors represent and guarantee to the Publisher that they are the sole authors of the said Work, that they are the owners of all the rights granted to the Publisher hereunder, that the said Work is original, has not been previously published in book form, and is not in the public domain; that it contains no libelous, obscene or other unlawful matter; and that it in no wise infringes upon the copy right or violates the right of privacy or any other right of any person or party whatsoever, and they agree to hold the Publisher harmless against any recovery finally sustained in any suit which may be brought or had against the Publisher, by reason of a

violation of any proprietary right or copyright, or because of any libelous, obscene or other unlawful matter contained in the said Work.

THE MANUSCRIPT

3. The Authors agree to deliver a completed manuscript copy of the said Work, ready for typing, containing works and cartoons equivalent to 196 pages of printed material, not later than the 15th of October, 1975. If the Authors fail to deliver such copy by said date the Publisher may terminate this agreement by giving written notice to the Authors to such effect. The Publisher and Authors may, by mutual consent in writing, establish a new deadline for delivery.

PUBLICATION OF THE WORK

4. The Publisher shall, upon receipt of a manuscript, have the right and sole discretion to reject the Work for any reason, or to request changes or additions to it. The Authors may refuse to make any such changes or additions to it, and in such event this agreement shall be terminated. The Publisher shall within three months after the Authors have delivered a complete and satisfactory manuscript, publish said Work at its own expense and in such style and manner as it deems best suited to the sale thereof, and advertise and promote the sale thereof as and to the extent it deems best. The Publisher will use all customary means to promote and market the Work throughout the United States.

The expenses for which the Publisher shall be responsible, in addition to all others involved in publication, distribution, and promotion, include: artist's fees; costs of editing, typing, collating, proofreading and make-up by the person or persons engaged by the Authors; secretarial and mailing services supplied by the Committee to obtain material for the book and subsequently to help promote within the Republican Party the sale of the book. The artist's fees and editing, typing, collating, proofreading, and make-up costs will

be paid by the Publisher prior to the release of the book, such fees and costs to be considered advances against the royalties. The cost of secretarial and mailing services supplied by the Committee will be ~~reimbursed by the Publisher by delivering one book for each three dollars of expenses incurred, such expenses to be~~ charged against the promotional expenses as per Paragraph 10.

THE COPYRIGHT

5. The Publisher, upon first publication of the Work, agrees to apply for copyright in the name of Stephen J. Skubik in the United States of America and under the Universal Copyright Convention, ~~in~~ the exclusive territory specified in Paragraph 1, and to imprint the copyright notice required by law in each copy of the Work. Stephen J. Skubik, using forms acceptable to the Publisher, agrees to furnish the Publisher promptly with any authorization or other document necessary to carry out the provisions hereof.

The Publisher shall, upon the termination of the first term, make timely application for renewal of copyright under then existing United States Copyright Law.

USE OF COPYRIGHT MATERIAL

6. If the Work includes excerpts of materials presently under copyright, the Authors, using forms acceptable to the Publisher, will obtain written permission from the owners of such copyrights to print the excerpts.

ADDITIONAL MATERIAL

7. The Authors agree to prepare and deliver, along with the manuscript: Title page, preface or foreword, table of contents and/or index, and complete and final copy for all illustrations properly prepared for reproduction.

PRINTERS PROOFS

8. The Publisher shall furnish the Authors with a proof of the Work which, except for such reasonable changes in styling as are required by the Publisher,

conform to the completed manuscript as submitted by the Authors, unless changed by mutual consent. The Authors agree to return such proof to the Publisher with their corrections within ten days of the receipt thereof by them.

ROYALTIES, AND SHARE OF PROCEEDS

9. The Publisher agrees that the retail price of this Work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors and the Committee on the following schedules:

A. On sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

i) Thirty Cents ($0.30) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) Two Dollars and Twenty-five Cents ($2.25) per book to the Committee, as long as Stephen J. Skubik shall receive Thirty (30) Cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the Committee;

iv) All orders from the Committee and Republican organizations shall be accompanied by check for the full retail price.

B. On sales through the normal book trade distribution channels, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

i) Ten Cents ($0.10) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) One Dollar ($1.00) to the Committee, and One Dollar and Ten Cents ($1.10) after Stephen J. Skubik has recovered his expenses.

C. The following shall be considered as subsidiary rights: sales to book clubs, publications by another publisher, publication of the Work in a paperbound or cheap edition, serial rights before and after book publication, dramatic and/or motion picture rights, translations, digests, abridgements, selections, anthologies, and mechanical, visual (such as microfilm and microprint), or sound reproducing and recording rights (including television and broadcasting), and adaptations of said Work for commercial use. Subsidiary rights to publish are to be arranged by mutual consent of the Authors, Publisher and the Committee. The division of receipts from the sale of subsidiary rights shall be Forty percent (40%) to the Committee, Thirty percent (30%) to the Publisher and Thirty percent (30%) to the Authors, i.e., Ten percent (10%) to Hal Short, Twenty percent (20%) to Stephen J. Skubik until his out-of-pocket costs of creating the book are recovered, then his 20% will be added to the Committee. All compensation from sales of the Work under this Paragraph shall be excluded from the computation of the royalties payable under Paragraph (A) above and shall be computed and shown separately in reports from the Publisher and/or Authors.

AND PARAGRAPH (B)

D. No royalties shall be payable on free copies furnished to the Authors or to the Committee, or on copies for review, sample, or other similar purposes.

PROMOTION

10. The Authors will take the Work to the national print, T. V., and radio press for maximum publicity including talk shows, known comedians, etc. The Committee will bulletin all state, county, and city Republican Committee officials, and in addition will publicize the Work through State Republican publications, Young Republicans, Women's Federation, etc. One Dollar ($1.00) per book sold by the Publisher (under the provisions of Paragraph 9A) shall be remitted by the Publisher to the Committee to cover these promotional expenses of the Authors and the Committee, on sales made through the National Committee but not on sales through normal book distribution channels referred to in Paragraph 9B. The Committee shall be the final judge of the legitimacy and necessity of promotional expenses and shall reimburse such expenses from this promotional fund. After the reimbursement of all said expenses, the balance of such fund shall be credited to the Committee as additional royalties under this agreement.

FREE COPIES

11. The Publisher agrees to present to each Author 100 copies of the Work and to the Committee 1,000 copies of the Work for promotional purposes, such costs to be charges against the promotion fund as per Paragraph 10.

REPORTS AND PAYMENTS

12. The Publisher will report on the sale of the Work in February and July of each year for the six month period ending the prior December 31 and June 30 respectively on sales to the Committee, and in March and September on sales made through trade channels. With each report of sales, the Publisher will make settlement for any balance of royalties due.

TERMINATION AND REVERSION OF RIGHTS

13. a) In the event that the Work shall at any time be out of print, the Authors may give notice thereof to the Publisher and in such event the Publisher shall declare

within sixty days in writing whether or not he intends to bring out a new printing of the Work within six months. Failure to reprint the Work within six months after receipt of the Authors' notice shall cause all rights herein granted to revert to the Authors at the expiration of said period without further notice.

b) If the Publisher shall, during the existence of this agreement, default in the making of payment as herein provided; if the Publisher shall fail to comply with or fulfill with other terms and conditions hereof; or in the event of bankruptcy, this agreement shall terminate and the rights granted herein to the Publisher shall revert to the Authors and Committee. In such event all payments theretofore made to the Authors and Committee shall belong to the Authors and Committee without prejudice to any other remedy which the Authors and Committee may have.

c) Upon the termination of this agreement for any cause, all rights granted to the Publisher revert to the Authors and Committee for their use at any time, and the Publisher shall return to the Authors all property originally furnished by the Authors. The Authors shall have the right in such instance to purchase the plates, if any exist, from the Publisher at their metal value, and any or all of the remaining sheets or copies at a price not to exceed 50% of the manufacturing costs, exclusive of overhead.

CONFLICTING PUBLICATION

14. The Authors agree that during the term of this agreement they will not, without the written permission of the Publisher, publish or permit to be published any material in book or pamphlet form, based on the material in the Work, which is reasonably likely to interfere with its sale.

INSOLVENCY

15. If a petition in bankruptcy should be filed by or against the Publisher, or if it shall be judged insolvent by any court, or if the Publisher shall liquidate its business for any cause whatsoever, this agreement shall

terminate automatically and without notice, and all rights granted hereunder shall thereupon revert to the Authors and to the Committee.

ARBITRATION

16. Any controversy or claim arising out of this agreement or the breach thereof, with the exception of a failure to pay royalties, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then obtaining, and judgement upon any award may be entered in the highest court of the forum, State or Federal, having jurisdiction. Such arbitration shall be held in the City of Washington, D.C., unless otherwise agreed by the parties.

This agreement shall be construed and interpreted according to the laws of the District of Columbia, and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives.

WAIVER

17. A waiver of any breach of any of the terms or conditions of this agreement by any of the parties thereto, shall neither be deemed a waiver of any repetition of such breach nor in any wise affect any other terms or conditions of this agreement; shall be valid or binding unless it shall be in writing, and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals at Washington, District of Columbia, the day and year first written above.

BY: Caduceus Books, Ltd.
Caduceus Books, Ltd.
2405 17th St. N.W. Wash D.C.
PUBLISHER

BY:
1725 DeSales Nw
Washington, DC
AUTHOR

BY:
310 - 1st St. SE
Washington D.C.
REPUBLICAN NATIONAL COMMITTEE

BY:
AUTHOR

82040333146

81 MAY 18 A9:35




**Republican National Committee.**
310 First Street Southeast, Washington, D.C. 20003.

To

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

100247

(410 # 4530

# CIVIC SERVICE INCORPORATED

SUITE 960
314 NORTH BROADWAY
SAINT LOUIS, MISSOURI 63102
AREA CODE 314-436-4185

ROY PFAUTCH
PRESIDENT

April 16, 1981

William E. Taylor, Esquire
Staff Attorney
Federal Election Commission
1325 'K' Street, N. W.
Washington, D. C. 20463

Re: MUR 1180

Dear Mr. Taylor:

I am president of Civic Service, Inc., a respondent in Matter Under Review ("MUR") 1180. Pursuant to the requirements of 11 C.F.R. S. 111.23, I hereby advise the Federal Election Commission ("FEC") that I will be represented in MUR 1180 by William H. Schweitzer and Jan W. Baran of the law firm of Baker & Hostetler in Washington, D. C.

The firm's address is 818 Connecticut Avenue, N. W., Washington, D. C. 20006 and its telephone number is 202/861-1500. I authorize Mr. Schweitzer and Mr. Baran to receive on behalf of Civic Service, Inc. any and all notifications and other communications from the FEC.

Very truly yours,

Roy Pfautch

Roy Pfautch
President
Civic Service, Inc.

81 APR 21 P2:46

GENERAL COUNSEL
RECEIVED

CCC# 4530

FEDERAL ELECTION COMMISSION
CORRESPONDENCE CONTROL SLIP
Do Not Separate From Document

| For Division Use | Suspense No. |
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| 810421132105 KJA | 100247 |

**Name and Address of Sender**

**Subject of Correspondence**

MUR 1180

| Date Received | Suspense Date |
|---|---|
| 04/21/81 | 05/12/81 |

| Referred to | Action (Optional) |
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| 1. GARR | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |

| Answer Date | File Designation |
|---|---|
| | 4300 |

**Special Instructions:**

FEC Form 17 (Revised March 1977)

U.S. Government Printing Office: 1980

CIVIC SERVICE INCORPORATED
SUITE 960
314 NORTH BROADWAY
SAINT LOUIS, MISSOURI 63102

102



REGISTERED
NO.
113514

William E. Taylor, Esquire
Staff Attorney
Federal Election Commission
1325 'K' Street, N. W.
Washington, D. C. 20463

RETURN RECEIPT
REQUESTED

GCC # 4494

ACROPOLIS
BOOKS LTD.
2400 Seventeenth St. N.W.
Washington, DC 20009
(202) 387-6805

April 14, 1981

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1180

Dear Mr. Taylor,

In reply to the letter of John Warren McGarry dated February 23, and that of Charles N. Steele dated March 27, we submit the following:

It was never our intent to make a donation. We simply carried out our contractual obligation as stipulated in the Author/Publisher Book Contract.

We respectfully request that the case be dropped for the reason stated above, and as further detailed in our letter of March 12, 1981.

Sincerely,

Alphons J. Hackl
Publisher

AJH/jlp

82040353130

ACROPOLIS BOOKS LTD.
2400 Seventeenth St. N.W.
Washington, D.C. 20009

William E. Taylor, Esq.
Federal Election Commision
1325 K Street, N.W.
Washington, D.C. 20463

CHUC 4484

MUR 1180

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MWE

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: APRIL 14, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1166 and MUR 1180

The attached letter regarding MUR 1166 and MUR 1180 was received in the Chairman's Office and then presented to the Secretary of the Commission. It is provided for your action.

Attachment:
Letter from James P. Mercurio, dated April 13, 1981

81 APR 14 P12:42

RECEIVED
GENERAL COUNSEL

2204035352

**Arent, Fox, Kintner, Plotkin & Kahn**

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

81 APR 14 P12: 10

April 13, 1981

81 APR 14 P12: 42

BY HAND

Honorable John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Mr. McGarry:

We are counsel for Franklin Mint Corporation in the above matters.

Franklin Mint recently has been advised that the Commission has found reason to believe that it violated 2 U.S.C. §441b(a) by making certain payments to the Republican National Committee and the Democratic National Committee in 1976. The payments in question -- which amounted to approximately $30,000 for each committee -- were made pursuant to contractual arrangements under which medals that were designed, minted and sold by Franklin Mint were designated by each committee as its Official Presidential Campaign Medal and Franklin Mint was authorized to refer to such designation in its advertising of the medals. The contract with each committee also provided that Franklin Mint would pay a royalty equal to 15 per cent of its sales, with a minimum guaranteed royalty of $30,000, and provide a quantity of medals equivalent in retail value to $5,000.

In the Notification of Reason to Believe Finding, the Commission states the following conclusion with respect to these arrangements:

> In the present transaction, the [committee] granted the Corporation the exclusive right to mint and market commemorative medals

> bearing the likeness of the candidates as the [committee's] campaign symbol and authorized the corporation to make reference to the committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican [or Democratic] National Committee" in advertising materials. In so doing, the [committee], in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of §441b of the Act.

The "credit card program" to which the above-quoted passage refers is a program that was proposed in 1979 by the Republican National Committee under which it would enter an arrangement with a credit card issuing bank that contained the following essential elements:

> (1) The committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership list, all of which would enable the card issuer to increase the number of persons holding its cards.
>
> (2) The committee would have been compensated by the credit card issuer in accordance with one of three options, all of which would have permitted the committee to make periodic use of the credit card issuer's monthly billing statement as a vehicle for sending political messages to the credit card holders.

The Republican National Committee in that case admitted that among the benefits expected to flow from the credit card program were that the program would "increase its identity with its members" and increase its "fund raising" potential. On these facts, the Commission concluded in Advisory Opinion 1979-17 that payments made by the credit card issuers to the

Republican National Committee and inclusion of political materials in mailings of credit card statements, as contemplated by the program, would be "contributions or expenditures" prohibited by 2 U.S.C. §441b.

The contractual arrangements under which Franklin Mint made royalty payments to the Republican and Democratic National Committees differ from the credit card program considered in AO 1979-17 in several important respects. Franklin Mint's purpose in proposing its official campaign medal program and in selling its medals was not to benefit the political committees that designated the medals as their official campaign medals, and unlike the credit card program, the campaign medal offer did not provide a vehicle whereby the committees could advance their political objectives. As stated in the affidavit of Franklin Mint's Chairman, which is submitted herewith, Franklin Mint had no purpose to influence any election or to contribute to the success of any political candidate or party. Its purpose was the commercial purpose of making a profit from the sale of its medals. Nothing in the program is inconsistent with that purpose.

Unless there are circumstances which indicate that a payment was made to a political committee for the purpose of influencing an election, there can be no reason to believe that a payment made pursuant to a commercial arrangement is a prohibited contribution. The Commission's opinion in the credit card program proposal addresses a joint arrangement between a political committee and a bank in which the bank not only would have made payments to the committee in return for commercial benefits, it also would have permitted the committee, as part of the commercial arrangement, to use mailings as a means by which the committee could promote its political aims. Under these circumstances, a purpose on the part of the bank to influence political elections might be inferred. By contrast, it is difficult to discern how Franklin Mint's promotion of official campaign medals of both the Republican and Democratic presidential candidates could have been intended to influence the presidential election. There is nothing in the promotional material that urges anyone to vote for any candidate or to support any party. The presidential election is merely the occasion for which these medals were created. And, while the election may have been the event that made the medal program appear to be an attractive commercial venture for Franklin

Mint, there is no evidence that the program was intended to influence the election.

Accordingly, we respectfully submit that payments by Franklin Mint to the Democratic and Republican National Committees pursuant to the presidential campaign medal programs in 1976 do not violate 2 U.S.C. §441b.

Sincerely,

James P. Mercurio

JPM:kcm
Enclosure
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

0204035315

FRANKLIN MINT CORPORATION

FRANKLIN CENTER, PENNSYLVANIA 19091

AFFIDAVIT

I, Charles L. Andes, being first duly sworn, depose and say as follows:

1. I am the Chairman of Franklin Mint Corporation, Franklin Center, Pennsylvania.

2. In 1976 the Franklin Mint entered into contractual arrangements under which it agreed with the Republican National Committee and the Democratic National Committee to pay royalties and other compensation in consideration of the committees' agreements to designate medals designed and minted by Franklin Mint as their official campaign medals. I am familiar with the circumstances under which these contractual arrangements were entered.

3. Franklin Mint's purpose in entering these arrangements was to earn a profit from the sale of the medals in question. It was not the purpose of Franklin Mint to influence any political election or to contribute to the success of any political party or candidate.

4. The terms of these arrangements are not more favorable to the Republican and Democratic National Committees than terms to which Franklin Mint agrees with others in similar programs.

5. Exhibit 1 and Exhibit 2 exemplify the promotional materials employed by Franklin Mint to promote the sale of these medals in 1976.

IN WITNESS WHEREOF, I hereby set my hand this 10th day of April, 1981.

Charles L. Andes

Charles L. Andes

County of Delaware )
Commonwealth of Pennsylvania) ss:

Subscribed and sworn to before
me this 10th day of April, 1981.

Helen A. Harty

Notary Public

HELEN A. HARTY, NOTARY PUBLIC
MIDDLETOWN TWP., DELAWARE COUNTY
MY COMMISSION EXPIRES DEC. 17, 1981
Member, Pennsylvania Association of Notaries

C 2 0 4 0 3 3 1 5 7

Exhibit 1

# THE FRANKLIN MINT

FRANKLIN CENTER, PENNSYLVANIA 19091

Dear Collector:

The Franklin Mint has been appointed to produce the official 1976 Presidential Campaign Medals of both the Republican National Committee and the Democratic National Committee.

These official campaign medals will be announced to the public soon in newspapers throughout the United States. But, as official minter for the medals, we have been given special permission to send this advance notice to our collectors.

Accordingly, we are enclosing a copy of the public announcement, which includes illustrations of the Republican and Democratic campaign medals. The portraits which appear on these medals are new and original works of art which were created especially for the 1976 Presidential campaign by two of America's leading medallic sculptors. The portrait of Gerald R. Ford is by Gilroy Roberts, and the portrait of Jimmy Carter is by Julian Harris. These official campaign portraits will be used only on these medals; they will never appear anywhere else.

Please note that you may acquire these official campaign commemoratives as solid sterling silver medals, or in pendant form. The pendants, each with an appropriate neckchain, will be produced in sterling silver, gold on sterling and in 18 karat gold. The medals and pendants alike will be issued in limited edition, exclusively for those who place orders by Election Day -- November 2, 1976. After that date, these medals and pendants will never be made available again.

As you may know, many past Presidential campaign commemoratives are today highly valued by collectors. And, since the 1976 Presidential campaign promises to be one of the most exciting in years, it seems quite likely that the official medals of this campaign will be widely sought after by collectors in the future.

To obtain the medals and pendants of your choice, enter your order on the accompanying form -- and be sure to mail it no later than Election Day, November 2nd.

Sincerely,

Brian G. Harrison

Brian G. Harrison
President

BGH:rw

The Franklin Mint is the world's largest private mint. It is not affiliated with the U.S. Mint or any other government agency.

Exhibit 2

*Announcing*

# THE OFFICIAL 1976 PRESIDENTIAL CAMPAIGN MEDALS

*Available only until Election Day, November 2, 1976*

## REPUBLICAN




SHOWN ACTUAL SIZE.

*The Official Presidential Campaign Medal of the Republican National Committee*

### ORDER FORM

OFFICIAL REPUBLICAN NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each . . . . . $____

____ Solid Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $22.50 each . . . . . $____

____ 24KT Gold electroplate on Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $27.50 each . . . . . $____

____ 18KT Gold pendant (1¼" diam.), with appropriate chain, @ $250. each . . . . . $____

Total of Order: $____

Plus my state sales tax: $____

Remittance Enclosed: $____

Mr.
Mrs.
Miss _____
PLEASE PRINT CLEARLY

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

## DEMOCRATIC




SHOWN ACTUAL SIZE.

*The Official Presidential Campaign Medal of the Democratic National Committee*

### ORDER FORM

OFFICIAL DEMOCRATIC NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each . . . . . $____

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Remittance Enclosed: $____

Mr.
Mrs.
Miss _____
PLEASE PRINT CLEARLY

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

1204035159

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

RECEIVED
GCC 4495
81 APR 14 A8:41
MUR 1180

April 13, 1981

BY HAND

Honorable John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

81 APR 14 P2:28

Re: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Mr. McGarry:

We are counsel for Franklin Mint Corporation in the above matters.

Franklin Mint recently has been advised that the Commission has found reason to believe that it violated 2 U.S.C. §441b(a) by making certain payments to the Republican National Committee and the Democratic National Committee in 1976. The payments in question -- which amounted to approximately $30,000 for each committee -- were made pursuant to contractual arrangements under which medals that were designed, minted and sold by Franklin Mint were designated by each committee as its Official Presidential Campaign Medal and Franklin Mint was authorized to refer to such designation in its advertising of the medals. The contract with each committee also provided that Franklin Mint would pay a royalty equal to 15 per cent of its sales, with a minimum guaranteed royalty of $30,000, and provide a quantity of medals equivalent in retail value to $5,000.

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> In the present transaction, the [committee] granted the Corporation the exclusive right to mint and market commemorative medals

> bearing the likeness of the candidates as the [committee's] campaign symbol and authorized the corporation to make reference to the committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican [or Democratic] National Committee" in advertising materials. In so doing, the [committee], in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of §441b of the Act.

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2040353161

Republican National Committee and inclusion of political materials in mailings of credit card statements, as contemplated by the program, would be "contributions or expenditures" prohibited by 2 U.S.C. §441b.

The contractual arrangements under which Franklin Mint made royalty payments to the Republican and Democratic National Committees differ from the credit card program considered in AO 1979-17 in several important respects. Franklin Mint's purpose in proposing its official campaign medal program and in selling its medals was not to benefit the political committees that designated the medals as their official campaign medals, and unlike the credit card program, the campaign medal offer did not provide a vehicle whereby the committees could advance their political objectives. As stated in the affidavit of Franklin Mint's Chairman, which is submitted herewith, Franklin Mint had no purpose to influence any election or to contribute to the success of any political candidate or party. Its purpose was the commercial purpose of making a profit from the sale of its medals. Nothing in the program is inconsistent with that purpose.

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Mint, there is no evidence that the program was intended to influence the election.

Accordingly, we respectfully submit that payments by Franklin Mint to the Democratic and Republican National Committees pursuant to the presidential campaign medal programs in 1976 do not violate 2 U.S.C. §441b.

Sincerely,

James P. Mercurio

JPM:kcm
Enclosure
cc: Charles N. Steele, Esquire
William Taylor, Esquire
Thomas Whitehead, Esquire

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RECEIVED

81 APR 14 A8:42

FRANKLIN MINT CORPORATION

FRANKLIN CENTER, PENNSYLVANIA 19091

AFFIDAVIT

I, Charles L. Andes, being first duly sworn, depose and say as follows:

1. I am the Chairman of Franklin Mint Corporation, Franklin Center, Pennsylvania.

2. In 1976 the Franklin Mint entered into contractual arrangements under which it agreed with the Republican National Committee and the Democratic National Committee to pay royalties and other compensation in consideration of the committees' agreements to designate medals designed and minted by Franklin Mint as their official campaign medals. I am familiar with the circumstances under which these contractual arrangements were entered.

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IN WITNESS WHEREOF, I hereby set my hand this 10th day of April, 1981.

Charles L. Andes

Charles L. Andes

County of Delaware )
Commonwealth of Pennsylvania) ss:

Subscribed and sworn to before me this 10th day of April, 1981.

Helen A. Harty

Notary Public

HELEN A. HARTY, NOTARY PUBLIC
MIDDLETOWN TWP., DELAWARE COUNTY
MY COMMISSION EXPIRES DEC. 17, 1981
Member, Pennsylvania Association of Notaries

Exhibit 1

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To obtain the medals and pendants of your choice, enter your order on the accompanying form -- and be sure to mail it no later than Election Day, November 2nd.

Sincerely,

Brian G. Harrison

Brian G. Harrison
President

BGH:rw

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Announcing

Exhibit 2

# THE OFFICIAL 1976 PRESIDENTIAL CAMPAIGN MEDALS

*Available only until Election Day, November 2, 1976*

## REPUBLICAN




*The Official Presidential Campaign Medal of the Republican National Committee*

### ORDER FORM

OFFICIAL REPUBLICAN NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

____ Solid Sterling Silver medal (1½" diam.) in Lucite display stand @ $22.50 each ..... $____

____ Solid Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $22.50 each ..... $____

____ 24 KT Gold electroplate on Sterling Silver pendant (1¼" diam.), with appropriate chain, @ $27.50 each ..... $____

____ 18 KT Gold pendant (1¼" diam.), with appropriate chain, @ $250. each ..... $____

Total of Order: $____

Plus my state sales tax: $____

Remittance Enclosed: $____

Mr.
Mrs.
Miss _____

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

## DEMOCRATIC




*The Official Presidential Campaign Medal of the Democratic National Committee*

### ORDER FORM

OFFICIAL DEMOCRATIC NATIONAL COMMITTEE
1976 PRESIDENTIAL CAMPAIGN MEDAL

The Franklin Mint
Franklin Center, Pennsylvania 19091

Please send me the following:

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Mr.
Mrs.
Miss _____

Address _____

City, State, Zip _____

ALL ORDERS ARE SUBJECT TO ACCEPTANCE 11

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RECEIVED
FEC # 4461
81 APR 10 P1:02


DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N.W.
SUITE 520
WASHINGTON, D.C. 20006


April 8, 1981

HAND-DELIVERED

APR 10 P1:45
GENERAL COUNSEL

Mr. John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: FEC File No. MUR 1180

Dear Mr. McGarry:

This firm represents Datatel, Inc., of 3700 Mount Vernon Avenue, Alexandria, Virginia, in regard to the referenced matter.

We have received and reviewed a copy of your letter dated February 23, 1981 to Mr. Kendrick, Chairman of our client. That letter states that on December 2, 1980 the Commission found reason to believe that Datatel, Inc. had violated 2 U.S.C. §441b(a). The enclosed memorandum indicates that this conclusion was based upon records of the Republican National Committee ("R.N.C.") which show that the R.N.C. received $6,521.50 from Datatel, Inc. for the sale of computer time by the R.N.C. to Datatel. The memorandum does not state the date(s) or time period involved. To the best of our knowledge, Datatel was not a party to that inquiry.

The memorandum summarily concludes that this alleged payment constitutes an illegal contribution by Datatel, Inc. to the R.N.C. and cites several Commission Advisory Opinions in support of its conclusion. We disagree and object to that conclusion.

Datatel, Inc. is a small closely held company engaged in the business of data processing. Its principal offices are located in Alexandria, Virginia. In the normal course of its business it periodically purchases the use of computer time from parties who offer the same for sale. It negotiates for this time and pays fair market value for it. Datatel did purchase some excess computer time from the R.N.C. It did so in an arm's length transaction and at fair market value. It did not intend to make

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a gift or contribution of any kind in violation of the law. From the Commission memorandum received it does not appear that the Commission determined that this purchase was "in connection with a Federal election." Certainly Datatel did not intend for its payment to be in connection with such.

The Commission has found in its memorandum that "the corporation [Datatel] did not realize they (sic) were making a contribution in contravention of 2 U.S.C. §441b, but believed they (sic) were involved in an arm's length business transaction." We assert that our client in fact was involved in an arm's length business transaction. The situation here is clearly and easily distinguished from those in Commission Advisory Opinions 1979-76, or 1979-17, in that the cited situations deal with a plan of fund raising by the Republican National Committee, in the one case by selling books and in the other by a credit card promotion. In this case, we do not believe that the action of the R.N.C. was intended as a fund raising plan. The computer time in question was an asset of the Committee developed in the normal course of its operations and primarily for its own use rather than to sell to others--a situation recognized as distinguishable by the Commission in Advisory Opinion 1979-76.

Lastly, the Commission memorandum states that Datatel, Inc. would not have liability if the R.N.C. had earmarked any funds received and placed same in a separate account used for exempted activities. While this suggestion might provide a satisfactory resolution of the matter for the R.N.C., it provides little help for Datatel, Inc., since it has no control over the R.N.C.'s use or depositing of funds.

The Advisory Opinions we have reviewed are careful to state that they relate "...to the specific factual situation" contained in the request. We believe this is appropriate and fair since otherwise unjust and unintended results could follow. Under the circumstances, and for the reasons set forth hereinabove, it is respectfully requested that the referenced matter be dismissed as to Datatel, Inc.

Very truly yours,

DAVENPORT & ASSOCIATES, P.C.

David M. Davenport

DMD/mab

cc: William E. Taylor, Esq.
Federal Election Commission

Mr. Earl G. Kendrick, Jr., Chairman
Datatel, Inc.

Donald Ivers, Esq.

2 2 0 4 0 3 5 5 1 5 3

GCN #1146

LAW OFFICES

# McCandlish, Lillard, Church & Best

A Professional Corporation

The Barbour House

4069 Chain Bridge Road

Fairfax, Virginia 22030

TELEPHONE (703) 273-2440

ROBERT J. McCANDLISH, JR.
ROTHWELL J. LILLARD
RANDOLPH W. CHURCH, JR.
STEPHEN L. BEST
JESSE B. WILSON, III
GERALD R. WALSH
PETER A. ARNTSON
THOMAS J. CAWLEY
RANDOLPH A. SUTLIFF
WILLIAM E. DONNELLY, III
ROBERT H. J. LOFTUS

GRADY K. CARLSON
ANN WOOD MISCHE
BARBARA L. ABERNETHY
R. PEYTON MAHAFFEY
PAUL B. TERPAK
JOHN M. GRAY

WILLIAM C. BAUKNIGHT
(COUNSEL)

F. D. RICHARDSON
(1884-1954)
HUGH B. MARSH
(1900-1976)

April 8, 1981

FILE NO

BY MESSENGER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
Seventh Floor
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR No. 1180
American Medical Laboratories, Inc.

Dear Mr. Steele:

Enclosed please find two (2) copies of the "Statement of American Medical Laboratories, Inc. In Response to the Commission's Notification of 'Reason to Believe' Finding."

This statement is due today, by virtue of the extension granted by you on March 12, 1981.

If further information would be helpful to you, please contact me.

Sincerely yours,

Randolph W. Church

Randolph W. Church, Jr.

RWC/sc

Enclosure

cc: William Taylor, Esquire

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR No. 1180

STATEMENT OF AMERICAN MEDICAL LABORATORIES, INC. IN RESPONSE TO THE COMMISSION'S NOTIFICATION OF "REASON TO BELIEVE" FINDING

## The Commission's Notice

By a letter dated February 23, 1981, the Federal Election Commission stated that it had found reason to believe that American Medical Laboratories, Inc. ("AML") violated 2 U.S.C. §441b(a) when it purchased two disc packs with controller for $11,000.00 from the Republican National Committee ("the RNC") in October of 1978.

AML respectfully contests the Commission's finding and presents the following factual and legal material.

## Factual Background

In 1976, the RNC purchased a 10 megabyte disc pack as part of a Microdata Reality computer system. Sometime

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thereafter, the RNC purchased an additional 10 megabyte disc pack. (Affidavit of William Fanning, Vice-President of Marketing of Datatel, Inc.).

As the information storage needs of the RNC increased, the two 10 megabyte disc packs became inadequate. Accordingly, the RNC purchased a 150 megabyte disc pack in 1978, which increased seven and a half times its information storage capability. (Affidavit of Ronald Charnock, Director of Computer Services of the RNC).

The 150 megabyte disc pack cannot be used in conjunction with the two 10 megabyte disc packs, as illustrated by the manufacturer's "Configuration Rules:"

> The 150 MB disc pack drives cannot be mixed with Royale configurations having 10 MB fixed disc drives and/or 25 MB disc drives. (Attachment No. 1 to Fanning Affidavit).

Thus, the RNC had no further use for the two 10 megabyte disc packs and desired to sell them. (Charnock Affidavit).

A third party, William Fanning of Datatel, Inc., brought the RNC and AML together, knowing that the RNC wanted to

sell this equipment and that AML wanted to purchase this type of equipment. (Fanning Affidavit).

In 1978 the manufacturer's price for two new 10 megabyte disc packs with controller was $20,650.00. (Attachment No. 2 of the Fanning Affidavit). Used equipment of this type would have sold in 1978 for at least $13,000.00 - $14,000.00 (Affidavit of David Schraeder, President of Innovative Computers, Inc.). AML paid $11,000.00 for this same equipment. This is considered a commercially reasonable price. (Fanning & Schraeder Affidavits).

AML is still using the two 10 megabyte disc packs with controller today. (Affidavit of C. R. Cumming, Vice-President of AML). In purchasing this equipment, AML did not intend to make a contribution.

As to both parties, the transaction was one undertaken for business reasons alone. The price agreed upon was the product of arms-length bargaining.

## Legal Analysis

The Commission has stated that AML violated §441b(a) of the Federal Election Commission Campaign Act of 1971 ("the Act"), which provides, in pertinent part, that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. §441b(a).

There is no dispute that the subject transaction occurred. The sole issue to be decided is whether that transaction consitutes a violation of the Act.

### *a. Business Purpose*

This transaction is not one prohibited by the Act. It was entered into solely for business purposes. Prior to this transaction the RNC and AML were not in contact with each other. They were brought together in the market place by the computer firm which serviced both accounts. William Fanning of Datatel, Inc. acted, in effect, as an unpaid broker to bring the buyer and seller together in the market-

place. The RNC had no further use for the two 10 megabyte disc packs with controller, since its storage needs could only be fulfilled by a 150 megabyte disc pack which, according to the manufacturer itself, could not be used in conjunction with 10 megabyte disc packs. AML needed 10 megabyte disc packs for its normal business operations. It was able to secure this equipment at a favorable price, and it did so.

The nature of "contributions" prohibited by the Act was considered in United States v. Chestnut, 533 F.2d 40, 45-46 (2d Cir.), cert. denied 429 U.S. 829 (1976), where a corporation paid an advertising agency for services rendered to a candidate's campaign committee. In holding that a prohibited contribution had occurred under 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b], the court observed that the corporation had incurred no obligations of its own to the advertising agency. The corporation simply discharged obligations incurred by the campaign committee in promoting its candidate to the public, thereby making a contribution.

Unlike the payment in Chestnut, AML's $11,000.00 payment satisfied its own obligation -- the indebtedness arising from the purchase of computer equipment which is integral to its daily business operations.

*b. No Contributory Intent*

AML had no intention or desire to make a "contribution" to the RNC.

In United States v. Clifford, 409 F.Supp. 1070, 1074 (E.D. N.Y. 1976), the court held that in order to prove a violation of the statutory predecessor of 2 U.S.C. §441b, the Government must show that the defendant intended to influence the election. Intent is a question to be determined by the jury. No jury would conclude, based on the facts of this case, that AML intended to influence an election when it purchased computer equipment for business purposes at a commercially reasonable price.

*c. Not "In Connection With Any Election"*

AML's purchase of computer equipment had no connection with any election and does not, therefore, fall within the ambit of the Act.

The legislative motivation for legislation such as 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b] was the necessity for destroying the influence over elections which corporations exercised through financial contributions. United States v. Lewis Food Co., 366 F.2d 710, 713-714 (9th Cir. 1966), citing United States v. Congress of Industrial Organizations, 335 U.S. 106, 113 (1948). One court has observed that the thrust of the Act "is to regulate contributions and expenditures made for the relatively narrow purpose of influencing federal elections." FEC v. California Medical Ass'n., 502 F.Supp. 196, 201 (N.D. Cal. 1980) (emphasis added). The Act was not, however, designed to frustrate commercially reasonable transactions, such as that between AML and the RNC.

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In United States v. Boyle, 482 F.2d 755, 760 (D.C. Cir.), cert. denied 414 U.S. 1076 (1973), the court ruled that in order to establish a violation of 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b], the Government must prove beyond a reasonable doubt that an organization made a contribution or expenditure in connection with a specified federal election for purposes of active electioneering and that the defendant officer consented to the making of the contribution.

And in Miller v. American Telephone & Telegraph Co. 507 F.2d 759, 764 (3rd Cir. 1974), it was held that plaintiffs in a stockholders' derivative action must establish that "the contribution was in connection with a federal election."

Fundamentally, this transaction was a business one. It was not done "in connection with any election," and it cannot be held to be a violation of the Act. See Ash v. Cort, 350 F.Supp. 227, 231-232 (E.D. Pa.), aff'd 471 F.2d 811 (3rd Cir. 1972), rev'd on other grounds 442 U.S. 66 (1975).

*d. The Commission's Excess Equipment Rule*

This Commission has consistently recognized the validity of sales by a political committee of its excess equipment. E.g., FEC Advisory Opinions 1981-7 & 1979-76. That exception governs the situation at hand. There is no prohibited corporate contribution where, as here, the asset which is sold has been developed by a political committee in the normal course of operations and primarily for its own use rather than to sell to others. FEC Advisory Opinion 1979-18 (sale of mailing lists to credit card company held not to be prohibited).

The two 10 megabyte disc packs were purchased by the RNC in 1976 for use in its own operation. It was not purchased with the anticipation that it would at some future time be a fund raising item. Indeed, these disc packs were used for two years by the RNC and were only sold when they could no longer fulfill the needs of the RNC.

Nor was the computer equipment sold by the RNC for "general fund raising purposes." This transaction is clearly distinguishable from a campaign committee's sale of artwork in order to raise money to retire obligations which will be or have been incurred for the purpose of influencing a Federal election. See FEC Advisory Opinions 1980-34 & 1980-136. Here, the equipment was sold for two reasons: (1) it was no longer adequate to fulfill the information storage needs of the RNC, and (2) it had a marketable value and if sold, would help defray the cost of the new, larger equipment purchased by the RNC. The used computer equipment was a capital asset in the hands of the RNC. As this Commission has recognized, political committees have a quasi-fiduciary obligation to manage their assets. FEC Advisory Opinion 1979-17. The RNC was compelled to attempt to sell this excess equipment at a commercailly reasonable price.

Independent experts in the computer industry believe that the $11,000.00 purchase price was a commercially

reasonable one. (Fanning and Schraeder Affidavits). Where the transaction price paid was "no greater than the usual and normal charge for those specific materials, the Commission [has] concluded that no 'contribution' would take place and that the sale would not be prohibited under the Act." FEC Advisory Opinion 1979-24.

Commercially reasonable transactions must be permitted. AML purchased the equipment to facilitate the operation of its own business, and it is still using this equipment today. The transaction was not an intentional disguised contribution.

Nor can this transaction be characterized as an "innocent" or "accidental contribution" which is a technical violation of the Act, even though unintended. To do so would chill every commercial transaction by a political committee and make it impossible for any committee to dispose of any goods or equipment -- indeed any property real, personal or mixed -- to any corporation or labor union except by gift. Such an

absurd result would clearly constitute an unreasonable restraint on alienation. Dunlop v. Dunlop's Ex'rs., 144 Va. 297, 310, 132 S.E. 351, 354 (1926) (devise to son of absolute fee simple title in both real estate and tangible personal property held to vest in son absolute control and ownership, notwithstanding subsequent condition that he should only receive one-fourth if he sold the property).

A required extension of the view that the transaction constituted a contribution is a finding that a sale of the same equipment back to the RNC by AML would be a contribution since the Act defines "anything of value" as being equivalent to "money." If AML cannot exchange money for equipment with the RNC, neither could it exchange equipment for money. If this situation were to obtain, then every purchase by the RNC of office equipment, paper -- or any item -- from a corporation would be a contribution. As Commissioners Aikens and Friedersdorf have stated, "It was not the purpose of the Act to preclude bona fide business relationships

between political committees and corporations or banks." FEC Advisory Opinion 1979-17 (dissenting opinion).

Surely, the Commission would not seek to require the parties to act in a commercially unreasonable manner by requiring the RNC to retain equipment for which it had no use and AML to forego acquiring equipment which has been, and still is, integral to is business operations. Neither the Act nor the opinions of this Commission support such a result.

## Conclusion

AML respectfully requests that the Commission reconsider its finding and dismiss the charge against it.

American Medical Laboratories, Inc.

By: Randolph W. Church
Counsel

Randolph W. Church, Jr.
Grady K. Carlson
McCANDLISH, LILLARD, CHURCH & BEST
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(703) 273-2440
Counsel for
American Medical Laboratories, Inc.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I, William Fanning, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, Vice President of Marketing of Datatel, Inc., a corporation engaged in the business of selling computer equipment and services.

2. Both American Medical Laboratories, Inc. (hereinafter referred to as "AML") and the Republican National Committee (hereinafter referred to as "RNC") are customers of Datatel.

3. In 1976, Datatel sold a 10 megabyte (MB) disc drive and pack to the RNC as part of a Microdata Reality computer system. Subsequently, the RNC purchased an additional 10 MB disc making its total disc 20 MB.

4. Thereafter, the RNC purchased a 150 MB disc pack, and I learned that the RNC wanted to sell the two used 10 MB discs with controller in order to help defray the cost of the 150 MB disc upgrade to its system and because the manufacturer's configuration rules do not permit the use of a 150 MB disc with 10 MB discs. (See Attachement No. 1).

5. I learned that AML wanted to buy two 10 MB discs with controller, as it already had a system which it wished to expand.

6. I advised the RNC that AML was in the market for this equipment, and I advised AML that RNC wanted to sell

same.

7. In 1978, the manufacturer's list price for two 10 MB discs with controller was a total of $20,650. (See Attachment No. 2).

8. In my opinion, the purchase price of $11,000.00 for two used 10 MB discs paid by AML in October of 1978 was a commercially reasonable one.

I understand that a false statement or answer to any question in this Affidavit may subject me to penalties for perjury.

W. Fanning
William Fanning

STATE OF VIRGINIA

COUNTY OF Fairfax, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, this the 8th day of April, 1981 by William Fanning.

Sylvia K Craig
Notary Public

My commission expires: April 7, 1984

## ROYALE™ CONFIGURATION RULES

1. The CPU chassis in the Royale™ Base System configurations (Models 4016, 4017, 4018 and 4019) contains a total of nineteen (19) slots of which four (4) slots are used for the processor. The following chart shows the space required for each base system configuration and the slots available for installation of additional I/O interfaces and core memory.

| MODEL | *SPACE (SLOTS) REQUIRED | SLOTS AVAILABLE |
|---|---|---|
| 4016 | 8 | 11 |
| 4017 | 10 | 9 |
| 4018 | 9 | 10 |
| 4019 | 10 | 9 |

*Includes core memory modules

If the I/O interfaces and core memory modules that are required for the configuration exceed the number of available slots, an I/O Expansion Chassis (Model 4033) and Expansion Cabinet (Model 4023) must be ordered.

2. Each Royale Base System configuration includes a single-bay cabinet which accommodates a magnetic tape drive or up to four (4) tape cartridge drives, the Royale CPU and its options, and up to two (2) 10MB 2400 RPM disc drives. If more than two 10MB drives are required, Model 4448 is required which not only consists of 10MB fixed disc subsystem (controller and drive) but includes an expansion cabinet to accommodate the third drive.

3. **Disc Configuration Rules**

Two 10MB disc drives may operate with one disc controller and a maximum of four (4) 10MB drives (i.e., two disc controllers) are allowed per system. The larger 25MB disc pack drives may be mixed with Royale configurations having 10MB fixed disc drives. The controller for the 25MB drive can accommodate up to four drives. A maximum of eight 25MB disc pack drives (i.e., two disc controllers) are allowed per system. A total of three disc controllers for 10MB or 25MB drives may be included in a Royale system.

*The 150MB disc pack drives cannot be mixed with Royale configurations having 10MB fixed disc drives and/or 25MB disc pack drives. The controller for the 150MB drive can accommodate up to four drives allowing a total of 600MB on the system.*

**ROYALE™** By Microdata

# PRICE CONFIGURATION

Date

Dealer | Dealer Purchase Order No. | Customer Purchase Order No.

Customer Name | Requested Installation Date

Customer Address (Street, City, State, Zip)

| MODEL | | QUANTITY | | PRICE | | MONTHLY MAINTENANCE* |
|---|---|---|---|---|---|---|
| | **BASE SYSTEM CONFIGURATION** | | | | | |
| 4016** | "A" Series; CPU, system cabinet, 16KB core, 10MB fixed disc drive, Lodestar™ tape cartridge, Prism™ and port, 120 cps Matrix Printer ..... | _____ | x | $35,995 = | _____ | 291 = _____ |
| 4017 | "B" Series, CPU, system cabinet, 32KB core, 10MB fixed disc drive, 800 bpi magnetic tape (concurrent), Prism and port ..... | _____ | x | 43,875 = | _____ | 362 = _____ |
| 4018 | "C" Series; CPU, system cabinet, 32KB core, 25MB disc pack drive, 800 bpi magnetic tape (DMA), Prism and port..... | _____ | x | 56,385 = | _____ | 517 = _____ |
| 4019 | "D" Series; CPU, system cabinet, 32KB core, 150MB disc pack drive, 800 bpi magnetic tape (DMA), Prism and port..... | _____ | x | 101,300 = | _____ | 692 = _____ |
| | **MEMORY** | | | | | |
| 4083 | 16KB core (128KB max) ..... | _____ | x | 3,500 = | _____ | 54 = _____ |
| | **MASS STORAGE** | | | | | |
| 4443 | 10MB Disc Controller for up to two drives..... | _____ | x | 2,500 = | _____ | 25 = _____ |
| 4448 | 10MB Fixed Disc Subsystem, includes 10MB fixed disc, controller for up to two drives, cable and expansion cabinet ..... | _____ | x | 11,250 = | _____ | 113 = _____ |
| 4449 | 10MB Fixed Disc Drive, includes cable (must have one or three 10MB drives)..... | _____ | x | 9,400 = | _____ | 88 = _____ |
| 4587 | 25MB Disc Pack Drive Subsystem, includes 25MB disc pack drive, controller for up to four drives, interface and cable ..... | _____ | x | 14,600 = | _____ | 170 = _____ |
| 4588 | 25MB Disc Pack Drive, includes cable (for use with existing controller) ..... | _____ | x | 12,200 = | _____ | 80 = _____ |
| 4573 | 2nd 150MB Disc Pack Drive, includes cable ..... | _____ | x | 23,700 = | _____ | 200 = _____ |
| 4574 | 3rd or 4th 150MB Disc Pack Drive, includes host interface and cable..... | _____ | x | 29,600 = | _____ | 250 = _____ |
| | **MAGNETIC TAPE** | | | | | |
| 4281 | Upgrade 800 bpi, concurrent mode, magnetic tape subsystem (model 4017) to 800 bpi DMA magnetic tape subsystem ..... | _____ | x | 1,700 = | _____ | 15 = _____ |
| 4282 | Upgrade 800 bpi DMA magnetic tape subsystem (model 4018) to 1600 bpi DMA magnetic tape subsystem ..... | _____ | x | 1,700 = | _____ | 15 = _____ |
| 4283 | 800 bpi, NRZI, 25 ips magnetic tape subsystem (DMA); includes controller/ formatter (1 x 4), tape drive, cabinet and cable ..... | _____ | x | 11,000 = | _____ | 90 = _____ |

*A discount of 5% is granted when published monthly maintenance charges are prepaid annually.

**Any enhancement to Model 4016 (Series A) configuration necessitates a one-time upgrade charge of $6,000.

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ATTACHMENT NO. 2

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I Ronald Charnock, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, the Director of Computer Services of the Repulican National Committee (hereinafter referred to as "the RNC").

2. In 1978, the RNC purchased one 150 megabite disk drive and pack for its Microdata "Realty" computer system.

3. Having no further use for the existing two 10 megabite disk drive and packs with controller, the RNC advised Datatel, Inc. that it desired to sell this equipment.

4. William Fanning of Datatel informed the RNC that American Medical Laboratories, Inc. (hereinafter referred to as "AML") wanted to purchase this type of equipment.

5. Thereafter, the RNC sold this excess equipment to AML for $11,000.00.

6. The two 10 megabite disk drive and packs with controller were used by the RNC in the normal course of its business, and were replaced only when the business needs of the RNC exceeded the capability of this equipment.

I understand that a false statement or answer to any quesition in this Affidavit may subject me to penalties for perjury.

Ronald Charnock

DISTRICT OF COLUMBIA, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public, on this the 3rd day of April, 1981 by Ronald Charnock, Director of Computer Services of the Republican National Committee.

Philip J. Guarino
Notary Public

My Commission expires: MY COMMISSION EXPIRES .

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FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR No. 1180

I, C. R. Cumming, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, Vice President for Finance of American Medical Laboratories, Inc. ("AML").

2. In October of 1978, AML purchased two used 10 megabyte disc packs with controller from the Republican National Committee ("the RNC") for $11,000.00. This price was substantially less than that being quoted by other sellers for this same equipment.

3. AML became aware of RNC's desire to sell this equipment through William Fanning of Datatel, Inc. Prior to this time, AML was not in contact with the RNC.

4. The two 10 megabyte disc packs with controller were purchased by AML for use in its daily business operations. AML is still using this equipment today and regards it as an integral part of its operation.

5. The $11,000.00 price was one arrived upon after negotiations between the RNC and AML.

6. In purchasing this computer equipment, AML did not intend or desire to make a contribution to the RNC. AML entered into this transaction solely for business reasons.

7. AML has never made a contribution to any political fund or party.

C. R. Cumming

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public, on this the 8th day of April, 1981 by C. R. Cumming, Vice President for Finance of American Medical Laboratories, Inc.

Sylvia K. Craig
Notary Public

My commission expires: April 7, 1984.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I, David Schraeder, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, President of Innovative Computers, Inc., a corporation engaged in the business of selling Microdata computers.

2. I have been active in the computer industry since 1962.

3. I am not employed by, nor do I own stock in, American Medical Laboratories, Inc.

4. It is my opinion that Innovative Computers, Inc. would have sold two used 10 MB disc packs with controller in 1978 for $13,000.00 or $14,000.00. Our prices for used Microdata computer equipment are generally lower than those quoted by other firms in the industry.

5. It is my opinion that the purchase price of $11,000.00 for two used 10 MB disc packs with controller paid by AML in October of 1978 was a commercially reasonable one.

I understand that a false statement or answer to any question in this Affidavit may subject me to penalties for perjury.

David Schraeder

STATE OF VIRGINIA

COUNTY OF Roanoke, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, this the 7th day of April, 1981 by David Schraeder.

Patricia S. Willoughby
Notary Public

My Commission expires: March 2, 1983.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR No. 1180

STATEMENT OF AMERICAN MEDICAL LABORATORIES, INC. IN RESPONSE TO THE COMMISSION'S NOTIFICATION OF "REASON TO BELIEVE" FINDING

The Commission's Notice

By a letter dated February 23, 1981, the Federal Election Commission stated that it had found reason to believe that American Medical Laboratories, Inc. ("AML") violated 2 U.S.C. §441b(a) when it purchased two disc packs with controller for $11,000.00 from the Republican National Committee ("the RNC") in October of 1978.

AML respectfully contests the Commission's finding and presents the following factual and legal material.

Factual Background

In 1976, the RNC purchased a 10 megabyte disc pack as part of a Microdata Reality computer system. Sometime

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thereafter, the RNC purchased an additional 10 megabyte disc pack. (Affidavit of William Fanning, Vice-President of Marketing of Datatel, Inc.).

As the information storage needs of the RNC increased, the two 10 megabyte disc packs became inadequate. Accordingly, the RNC purchased a 150 megabyte disc pack in 1978, which increased seven and a half times its information storage capability. (Affidavit of Ronald Charnock, Director of Computer Services of the RNC).

The 150 megabyte disc pack cannot be used in conjunction with the two 10 megabyte disc packs, as illustrated by the manufacturer's "Configuration Rules:"

> The 150 MB disc pack drives cannot be mixed with Royale configurations having 10 MB fixed disc drives and/or 25 MB disc drives. (Attachment No. 1 to Fanning Affidavit).

Thus, the RNC had no further use for the two 10 megabyte disc packs and desired to sell them. (Charnock Affidavit).

A third party, William Fanning of Datatel, Inc., brought the RNC and AML together, knowing that the RNC wanted to



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sell this equipment and that AML wanted to purchase this type of equipment. (Fanning Affidavit).

In 1978 the manufacturer's price for two new 10 megabyte disc packs with controller was $20,650.00. (Attachment No. 2 of the Fanning Affidavit). Used equipment of this type would have sold in 1978 for at least $13,000.00 - $14,000.00 (Affidavit of David Schraeder, President of Innovative Computers, Inc.). AML paid $11,000.00 for this same equipment. This is considered a commercially reasonable price. (Fanning & Schraeder Affidavits).

AML is still using the two 10 megabyte disc packs with controller today. (Affidavit of C. R. Cumming, Vice-President of AML). In purchasing this equipment, AML did not intend to make a contribution.

As to both parties, the transaction was one undertaken for business reasons alone. The price agreed upon was the product of arms-length bargaining.

## Legal Analysis

The Commission has stated that AML violated §441b(a) of the Federal Election Commission Campaign Act of 1971 ("the Act"), which provides, in pertinent part, that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. §441b(a).

There is no dispute that the subject transaction occurred. The sole issue to be decided is whether that transaction consitutes a violation of the Act.

### *a. Business Purpose*

This transaction is not one prohibited by the Act. It was entered into solely for business purposes. Prior to this transaction the RNC and AML were not in contact with each other. They were brought together in the market place by the computer firm which serviced both accounts. William Fanning of Datatel, Inc. acted, in effect, as an unpaid broker to bring the buyer and seller together in the market-

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place. The RNC had no further use for the two 10 megabyte disc packs with controller, since its storage needs could only be fulfilled by a 150 megabyte disc pack which, according to the manufacturer itself, could not be used in conjunction with 10 megabyte disc packs. AML needed 10 megabyte disc packs for its normal business operations. It was able to secure this equipment at a favorable price, and it did so.

The nature of "contributions" prohibited by the Act was considered in United States v. Chestnut, 533 F.2d 40, 45-46 (2d Cir.), cert. denied 429 U.S. 829 (1976), where a corporation paid an advertising agency for services rendered to a candidate's campaign committee. In holding that a prohibited contribution had occurred under 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b], the court observed that the corporation had incurred no obligations of its own to the advertising agency. The corporation simply discharged obligations incurred by the campaign committee in promoting its candidate to the public, thereby making a contribution.



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Unlike the payment in Chestnut, AML's $11,000.00 payment satisfied its own obligation -- the indebtedness arising from the purchase of computer equipment which is integral to its daily business operations.

*b. No Contributory Intent*

AML had no intention or desire to make a "contribution" to the RNC.

In United States v. Clifford, 409 F.Supp. 1070, 1074 (E.D. N.Y. 1976), the court held that in order to prove a violation of the statutory predecessor of 2 U.S.C. §441b, the Government must show that the defendant intended to influence the election. Intent is a question to be determined by the jury. No jury would conclude, based on the facts of this case, that AML intended to influence an election when it purchased computer equipment for business purposes at a commercially reasonable price.

*c. Not "In Connection With Any Election"*

AML's purchase of computer equipment had no connection with any election and does not, therefore, fall within the ambit of the Act.

The legislative motivation for legislation such as 18 U.S.C. §610 [the predecessor of 2 U.S.C. §441b] was the necessity for destroying the influence over elections which corporations exercised through financial contributions. United States v. Lewis Food Co., 366 F.2d 710, 713-714 (9th Cir. 1966), citing United States v. Congress of Industrial Organizations, 335 U.S. 106, 113 (1948). One court has observed that the thrust of the Act "is to regulate contributions and expenditures made for the relatively narrow purpose of influencing federal elections." FEC v. California Medical Ass'n., 502 F.Supp. 196, 201 (N.D. Cal. 1980) (emphasis added). The Act was not, however, designed to frustrate commercially reasonable transactions, such as that between AML and the RNC.

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And in Miller v. American Telephone & Telegraph Co. 507 F.2d 759, 764 (3rd Cir. 1974), it was held that plaintiffs in a stockholders' derivative action must establish that "the contribution was in connection with a federal election."

Fundamentally, this transaction was a business one. It was not done "in connection with any election," and it cannot be held to be a violation of the Act. See Ash v. Cort, 350 F.Supp. 227, 231-232 (E.D. Pa.), aff'd 471 F.2d 811 (3rd Cir. 1972), rev'd on other grounds 442 U.S. 66 (1975).

*d. The Commission's Excess Equipment Rule*

This Commission has consistently recognized the validity of sales by a political committee of its excess equipment. E.g., FEC Advisory Opinions 1981-7 & 1979-76. That exception governs the situation at hand. There is no prohibited corporate contribution where, as here, the asset which is sold has been developed by a political committee in the normal course of operations and primarily for its own use rather than to sell to others. FEC Advisory Opinion 1979-18 (sale of mailing lists to credit card company held not to be prohibited).

The two 10 megabyte disc packs were purchased by the RNC in 1976 for use in its own operation. It was not purchased with the anticipation that it would at some future time be a fund raising item. Indeed, these disc packs were used for two years by the RNC and were only sold when they could no longer fulfill the needs of the RNC.



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Nor was the computer equipment sold by the RNC for "general fund raising purposes." This transaction is clearly distinguishable from a campaign committee's sale of artwork in order to raise money to retire obligations which will be or have been incurred for the purpose of influencing a Federal election. See FEC Advisory Opinions 1980-34 & 1980-136. Here, the equipment was sold for two reasons: (1) it was no longer adequate to fulfill the information storage needs of the RNC, and (2) it had a marketable value and if sold, would help defray the cost of the new, larger equipment purchased by the RNC. The used computer equipment was a capital asset in the hands of the RNC. As this Commission has recognized, political committees have a quasi-fiduciary obligation to manage their assets. FEC Advisory Opinion 1979-17. The RNC was compelled to attempt to sell this excess equipment at a commercailly reasonable price.

Independent experts in the computer industry believe that the $11,000.00 purchase price was a commercially

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Commercially reasonable transactions must be permitted. AML purchased the equipment to facilitate the operation of its own business, and it is still using this equipment today. The transaction was not an intentional disguised contribution.

Nor can this transaction be characterized as an "innocent" or "accidental contribution" which is a technical violation of the Act, even though unintended. To do so would chill every commercial transaction by a political committee and make it impossible for any committee to dispose of any goods or equipment -- indeed any property real, personal or mixed -- to any corporation or labor union except by gift. Such an

absurd result would clearly constitute an unreasonable restraint on alienation. Dunlop v. Dunlop's Ex'rs., 144 Va. 297, 310, 132 S.E. 351, 354 (1926) (devise to son of absolute fee simple title in both real estate and tangible personal property held to vest in son absolute control and ownership, notwithstanding subsequent condition that he should only receive one-fourth if he sold the property).

A required extension of the view that the transaction constituted a contribution is a finding that a sale of the same equipment back to the RNC by AML would be a contribution since the Act defines "anything of value" as being equivalent to "money." If AML cannot exchange money for equipment with the RNC, neither could it exchange equipment for money. If this situation were to obtain, then every purchase by the RNC of office equipment, paper -- or any item -- from a corporation would be a contribution. As Commissioners Aikens and Friedersdorf have stated, "It was not the purpose of the Act to preclude bona fide business relationships

between political committees and corporations or banks." FEC Advisory Opinion 1979-17 (dissenting opinion).

Surely, the Commission would not seek to require the parties to act in a commercially unreasonable manner by requiring the RNC to retain equipment for which it had no use and AML to forego acquiring equipment which has been, and still is, integral to is business operations. Neither the Act nor the opinions of this Commission support such a result.

## Conclusion

AML respectfully requests that the Commission reconsider its finding and dismiss the charge against it.

American Medical Laboratories, Inc.

By: _____
Counsel

Randolph W. Church, Jr.
Grady K. Carlson
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A Professional Corporation
4069 Chain Bridge Road
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(703) 273-2440
Counsel for
American Medical Laboratories, Inc.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I, William Fanning, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, Vice President of Marketing of Datatel, Inc., a corporation engaged in the business of selling computer equipment and services.

2. Both American Medical Laboratories, Inc. (hereinafter referred to as "AML") and the Republican National Committee (hereinafter referred to as "RNC") are customers of Datatel.

3. In 1976, Datatel sold a 10 megabyte (MB) disc drive and pack to the RNC as part of a Microdata Reality computer system. Subsequently, the RNC purchased an additional 10 MB disc making its total disc 20 MB.

4. Thereafter, the RNC purchased a 150 MB disc pack, and I learned that the RNC wanted to sell the two used 10 MB discs with controller in order to help defray the cost of the 150 MB disc upgrade to its system and because the manufacturer's configuration rules do not permit the use of a 150 MB disc with 10 MB discs. (See Attachement No. 1).

5. I learned that AML wanted to buy two 10 MB discs with controller, as it already had a system which it wished to expand.

6. I advised the RNC that AML was in the market for this equipment, and I advised AML that RNC wanted to sell

same.

7. In 1978, the manufacturer's list price for two 10 MB discs with controller was a total of $20,650. (See Attachment No. 2).

8. In my opinion, the purchase price of $11,000.00 for two used 10 MB discs paid by AML in October of 1978 was a commercially reasonable one.

I understand that a false statement or answer to any question in this Affidavit may subject me to penalties for perjury.

W. Fanning
William Fanning

STATE OF VIRGINIA
COUNTY OF Fairfax, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, this the 8th day of April, 1981 by William Fanning.

Sylvia K. Craig
Notary Public

My commission expires: April 7, 1984

## ROYALE™ CONFIGURATION RULES

1. The CPU chassis in the Royale™ Base System configurations (Models 4016, 4017, 4018 and 4019) contains a total of nineteen (19) slots of which four (4) slots are used for the processor. The following chart shows the space required for each base system configuration and the slots available for installation of additional I/O interfaces and core memory.

| MODEL | *SPACE (SLOTS) REQUIRED | SLOTS AVAILABLE |
|---|---|---|
| 4016 | 8 | 11 |
| 4017 | 10 | 9 |
| 4018 | 9 | 10 |
| 4019 | 10 | 9 |

*Includes core memory modules

If the I/O interfaces and core memory modules that are required for the configuration exceed the number of available slots, an I/O Expansion Chassis (Model 4033) and Expansion Cabinet (Model 4023) must be ordered.

2. Each Royale Base System configuration includes a single-bay cabinet which accommodates a magnetic tape drive or up to four (4) tape cartridge drives, the Royale CPU and its options, and up to two (2) 10MB 2400 RPM disc drives. If more than two 10MB drives are required, Model 4448 is required which not only consists of 10MB fixed disc subsystem (controller and drive) but includes an expansion cabinet to accommodate the third drive.

3. **Disc Configuration Rules**

Two 10MB disc drives may operate with one disc controller and a maximum of four (4) 10MB drives (i.e., two disc controllers) are allowed per system. The larger 25MB disc pack drives may be mixed with Royale configurations having 10MB fixed disc drives. The controller for the 25MB drive can accommodate up to four drives. A maximum of eight 25MB disc pack drives (i.e., two disc controllers) are allowed per system. A total of three disc controllers for 10MB or 25MB drives may be included in a Royale system.

*The 150MB disc pack drives cannot be mixed with Royale configurations having 10MB fixed disc drives and/or 25MB disc pack drives. The controller for the 150MB drive can accommodate up to four drives allowing a total of 600MB on the system.*

**ROYALE™** By Microdata

# PRICE CONFIGURATION

Date

Dealer | Dealer Purchase Order No. | Customer Purchase Order No.

Customer Name | Requested Installation Date

Customer Address (Street, City, State, Zip)

| MODEL | | QUANTITY | | PRICE | | MONTHLY MAINTENANCE* |
|---|---|---|---|---|---|---|
| | **BASE SYSTEM CONFIGURATION** | | | | | |
| 4016** | "A" Series; CPU, system cabinet, 16KB core, 10MB fixed disc drive, Lodestar™ tape cartridge, Prism™ and port, 120 cps Matrix Printer ..... | _____ | x | $35,995 = | _____ | 291 = _____ |
| 4017 | "B" Series, CPU, system cabinet, 32KB core, 10MB fixed disc drive, 800 bpi magnetic tape (concurrent), Prism and port ..... | _____ | x | 43,875 = | _____ | 362 = _____ |
| 4018 | "C" Series; CPU, system cabinet, 32KB core, 25MB disc pack drive, 800 bpi magnetic tape (DMA), Prism and port ..... | _____ | x | 56,385 = | _____ | 517 = _____ |
| 4019 | "D" Series; CPU, system cabinet, 32KB core, 150MB disc pack drive, 800 bpi magnetic tape (DMA), Prism and port ..... | _____ | x | 101,300 = | _____ | 692 = _____ |
| | **MEMORY** | | | | | |
| 4083 | 16KB core (128KB max) ..... | _____ | x | 3,500 = | _____ | 54 = _____ |
| | **MASS STORAGE** | | | | | |
| 4443 | 10MB Disc Controller for up to two drives ..... | _____ | x | 2,500 = | _____ | 25 = _____ |
| 4448 | 10MB Fixed Disc Subsystem, includes 10MB fixed disc, controller for up to two drives, cable and expansion cabinet ..... | _____ | x | 11,250 = | _____ | 113 = _____ |
| 4449 | 10MB Fixed Disc Drive, includes cable (must have one or three 10MB drives) ..... | _____ | x | 9,400 = | _____ | 88 = _____ |
| 4587 | 25MB Disc Pack Drive Subsystem, includes 25MB disc pack drive, controller for up to four drives, interface and cable ..... | _____ | x | 14,600 = | _____ | 170 = _____ |
| 4588 | 25MB Disc Pack Drive, includes cable (for use with existing controller) ..... | _____ | x | 12,200 = | _____ | 80 = _____ |
| 4573 | 2nd 150MB Disc Pack Drive, includes cable ..... | _____ | x | 23,700 = | _____ | 200 = _____ |
| 4574 | 3rd or 4th 150MB Disc Pack Drive, includes host interface and cable ..... | _____ | x | 29,600 = | _____ | 250 = _____ |
| | **MAGNETIC TAPE** | | | | | |
| 4281 | Upgrade 800 bpi, concurrent mode, magnetic tape subsystem (model 4017) to 800 bpi DMA magnetic tape subsystem ..... | _____ | x | 1,700 = | _____ | 15 = _____ |
| 4282 | Upgrade 800 bpi DMA magnetic tape subsystem (model 4018) to 1600 bpi DMA magnetic tape subsystem ..... | _____ | x | 1,700 = | _____ | 15 = _____ |
| 4283 | 800 bpi, NRZI, 25 ips magnetic tape subsystem (DMA); includes controller/formatter (1 x 4), tape drive, cabinet and cable ..... | _____ | x | 11,000 = | _____ | 90 = _____ |

*A discount of 5% is granted when published monthly maintenance charges are prepaid annually.

**Any enhancement to Model 4016 (Series A) configuration necessitates a one-time upgrade charge of $6,000.

77 4/5

ATTACHMENT NO. 2

2040353210

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR No. 1180

I, C. R. Cumming, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, Vice President for Finance of American Medical Laboratories, Inc. ("AML").

2. In October of 1978, AML purchased two used 10 megabyte disc packs with controller from the Republican National Committee ("the RNC") for $11,000.00. This price was substantially less than that being quoted by other sellers for this same equipment.

3. AML became aware of RNC's desire to sell this equipment through William Fanning of Datatel, Inc. Prior to this time, AML was not in contact with the RNC.

4. The two 10 megabyte disc packs with controller were purchased by AML for use in its daily business operations. AML is still using this equipment today and regards it as an integral part of its operation.

5. The $11,000.00 price was one arrived upon after negotiations between the RNC and AML.

6. In purchasing this computer equipment, AML did not intend or desire to make a contribution to the RNC. AML entered into this transaction solely for business reasons.

7. AML has never made a contribution to any political fund or party.

C. R. Cumming

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public, on this the 8th day of April, 1981 by C. R. Cumming, Vice President for Finance of American Medical Laboratories, Inc.

Sylvia K. Craig
Notary Public

My commission expires: April 7, 1984.

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I, David Schraeder, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, President of Innovative Computers, Inc., a corporation engaged in the business of selling Microdata computers.

2. I have been active in the computer industry since 1962.

3. I am not employed by, nor do I own stock in, American Medical Laboratories, Inc.

4. It is my opinion that Innovative Computers, Inc. would have sold two used 10 MB disc packs with controller in 1978 for $13,000.00 or $14,000.00. Our prices for used Microdata computer equipment are generally lower than those quoted by other firms in the industry.

5. It is my opinion that the purchase price of $11,000.00 for two used 10 MB disc packs with controller paid by AML in October of 1978 was a commercially reasonable one.

I understand that a false statement or answer to any question in this Affidavit may subject me to penalties for perjury.

David Schraeder

STATE OF VIRGINIA

COUNTY OF Roanoke, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public in and for the aforementioned jurisdiction, this the 7th day of April, 1981 by David Schraeder.

Patricia S. Kellaghby
Notary Public

My Commission expires: March 2, 1983.

0 4 0 3 5 3 2 1

FEDERAL ELECTION COMMISSION

Washington, D. C.

In Re: American Medical Laboratories, Inc. MUR 1180

AFFIDAVIT

I Ronald Charnock, being first duly sworn, depose and say as follows:

1. I am, and at all times relevant hereto have been, the Director of Computer Services of the Repulican National Committee (hereinafter referred to as "the RNC").

2. In 1978, the RNC purchased one 150 megabite disk drive and pack for its Microdata "Realty" computer system.

3. Having no further use for the existing two 10 megabite disk drive and packs with controller, the RNC advised Datatel, Inc. that it desired to sell this equipment.

4. William Fanning of Datatel informed the RNC that American Medical Laboratories, Inc. (hereinafter referred to as "AML") wanted to purchase this type of equipment.

5. Thereafter, the RNC sold this excess equipment to AML for $11,000.00.

6. The two 10 megabite disk drive and packs with controller were used by the RNC in the normal course of its business, and were replaced only when the business needs of the RNC exceeded the capability of this equipment.

I understand that a false statement or answer to any quesition in this Affidavit may subject me to penalties for perjury.

Ronald Charnock

DISTRICT OF COLUMBIA, to-wit:

The foregoing Affidavit was subscribed and sworn to before me, a Notary Public, on this the _____ day of April, 1981 by Ronald Charnock, Director of Computer Services of the Republican National Committee.

_____
Notary Public

My Commission expires: _____.

8204035321 6

LAW OFFICES
McCANDLISH, LILLARD, CHURCH & BEST
A PROFESSIONAL CORPORATION
THE BARBOUR HOUSE
4069 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

**TO:** BY MESSENGER

William Taylor, Esquire
Federal Election Commission
Seventh Floor
1325 K Street, N.W.
Washington, D. C. 20463

8204035321 7

LAW OFFICES

**McCANDLISH, LILLARD, CHURCH & BEST**

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

**TO:** BY MESSENGER

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
Seventh Floor
1325 K Street, N.W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1981

Mr. James Mercurio
Arent, Fox, Kintner,
Plotkin and Kahn
Federal Bar Building
1815 H Street, N.W.
Washington, D.C. 20006

Re: MURs 1166 and 1180
The Franklin Mint

Dear Mr. Mercurio:

This is in response to your letter of March 6, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve a 30-day extension of time in which to respond to the Commission's notification. Furthermore, as to your contention that the Commission's letter of January 13, 1981 did not receive the attention it otherwise would have received because of a typographical error, the Office of General Counsel would like to remind you that the Commission's four (4) page Notification of Reason to Believe, a copy of which was attached to that letter, in addition to disclosing, in detail, the facts and issues involved in this matter, clearly cites the Franklin Mint as the respondent in this matter. Nonetheless, your client has until the close of business April 13, 1981 to respond.

Should you have any questions, please call William Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1981

Mr. Alphons J. Hackl
Acropolis Books Ltd.
2400 Seventeenth Street, N.W.
Washington, D.C. 20009

re: MUR 1180

Dear Mr. Hackl:

This is in reference to your letters of March 12, 1981 and March 13, 1981 requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve a 30-day extension of time in which to respond to the Commission's notification. Thus, you have until the close of business on April 13, 1981 to respond.

If you have any questions, please call William Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040353219

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1981

David M. Davenport, Esquire
Davenport and Associates P.L.
611 McLean Office Center
6845 Elm Street
McLean, Va. 22101

Re: MUR 1180

Dear Mr. Davenport:

This is in reference to your letter of March 18, 1981, requesting an extension of time until 8th of April in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided to approve your request. Thus, your client has, as requested, until April 8, 1981 to respond.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this matter, at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2204035520

MUR 1180

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: MARCH 20, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1180

The attached letter regarding MUR 1180 was received in Chairman McGarry's office and then presented to the Secretary of the Commission. It is being forwarded to you for action.

ATTACHMENT:
Letter dated 3-18-81

8204033021

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Official Business
Penalty for Private Use $300

POSTAGE AND FEES PAID

FEC

TO OGC

RETURNED TO SENDER
Not Deliverable as Addressed
Unable to forward

Mr. Grady K. Carlsen, Esquire
McCandish, Lillard, Church and Best
4069 Chain Bridge Road
McLean, Virginia 22030

Fax in Fax

WASHINGTON
12 MAR
2PM
1981

87

Memorandum TO: File

From: W Taylor

SUBJECT MUR 1150 letter to

Please email the letter of March 10, 1981 to Mr Gaby K Calvert at the address listed on the re-typed envelope

W Taylor

C20403522

DAVENPORT & ASSOCIATES, P.C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101
(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006

81 MAR 20 P12: 38

March 18, 1981

John Warren McGarry, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: Your File Number MUR 1180

Dear Mr. McGarry:

Please be advised that this firm represents Datatel, Inc. of 3700 Mt. Vernon Avenue, Alexandria, Virginia, in regard to the referenced matter.

My client has received a report of the Commission's findings in that matter pursuant to U.S. Code Section 441b(a). I am writing to request an extension of time in which to file an answer or other responsive documentation to the Commission up to and including April 8, 1981. A similar request has been made and granted for the benefit of the Republican National Committee, the other party in this case. This request would have been made earlier but the undersigned was absent from the office with illness at the time the matter was referred over by our client.

The additional time will be necessary to review the several Commission Advisory Opinions referred to in the memorandum so that the matter may be properly and expeditiously handled.

Your assistance will be sincerely appreciated.

Very truly yours,

David M. Davenport

DMD:slg

CC: William E. Taylor, Esquire
Office of the General Counsel

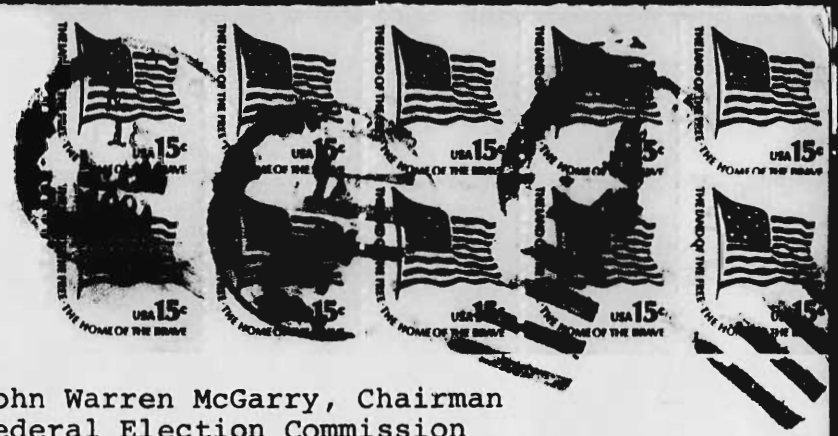
CERTIFIED MAIL #370909
Return Receipt Requested

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

82040353225

CERTIFIED MAIL#370909
Return Receipt Requested

CERTIFIED
No. 370909
MAIL




John Warren McGarry, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

912653

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101
(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006

March 18, 1981

John Warren McGarry, Chairman
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: Your File Number MUR 1180

Dear Mr. McGarry:

Please be advised that this firm represents Datatel, Inc. of 3700 Mt. Vernon Avenue, Alexandria, Virginia, in regard to the referenced matter.

My client has received a report of the Commission's findings in that matter pursuant to U.S. Code Section 441b(a). I am writing to request an extension of time in which to file an answer or other responsive documentation to the Commission up to and including April 8, 1981. A similar request has been made and granted for the benefit of the Republican National Committee, the other party in this case. This request would have been made earlier but the undersigned was absent from the office with illness at the time the matter was referred over by our client.

The additional time will be necessary to review the several Commission Advisory Opinions referred to in the memorandum so that the matter may be properly and expeditiously handled.

Your assistance will be sincerely appreciated.

Very truly yours,

David M. Davenport

DMD:slg

CC: William E. Taylor, Esquire
Office of the General Counsel

1 MAR 19 P1:47

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101

(703) 790-1262

DAVID M. DAVENPORT
ROBERT J. DAVENPORT
BRUCE V. MEYER

1629 K STREET, N. W.
SUITE 520
WASHINGTON, D. C. 20006

March 18, 1981

William E. Taylor, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Dear Mr. Taylor:

Per our telephone conversation of date, and your suggestion, I have mailed the original of the enclosed letter to John Warren McGarry, Chairman of the Federal Election Commission, requesting an extension of time for response for my client, Datatel, Inc., up to and including April 8, 1981.

I look forward to receiving from you the Commission Advisory Opinions we discussed and working with you to achieve a satisfactory resolution to this matter.

With best regards, I am

Sincerely yours,

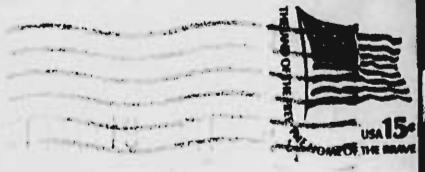
David M. Davenport

DMD:slg

Enclosure

DAVENPORT & ASSOCIATES, P. C.
ATTORNEYS AT LAW
611 McLEAN OFFICE CENTRE
6845 ELM STREET
McLEAN, VIRGINIA 22101




William E. Taylor, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

912651

LAW OFFICES

**McCANDLISH, LILLARD, CHURCH & BEST**

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440

ROBERT J. McCANDLISH, JR.
ROTHWELL J. LILLARD
RANDOLPH W. CHURCH, JR.
STEPHEN L. BEST
JESSE B. WILSON, III
GERALD R. WALSH
PETER A. ARNTSON
THOMAS J. CAWLEY
RANDOLPH A. SUTLIFF
WILLIAM E. DONNELLY, III
ROBERT H. J. LOFTUS

GRADY K. CARLSON
ANN WOOD MISCHE
BARBARA L. ABERNETHY
R. PEYTON MAHAFFEY
PAUL B. TERPAK
JOHN M. GRAY

WILLIAM C. BAUKNIGHT
(COUNSEL)

F. D. RICHARDSON
(1884-1954)
HUGH B. MARSH
(1900-1976)

March 17, 1981

FILE NO

Federal Election Commission
1325 K Streets, N.W.
Washington, D. C. 20463
ATTN: William E. Taylor, Esquire

Re: American Medical Laboratories, Inc.
MUR 1180

Dear Mr. Taylor:

Thank you for speaking with me by telephone this morning.

This will confirm that conversation wherein you advised me that our request for an extension on behalf of American Medical Laboratories, Inc. has been granted. The due date for our response is April 8, 1981.

Thank you, again, for your assistance in this matter.

Sincerely yours,

Grady K. Carlson

Grady K. Carlson
Counsel for American
Medical Laboratories, Inc.

GKC/sc

11 MAR 19 P1:47

GENERAL COUNSEL

RECEIVED

LAW OFFICES
McCANDLISH, LILLARD, CHURCH & BEST
A PROFESSIONAL CORPORATION
THE BARBOUR HOUSE
4069 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030



Federal Election Commission
1325 K Streets, N.W.
Washington, D. C. 20463
ATTN: William E. Taylor, Esquire

91265

CRC 4305

# AMERICAN MEDICAL LABORATORIES, INC.

11091 Main Street, P.O. Box 188, Fairfax, Virginia 22030 / Telephone: (703) 273-7400

March 17, 1981

Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Attn: William E. Taylor, Esq.

Re: AML, Inc.
MUR 1180

Dear Mr. Taylor:

Pursuant to 11 C.F.R., Section111.23, please be advised that the firm of McCandlish, Lillard, Church & Best is authorized to represent AML, Inc. in connection with all matters pertaining to MUR 1180. The individual attorneys who are familiar with this matter are Randolph W. Church, Jr. and Grady K. Carlson.

Thank you for your assistance.

Sincerely,

C. R. Cumming

CRC:rh

C. R. Cumming
Vice President of Finance
& Treasurer

cc: Randolph W. Church, Jr.
Grady K. Carlson

81 MAR 19 P1:47

GENERAL COUNSEL

RECEIVED

*Personalized Service through Modern Technology*

AMERICAN MEDICAL LABORATORIES, INC.
11091 Main Street, P.O. Box 1[illegible] Fairfax, Virginia 22030



Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Attn: William E. Taylor, Esq.

GCC #4190

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037
202 785-9700
TELEX: 892608 DSM WSH

JUSTIN D. SIMON
DIRECT DIAL
202 828-2211

598 MADISON AVENUE
NEW YORK, N.Y. 10022
212 832-1900

BY HAND

March 18, 1981

1981 MAR 18 P1:35

William Taylor, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1180

Dear Mr. Taylor:

I am writing on behalf of our client, National Direct Mail Services, Inc. ("NDMS"), in response to the February 23, 1981 letter of Chairman McGarry. In that letter, Chairman McGarry reported that as a result of a routine audit by the Staff the Commission had issued a Notification of Reason to Believe Finding that NDMS had violated 2 U.S.C. §441b. The matter in issue concerns the purchase of envelopes by NDMS from the Republican National Committee ("RNC") for a total amount of $680.

It is our view that NDMS in no way violated §441b in this matter. Let me briefly outline the reasons for this conclusion. First, neither the FECA nor the regulations of the Commission prohibit any company from engaging in business transactions with a political committee.*/ That being so, the mere fact that a company such as NDMS made a purchase from the RNC in no way forms the basis for a "reason to believe" that §441b was violated. Second, the definition of contribution contained in §431 (and read into §441b(a)), requires that a payment be made "for the purpose of influencing any election for federal office" to constitute a "contribution." The reference to the term "contribution or expenditure" contained in §441(b)(2) merely elaborates on the basic definition of the Act, but does not eliminate the requirement that the payment be made for the purpose of influencing a election for federal office. There is nothing in the Commission's findings which indicates that

---

*/ See AO 1979-24

the Commission found such a prohibited purpose -- indeed, the Commission noted that its "evidence indicates that the corporation did not realize that they were making a contribution ... but believed they were involved in an arms-length transaction." Based on my discussions with the Staff, there is no evidence of such a prohibited purpose. Accordingly, on the face of the matter, we submit there is no factual basis for any further action by the Commission.

Third, when one probes below the surface, one discovers that there is no conceivable manner in which this transaction could be construed to violate the FECA. The 100,000 envelopes in question were purchased at cost. The envelopes were blank, ivory #7-3/4 with windows and were readily interchangable and usable for a multitude of commercial purposes by NDMS. Prior to their purchase by NDMS, these envelopes were collecting dust in a warehouse and, according to our information, the RNC was faced with one of three choices: 1) paying storage charges for them; 2) discarding them; or 3) selling them. At the time of the purchase, NDMS had another client for whom the envelopes could be used.

As the Commission made clear in Advisory Opinion 1979-24, political committees are allowed to engage in such sales as long as the price received for such goods "is not greater than the usual and normal charges for those specified materials." Since the Commission would have allowed RNC to sell these envelopes for their normal commercial value, a fortiori, they most certainly are allowed to sell excess supplies at cost. This is especially true where, as here, the purchaser has a legitimate commercial use for the items purchased.

The short of it is we do not believe there is any basis for any further action in this matter by the Commission. We remain more than willing to discuss this matter with you further if you have any questions.

Sincerely,

Justin D. Simon

Justin D. Simon

JDS:ms

GCC#4190

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037
202 785-9700
TELEX: 892608 DSM WSH

JUSTIN D. SIMON
DIRECT DIAL
202 828-2211

598 MADISON AVENUE
NEW YORK, N.Y. 10022
212 832-1900

FEDERAL ELECTION COMMISSION
81 MAR 18 P1:35

BY HAND

March 18, 1981

Mr. William Taylor
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Taylor:

At your request, I am enclosing herewith a letter from Peter L. Boggs, Executive Vice President of National Direct Mail Service, Inc., authorizing this firm to appear on their behalf on MUR 1180. In addition to Mr. Jost, whose name was incorrectly spelled in the enclosed letter, please feel free to contact me if you have any further questions.

Sincerely,

Justin D. Simon

Justin D. Simon

JDS:ms

Enclosure

NATIONAL DIRECT MAIL SERVICES, INC.

WASHINGTON, D.C. • COLUMBUS, OHIO

March 16, 1981

1981 MAR 18 P 1:36

Mr. John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1180

Dear Mr. McGarry:

Please be advised that Dickstein, Shapiro and Morin will be the legal representatives of National Direct Mail Services, Inc. in reference to MUR 1180. All further correspondence should be directed to the following person:

Peter Yost, Esquire
Dickstein, Shapiro and Morin
2101 L Street, N.W.
Washington, D.C. 20037

Sincerely,

Peter L. Boggs
Executive Vice President

PLB:sl
cc: Peter Yost, Esquire
Robert P. Odell, Jr.

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037

82 04 13 15 53 37

William Taylor, Esquire
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

BY HAND

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 18, 1981

Mr. Donald L. Ivers, Esq.
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Ivers:

This is in reference to your letter of March 9, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve a 30-day extension of time in which to respond to the Commission's notification. Thus your client has until the close of business on April 13, 1981 to respond.

If you have any questions, please call William Taylor, the attorney assigned to this matter at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

8204035

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Donald L. Ivers, Esq.
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Ivers:

This is in reference to your letter of March 9, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve a 30-day extension of time in which to respond to the Commission's notification. Thus your client has until the close of business on April 13, 1981 to respond.

If you have any questions, please call William Taylor, the attorney assigned to this matter at 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040356

912539

GOOT 4/171

ACROPOLIS BOOKS LTD.
2100 Seventeenth St. N.W.
Washington, D.C. 20009
(202) 387-6805

March 13, 1981

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1180

Dear Mr. Taylor,

Following up on our telephone conversation of today, we respectfully request a 30 day extenstion on the above cited matter.

Many thanks for your consideration.

Sincerely,

Alphons J. Hackl
Publisher

AJH/mmc

1 MAR 16 A11 : 42

ACROPOLIS BOOKS LTD.
2400 Seventeenth St. N.W.
Washington DC 20009

WASHINGTON, DC
-PM
13 MAR
1981

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

ACROPOLIS BOOKS LTD.
2400 Seventeenth St. N.W.
Washington, DC 20009

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

GCC # 4157

9125508

ACROPOLIS
BOOKS LTD.
2400 Seventeenth St. N.W.
Washington, DC 20009
(202) 387-6805

March 12, 1981

William E. Taylor, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1180

Dear Mr. Taylor,

In reply to the letter of John Warren McGarry dated February 23, we request a continuance of this matter as discussed with you on the telephone today, or that you will drop this case for the reasons stated below.

Please let me point out that we never made a contribution to the Republican National Committee, and that the payment referred to by the letter was a royalty negotiated at arms length after time consuming and hard negotiation, stipulated by the authors in the Author-Publisher book contract, which we were obligated to pay.

The book, REPUBLICAN HUMOR, by Steve Skubik, was a sequel to THE HANDBOOK OF POLITICAL HUMOR, also by Steve Skubik and published by us in 1968. This book contained anecdotes contributed by George McGovern, Mark Hatfield and Dwight Eisenhower, among others.

Acropolis Books Ltd. would have been in violation of the Author-Publisher contract if the stipulated royalties had not been made to the Republican National Committee.

We trust that you will find this reason for the case to be dropped. Thank you in advance for your consideration.

Sincerely,

Alphons J. Hackl
Publisher

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1981

Ms. Sandra L. Leibsen
National Direct Mail Services, Inc.
4733 Bethesda Avenue, Suite 530
Bethesda, Maryland 20014

Re: MUR 1180

Dear Ms. Leibsen:

This is in reference to your letter of March 2, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve an extension of 10 additional days in which to respond to the Commission's Notification. Thus, National Direct Mail Services, Inc., has until March 18, 1981, to respond.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this matter at (202)523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1981

Mr. Grady K. Carlsen, Esquire
McCandish, Lillard, Church and Best
4069 Chain Bridge Road
McLean, Virginia 22030

Re: MUR 1180
American Medical Laboratories, Incorporated

Dear Mr. Carlson:

This is in reference to your letter of March 4, 1981, requesting an extension of time in which to respond to the Commission's Notification of Reason to Believe. The Office of General Counsel has decided, after considering your request, to approve a 30-day extension of time in which to respond to the Commission's notification. Thus, your client has until the close of business on April 8, 1981, to respond.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this matter at (202)523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040353245

12471

4147

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091

9 March 1981

Federal Election Commission
1325 "K" Street, NW
Washington, DC 20463

RE: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Sirs:

Pursuant to 11 CFR §111.23, Franklin Mint Corporation hereby advises that it wishes to be represented by counsel with regard to the above matters.

The name, address and telephone number of our counsel is as follows:

James P. Mercurio
Arent, Fox, Kintner, Plotkin & Kahn
1815 "H" Street, NW
Washington, DC 20006
202/857-6092

The foregoing counsel is authorized to receive any and all notifications and all communications from the Commission on behalf of Franklin Mint Corporation in these matters.

Sincerely,

FRANKLIN MINT CORPORATION

Donald S. Winograd
Secretary

DSW:cm

cc: J. P. Mercurio

RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL
'81 MAR 11 P2:25

BCC 4130

# Republican National Committee

**Donald L. Ivers**
House Counsel

March 9, 1981

1981 MAR 10 A10:11

Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

ATTN: William E. Taylor, Esq.

RE: MUR 1180

Gentlemen:

Pursuant to telephonic discussions with Mr. Taylor of your office and in light of the rather extensive period of time involved in the above referred MUR and the potentially extensive list of co-respondents, the Republican National Committee respectfully requests a thirty-day extension for response.

Your prompt and favorable consideration of this matter will be appreciated.

Very truly yours,

Donald L. Ivers

DLI:jd



Republican
National
Committee.

Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

912461

CITIES SERVICE COMPANY
BOX 300
TULSA, OKLAHOMA 74102
918/561-8389

JOHN A. LYCKMAN
ATTORNEY

LEGAL DIVISION

March 4, 1981

William E. Taylor, Esq.
Federal Election Commission
Washington, D. C. 20463

Dear Mr. Taylor:

RE: MUR 1180

I am writing in response to the Notification of Reason to Believe Finding (the "Notice") dated February 23, 1981, and indicating "Cities Service Corp." as Respondent. The Notice indicated that your audit of the records of the Republican National Committee ("RNC") show that Respondent purchased precinct lists from the RNC in May and November of 1977. In our conversation on March 3, 1981, you indicated that your records also show the Respondent's actual name as Civic Services Corp. located in St. Louis, Missouri and incorporated on January 23, 1970.

As Cities Service Company is not that Company named as Respondent in the Notice, I request that no further action be taken against Cities Service Company with respect thereto.

Very truly yours,

JAL:sb

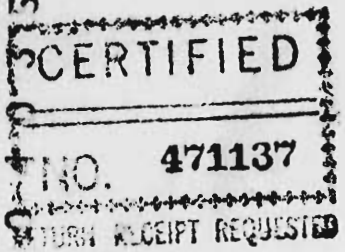
cc: Messrs. Park Holland, Jr. - 1104 PPL, Tulsa
Graydon D. Luthey - 1102 PPL, Tulsa

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

1 MAR 10 P2:30

JOHN A LYCKMAN ESQ
CITIES SERVICE COMPANY
BOX 300, TULSA, OKLAHOMA 74102




WILLIAM E TAYLOR ESQ

FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

912445 CC 4120

**Arent, Fox, Kintner, Plotkin & Kahn**

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

James P. Mercurio
(202) 857-6092

81 MAR 9 P12:21

GENERAL COUNSEL

81 MAR 9 P12:49

March 6, 1981

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: Franklin Mint Corporation
MUR 1166 and MUR 1180

Dear Mr. Steele:

We are counsel for Franklin Mint Corporation in the above matters. The company's letter of representation pursuant to 11 CFR §111.23 will follow.

On March 3, 1981, Franklin Mint Corporation received a letter in MUR 1180 which stated that the Federal Election Commission on December 2, 1980 had found reason to believe that the company had violated 2 USC §441b(a) by making certain payments to the Republican National Committee. The letter requests that the company submit any factual or legal material that it believes relevant within ten (10) days.

On January 13, 1981, the company received a letter in MUR 1166 which stated that the Federal Election Commission on December 2, 1980 found reason to believe that "the Republican National Committee had violated 2 USC §41a(f)." A copy of this letter is enclosed. On March 4, 1981 the counsel for the Commission advised us that, although it did not so state, the enclosed letter was intended to notify Franklin Mint Corporation that the Commission had found reason to believe that it had violated 2 USC §441b(a) by making certain payments to the Democratic National Committee. Apparently, a memorandum that accompanied this letter did discuss a possible violation by Franklin Mint, but since the covering letter itself did not allege a violation by Franklin Mint Corporation the matter did not receive the attention it otherwise would have received, and legal counsel was consulted in this matter only after the company received the letter in MUR 1180 on March 3, 1981.

As I advised Messrs. Whitehead and Taylor during a conference with them on March 5, 1981, we have not had an opportunity to look into this matter with our client or to consider whether any factual or legal material should be submitted on behalf of Franklin Mint Corporation, or whether the possibility of informal conciliation should be pursued. In addition, previous commitments would make it very difficult to adhere to the deadline set forth in the Commission's letter in MUR 1180. We respectfully request, therefore, that the deadline for submission of any factual or legal materials and any discussion of informal conciliation in both MUR 1166 and 1180 be extended to April 13, 1981.

Thank you for your consideration in these matters.

Sincerely,

James P. Mercurio

JPM:kcm
Enclosure
cc: Thomas Whitehead
William Taylor

January 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes
Franklin Mint
Franklin Center, PA 19091

Re: MUR 1166

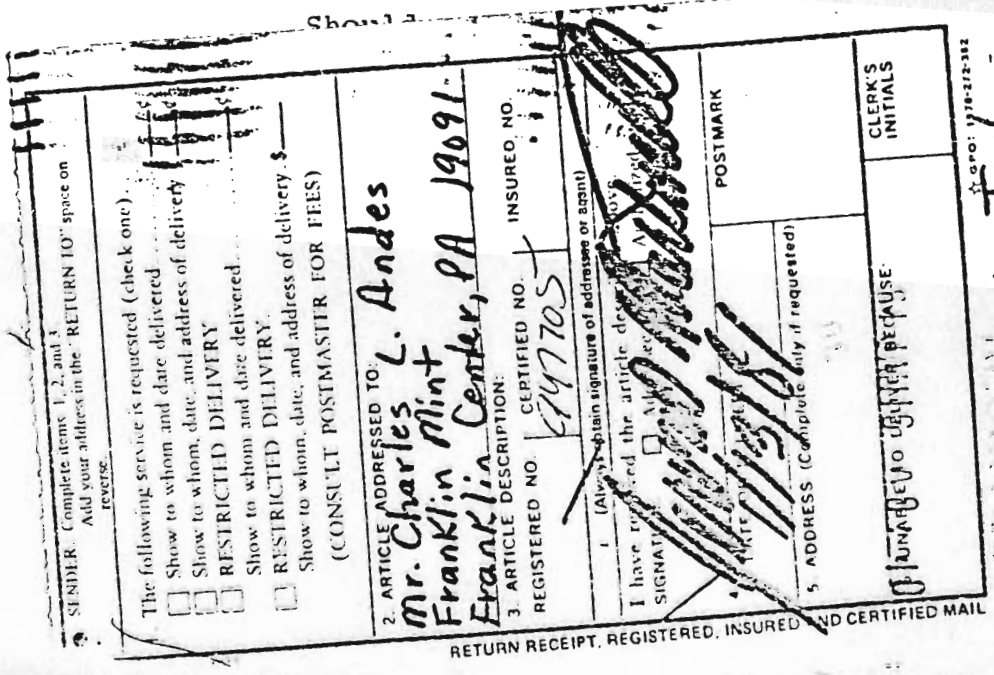
Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should ... this matter, ... assigned to this ...

Garry ...



Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building, 1815 H Street, N. W.
Washington, D. C. 20006

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building, 1815 H Street, N. W.
Washington, D. C. 20006

Thomas Whitehead, Esquire
Assistant General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

FCC 4427

Bailey | Deardourff

Bailey, Deardourff & Associates, Inc.
6720 Old McLean Village Drive
McLean, Virginia 22101 (703) 442-0880

MAR 9 1981

*Douglas L. Bailey*
*President*

March 5, 1981

Re: MUR 1180

Dear Sirs:

We acknowledge receipt of your letter of February 23, 1981, enclosing a form which appears to be described as MUR #1180.

The form (which incidentally misspells our name) recites:

> "The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Bailey, Deurdouff Assoc. Inc. (Bailey Deurdouff) in the amount of $750.00 for pips listings purchased by Bailey Deurdouff from R.N.C."

The form further states:

> "It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction."

Our discussions with Mr. Taylor of your staff indicate that he is referring to a payment of $750.00 on September 29, 1978 by our check #11624 which was in payment of invoice #1122 of the Republican National Committee dated May 3, 1978 for Illinois Tenth Congressional District Analysis pips in the amount of $250.00 and Republican National Committee invoice #1153 dated June 6, 1978 for precinct voter analysis pips in the amount of $500.00. These invoices were paid by our check #11624 dated September 28, 1978 in the amount of $750.00.

For the record, I can state that this information was purchased by our company from the Republican National Committee pursuant to an agreement in the ordinary course for no more than fair market value and on an arm's length basis. We considered the Republican National Committee to be no different from any other vendor of data and information we use in our business. Furthermore, we know of no other place where the needed information could have been obtained without inordinate effort and expense. It would have cost our company considerably more to have generated the

data ourselves than we paid the R.N.C. for it. Consequently, we believed then and believe now that we received full value and in fact got a bargain. Moreover, we were led to believe that this data was charged to us at R.N.C.'s cost so there was no reason for us to believe there was any excess over R.N.C.'s cost to apply to any election.

Consequently, we have had no reason to believe that we were making any direct or indirect payment, distribution, loan, advance or gift of money or any services or anything of value to any candidate, campaign committee or political party or organization in connection with any election to federal office.

We did not then and do not now believe that there has been any violation by Bailey, Deardourff & Associates, Inc. of 2 U.S.C. §§ 441b.

Sincerely yours,

Douglas L. Bailey

Douglas L. Bailey
President

Federal Election Commission
Washington, D.C. 20463

Attention: Mr. John Warren McGarry, Chairman

Bailey | Deardourff

Bailey, Deardourff & Associates, Inc.
6720 Old McLean Village Drive
McLean, Virginia 22101

WASHINGTON DC PM 7 MAR 1981

ATTENTION:
MR. JOHN W. MCGARRY,
CHAIRMAN

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

GCM 4127

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE MWE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc

DATE: MARCH 9, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1180

The attached letter regarding MUR 1180 was received in Chairman McGarry's office and then presented to the Secretary to the Commission. It is being forwarded to you for action.

8204035215

MAR 9 A11:49

ATTACHMENT:
Letter dated 3-4-81 from Bailey/Deardourff

9124041 SCC 4101

LAW OFFICES

# McCANDLISH, LILLARD, CHURCH & BEST

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440


ROBERT J. McCANDLISH, JR.
ROTHWELL J. LILLARD
RANDOLPH W. CHURCH, JR.
STEPHEN L. BEST
JESSE B. WILSON, III
GERALD R. WALSH
PETER A. ARNTSON
THOMAS J. CAWLEY
RANDOLPH A. SUTLIFF
WILLIAM E. DONNELLY, III
ROBERT H. J. LOFTUS

GRADY K. CARLSON
ANN WOOD MISCHE
BARBARA L. ABERNETHY
R. PEYTON MAHAFFEY
PAUL B. TERPAK
JOHN M. GRAY

WILLIAM C. BAUKNIGHT
(COUNSEL)

F. D. RICHARDSON
(1884-1954)
HUGH B. MARSH
(1900-1976)


March 4, 1981

FILE NO.

CERTIFIED MAIL #157529
RETURN RECEIPT REQUESTED

Federal Election Commission
1325 K Streets, N.W.
Washington, D. C. 20463
ATTN: William E. Taylor, Esquire

Re: American Medical Laboratories, Inc.
MUR 1180

Dear Mr. Taylor:

Thank you for speaking with me by telephone this morning.

On behalf of American Medical Laboratories, Inc., I request a thirty day extension of the time period within which factual or legal material may be submitted in response to the Commission's finding.

Sincerely yours,

Grady K Carlson

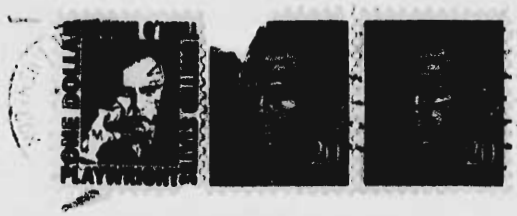
Grady K. Carlson
Counsel for American
Medical Laboratories, Inc.

GKC/sc

MAR 6 P2:12

GENERAL COUNSEL
RECEIVED

LAW OFFICES
McCANDLISH, LILLARD, CHURCH & BEST
A PROFESSIONAL CORPORATION
THE BARBOUR HOUSE
4069 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030




CERTIFIED
No. 157529
MAIL

Federal Election Commission
1325 K Streets, N.W.
Washington, D. C. 20463
ATTN: William E. Taylor, Esquire

912403 GCM 4101

LAW OFFICES

McCANDLISH, LILLARD, CHURCH & BEST

A PROFESSIONAL CORPORATION

THE BARBOUR HOUSE

4069 CHAIN BRIDGE ROAD

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 273-2440

ROBERT J. McCANDLISH, JR.
ROTHWELL J. LILLARD
RANDOLPH W. CHURCH, JR.
STEPHEN L. BEST
JESSE B. WILSON, III
GERALD R. WALSH
PETER A. ARNTSON
THOMAS J. CAWLEY
RANDOLPH A. SUTLIFF
WILLIAM E. DONNELLY, III
ROBERT H. J. LOFTUS

GRADY K. CARLSON
ANN WOOD MISCHE
BARBARA L. ABERNETHY
R. PEYTON MAHAFFEY
PAUL B. TERPAK
JOHN M. GRAY

WILLIAM C. BAUKNIGHT
(COUNSEL)

F. D. RICHARDSON
(1884-1954)
HUGH B. MARSH
(1900-1976)

March 4, 1981

FILE NO.

CERTIFIED MAIL #157529
RETURN RECEIPT REQUESTED

Federal Election Commission
1325 K Streets, N.W.
Washington, D. C. 20463
ATTN: William E. Taylor, Esquire

Re: American Medical Laboratories, Inc.
MUR 1180

Dear Mr. Taylor:

Thank you for speaking with me by telephone this morning.

On behalf of American Medical Laboratories, Inc., I request a thirty day extension of the time period within which factual or legal material may be submitted in response to the Commission's finding.

Sincerely yours,

Grady K. Carlson

Grady K. Carlson
Counsel for American
Medical Laboratories, Inc.

GKC/sc

9 2 0 4 0 3 5 3 2 6

MAR 6 P2:12

LAW OFFICES
McCANDLISH, LILLARD, CHURCH & BEST
A PROFESSIONAL CORPORATION
THE BARBOUR HOUSE
4069 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030





Federal Election Commission
1325 K Streets, N.W.
Washington, D. C. 20463
ATTN: William E. Taylor, Esquire

GCC 4080

LAW OFFICES
PEABODY, RIVLIN, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION
WASHINGTON, D.C. 20036

TWELFTH FLOOR
CONNECTICUT BUILDING
1150 CONNECTICUT AVENUE, N.W.

TELEPHONE (202) 457-1000
CABLE ADDRESS: "EXCELSIOR"
TELEX: 897413

ENDICOTT PEABODY
LEWIS A. RIVLIN
JEREMIAH D. LAMBERT
TEDSON J. MEYERS
CHARLES T. DUNCAN
DAVID J. TAYLOR
MICHAEL W. FABER
JOHN R. FERGUSON
TIMOTHY J. WATERS
JOHN T. SCHELL
PETER B. ARCHIE
CHARLES R. WORK
JOHN A. HODGES
ROBERT H. MORSE
ROBERT A. WARDEN
ROBERT N. JENSEN
COLLISTER JOHNSON, JR.
JOHN LOCKIE
ROBERT P. VISSER
TIMOTHY L. HARKER
NATHALIE P. GILFOYLE
RONALD J. DOLAN

LAWRENCE WHITE
JEANNE A. CARPENTER
JOHN MARK JANSEN
NANCY MARIE STILES
MICHAEL W. BEASLEY
ROBERT J. MILLER
GLENN R. REICHARDT
JOEL B. WINNIK
WILLIAM D. COSTON
RALPH A. SIMMONS
JEFFREY N. MARTIN
ROBERT A. HAZEL
DIANE GILBERT WEINSTEIN
JAY D. FEDELTY
ROBERT C. GODBEY
KATHRYN E. PAULI
JANINE H. COWARD
MYRON L. DALE

OF COUNSEL
JORGE L. CÓRDOVA, JR.

WRITER'S DIRECT DIAL NUMBER
(202) 457-1019

March 2, 1981

BY HAND DELIVERY

William E. Taylor, Esquire
Federal Election Commission
1325 K Street NW
Washington DC 20463

Dear Mr. Taylor:

Re: MUR 1180

Reference is made to the letter from Chairman McGarry to Robert Teeter, President of Market Opinion Research ("MOR") regarding the Commission's finding of reason to believe that MOR violated 2 U.S.C. § 441b(a) with regard to the above-referenced Matter Under Review.

This is to confirm that I have been retained to represent MOR with regard to this matter and that we will meet at your offices on Wednesday, March 4, at 11 o'clock.

Sincerely,

Robert P. Visser

Robert P. Visser

cc: Robert Teeter

1 MAR 4 P2:10

LAW OFFICES
PEABODY, RIVLIN, LAMBERT & MEYERS
A PROFESSIONAL CORPORATION
CONNECTICUT BUILDING - TWELFTH FLOOR
1150 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

BY HAND DELIVERY

William E. Taylor, Esquire
Federal Election Commission
1325 K Street NW
Washington DC 20463

MUR 1180

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 5, 1981

Don Ivers, Esquire
Counsel, The Republican National
Committee
310 First Street
Washington, D.C. 20003

Dear Mr. Ivers:

Pursuant to your phone conversation of March 2, 1981, with William Taylor, Esquire of this office, please find the enclosed additional material. We hope this information will be satisfactory but, should you have any questions, please call Mr. Taylor at (202)523-4529.

Sincerely,

Thomas J. Whitehead
Assistant General Counsel

Enclosure

8204033156

JPM 5/23/79
Pg 1 of 1
E 4/1

Federal Election Commission (8/77)

RNC - EXPENDITURES

CORPORATE CONTRIBUTIONS REPORTED AS REFUNDS/REBATES

1976

| | Corporation | Purpose | 1 City/State | Date of Incorporation | 3 Amount | Month Received by CMTE | Breakdown Code - See Pg E 4/3 | 10 Comments |
|---|---|---|---|---|---|---|---|---|
| 1 | Quayle, Plesser & Co, Inc | ST Chairman Meetings | NY/NY | 10-04-73 | 35000 | JAN | B | |
| 2 | Datatab, Inc | " " " | NY/NY | 3-29-65 | 7000 | | B | |
| 3 | Central Surveys, Inc | " " " | SHENANDOAH/IA | 11-26-74 | 35000 | | B | |
| 4 | Dimmitt Agency | FEC Law Seminar | JERSEY CITY/NJ | 7-06-60 | 35000 | MAR | B | |
| 5 | CBS News | almanac | NY/NY | 6-03-55 | 15000 | | A | |
| 6 | Rose Corporate Corp | Campaign Law Seminar | Boise/ID | 10-07-82 | 35000 | | B | |
| 7 | Developers Unlimited | computer services | Rockville/MD | 11-04-71 | 812500 | | C | |
| 8 | Arnason, Hart + Maxwell, Inc. (1) | FEC Law Seminar | Salt Lake/UT | 10-25-72 | 20000 | JUN | B | |
| 9 | The LTV Corp | " " " | Dallas/Tx | 7-13-59 | 20000 | | B | |
| 10 | Arlington Hall Inc | almanacs | Englewood, NJ | 11-15-53 | 60000 | | A | |
| 11 | Reuben Donnenfeld + Eyre, Inc | analysis info | Wash/DC | 3-26-70 | 85000 | | C | |
| 12 | Mid American Dairymen, Inc | PAC Seminar | Springfield, MO | 7-01-68 | 10000 | AUG | B | |
| 13 | Government Ind of America, Inc | " " | Louisville/KY | 10-14-59 | 10000 | | B | |
| 14 | Delta Airlines | " " | Chicago/Ill | 5-07-68 | 10000 | | B | |
| 15 | The Brooker Corp | " " | Smithfield/MO | 3-22-49 | 10000 | | B | |
| 16 | Kathryn Adams Ponytail Man, Inc | " " | Richmond/VA | 5-06-76 | 10000 | | B | |
| 17 | International Paper Co | " " | Wash, DC | 11-21-72 | 20000 | | B | |
| 18 | CBS News | almanacs | Wash, DC | 6-03-55 | 30000 | | A | |
| 19 | Harper & Whitney, Inc | no research given | Avon, Ct | 8-12-69 | 11700 | | B | |
| 20 | Simpson Timber Co | PAC Seminar | Seattle, WA | 6-27-1905 | 10000 | | B | |
| 21 | Nat Assoc Mutual Ins Agents | " " | Wash, DC | 9-30-35 | 10000 | | B | |
| 22 | Item Box Board Co | " " | Alsip, Ill | 12-31-36 | 10000 | | B | |
| 23 | American Petroleum Inst | " " | Wash, DC | 3-20-17 | 10000 | | B | |
| 24 | Kansas City Life Insurance | " " | Kansas City, Mo | 5-01-1895 | 30000 | | B | |
| 25 | Pension Real Estate Association | " " | Columbus, Oh | 9-24-76 | 17500 | | B | INCORPORATED AFTER THE DATE OF THE TRANSFER |
| 26 | Nat Direct Mail Svc Inc | envelopes | Wash, DC | 8-18-75 | 30000 | | A | |
| 27 | Collins Associates, Inc | photoprints | Silver Spring, MD | 3-31-75 | 15000 | SEP | A | |
| 28 | Nat Direct Mail Svc, Inc 26 | envelopes | Wash DC | 8-18-75 | 480000 | | A | |
| 29 | Price Waterhouse + Co | FEC manual | Rochester, NY | 7-30-101 | 10000 | | A | |
| 30 | Kramer, Fleming Firms | PAC Seminar | Cortland, NY | 10-24-[illegible] | 10000 | | B | |
| 31 | Franklin Mint Center | royalties on medal | Franklin Mint, Pa | 11-22-64 | 2000000 | OCT | H | |
| 32 | Heritage Books, LTD | royalties on sale of | Wash, DC | 11-25-68 | 214550 | NOV | H | |
| 33 | " " Republican Honor Book | " " " | " " " | 6-22-76 | 1050025 | MAY | H | — |
| 34 | | | | | | | | |
| 35 | | | | | 25320 25 | | | |
| 36 | | | | | | | | |
| 37 | | | | | | | | |
| 38 | (1) Name changed to Arnason, Hart & Maxwell, Inc (12/28/72) | | | | | | | |
| 39 | | | | | | | | |
| 40 | → Make your total here on last page | | | | | | | |
| 41 | | | | | | | | |
| 42 | all corporations verified with the appropriate Secretary of State | | | | | | | |
| 43 | | | | | | | | |
| 44 | SOURCE: Cmte Records / Comm of Secured Debts | | | | | | | |

Purpose: to document possible compliance problems

GPO 918-949

Federal Election Commission (8/77)

JPM 5/23/78
Pg 1 of 1
E 4/3

RNC - EXPENDITURES

Corporate Contributions Reported as Refunds/Rebates

1978

| | Corporation | Purpose | City/State | Date of Incorporation | Amount | Month Reported By Code | Breakdown Code - see Pg E 4/5 | Comments |
|---|---|---|---|---|---|---|---|---|
| S13 | Allison + Assoc Inc | "promises" | Merrick, NJ | 9.11.73 | 750 | JAN | A | |
| S4 | Skaggs Electric Inc | " | Hagerstown, Md | 3.04.76 | 750 | " | A | |
| S5 | ELECTION RESEARCH CENTER | almanac | WASH, DC | 5.00.65 | 1500 | FEB | A | |
| 5 | Mervit Common Research Co 59 | list sample | Detroit, Mi | 1.05.60 | 80000 | " | D | |
| 6 | Bailey Deardourff + Assoc Inc | precinct list | WASH, DC | 3.26.70 | 5000 | MAR | D | |
| S6 | The Bradenton Herald | "promises" | Bradenton, Fla | 10.23.73 | 766 | MAY | A | |
| S7 | General Motors Corp | " | WASH, DC | 12.20.54 | 766 | " | A | |
| S8 | Capital Broadcasting Co | " | Raleigh, NC | 5.19.37 | 766 | " | A | |
| 10 | Rizzo + Russo Associates | film | Boston, Ma | 6.26.78 | 4470 | JUN | INCORPORATED AFTER DATE OF TRANSFER | |
| 59 | Cornett + Co | luncheon | Atlanta, GA | 10.21.64 | 1000 | MAY | B | |
| 12 | Datatel Inc 32 | computer time | Hanover, Md | 4.02.74 | 37500 | " | C | |
| 60 | F W Flaxon Co, Inc * 60 | "commonsense" | Westwood, Ma | 7.30.51 | 2400 | OCT | A | |
| 14 | F W Flaxon Co, Inc * 60 | newsletter subscription | Westwood, Ma | 7.30.51 | 1200 | " | A | |
| 61 | Weaver Mfg Inc | pamphlets/bumperstickers | Salvatierra, Ks | 1.23.59 | 1900 | " | A | |
| 62 | Dresser Mobilabs Inc | disc packs w/controller | Fairfield, Va | 12.29.69 | 1100000 | " | C | |
| 63 | Bailey Deardourff + Assoc Inc | "Reps" listing | Wash, DC | 3.26.70 | 75000 | " | D | |
| 18 | F W Flaxon Co, Inc * 60 | newsletter subscription | Westwood, Ma | 7.30.51 | 1200 | NOV | A | |
| 19 | F W Flaxon Co, Inc * 60 | " | Westwood, Ma | 7.30.51 | 1200 | " | A | |
| 20 | Datatel Inc 32 | computer time | Alexandria, Va | 4.02.74 | 42250 | " | C | |
| G57 | Ford Motor Co | newsletter subscription | Dearborn, Mi | 3.02.20 | 1200 | " | A | |
| 64 | Vantage Point Peddler | campaign manual | Contoocook, NH | 3.06.72 | 1950 | DEC | A | |
| 25 | | | | | 1392698 | | | |

* Subscription service bureau

/- [illegible] by type on reverse side

all corporations involved with the appropriate Secretary of State

Source: Cmte Records / Copies of Receipt Checks

GPO 912-847

JPM 5/23/74
PG 1 OF 1

Federal Election Commission (8/77)

RNC - EXPENDITURES

E 9/2

Corporate Contributions Reported as Refunds/Rebates

1977

| Corporation | Purpose | 1 City/State | 2 DATE OF INCORPORATION | 3 Amount | 12 MONTH REPORTED BY CMTE | 13 BREAKDOWN CODE - SEE PG E 9/5 | 14 Comments |
|---|---|---|---|---|---|---|---|
| ore Valentine Productions, Inc | videotapes | Wilmington, DE | | 75 00 | APR | A | |
| lis Graphics, Inc. 23 | printing services | Silver Spring, MD | 3-31-75 | 350 | MAY | A | |
| Cruse Services Inc | precinct lists | St Louis, Mo | 1-23-70 | 1500 00 | ( | D | |
| ntatel Inc | computer time | Hanover, MD | 4-02-74 | 253150 | ) | C | |
| | | | | 00 | JUL | — | — |
| ipers, Perry, Chapman Corp | almanac | Wheaton, MD | 11-01-71 | 1500 | ( | A | |
| nerican Political Research Corp | " | Bethesda, MD | 5-14-70 | 1600 | | A | |
| atl Broadcasting Co, Inc | " | WASH, DC | 7-08-55 | 1500 | | A | |
| e Baltimore Sun (2) | " | WASH, DC | 3-24-101 | 1500 | ) | A | |
| ic Ice Building Co. | " | College Park, MD | 6-16-47 | 1500 | AUG | A | |
| e Assoc | " | New Castle, DE | 12-05-70 | 1500 | | A | |
| arket Opinion Research Co | " | Detroit, MI | 1-05-60 | 1500 | ( | A | |
| s Moines Register + Tribune | " | Des Moines, IA | 7-10-02 | 1500 | | A | |
| Editorial Report | " | WASH, DC | 6-27-62 | 4600 | | A | |
| Intatel Inc 32 | computer time | Hanover, MD | 4-02-74 | 1295 80 | ) | C | |
| ociated Builders + Contractors, Inc | almanac | BWI - MD | 4-11-50 | 15 00 | | A | |
| ociated Builders + Contractors, Inc 42 | " | BWI - MD | 4-11-50 | 300 00 | | A | |
| ke Bell Inc | " | Greensboro, NC | 2-12-62 | 1500 | | A | |
| Direct Mail Services Inc 24 | " | WASH, DC | 8-18-75 | 1500 | | A | |
| Intatel Inc 32 | computer time | Hanover, MD | 4-02-74 | 946 80 | ) | C | |
| rican Optometric Assoc | almanac | WASH, DC | 4-17-63 | 1600 | OCT | A | |
| Consumer Enterprises Assoc Inc | "promises" | NY, NY | 11-02-47 | 750 | | A | |
| Dart Drug Corp | computer time | Landover, MD | 5-26-66 | 2000 00 | ( | C | |
| Intatel Inc 32 | " | Hanover, MD | 4-02-74 | 988 90 | ) | C | |
| olitical Research Inc | almanac | Dallas, TX | 4-09-68 | 1500 | | A | |
| 2062 Cascade Corp 6 | " | Boise, Idaho | 10-07-32 | 1500 | | A | |
| ited Americas Communications, Inc | "promises" | Sioux Falls, SD | 12-30-75 | 750 | NOV | A | |
| ardage Enterprises | " | Wichita, KS | 6-06-75 | 750 | ( | A | |
| ties Service Gas Co 31 | " | WASH, DC | 11-23-70 | 1500 | | A | |
| Standard O.I - Indiana | almanac | Chicago, ILL | 6-18-18 | 1500 | | A | |
| Investment Brokers Corp | "promises" | Wichita, KS | 9-06-72 | 750 | | A | |
| el Dorado Graphics, Inc. | " | New Berlin, WIS | 4-03-63 | 750 | | A | |
| Standard O.I - Indiana 50 | almanac | Chicago, ILL | 6-18-18 | 1500 | DEC | A | |
| | | | | 7870 00 | | | |

(2) incorporated under A.S. Able Co. (3/21/16)

/ - total verified by tape on reverse side

all [illegible] verified with the appropriate Secretary of State

Source: Cmte Records/Copies of Discount Checks

Purpose: to document possible campaign spending problems

Federal Election Commission (8/77)

JPM 5123/78
PG 1 of 1
E 4/4

# RNC EXPENDITURES

## Corporate Contributions Reported as Refunds/Rebates 1979

| | Corporation | Purpose | 1 City/State | 2 Month | 3 Amount | Month Reported By Cmte | Break Down Code - See Pg E 4/5 |
|---|---|---|---|---|---|---|---|
| 1 | | | | | | | |
| 2 | FW Flavor Co, Inc * 60 | newsletter subscription | Westwood Ma | 7-30-51 | 1200 | JAN | A |
| 3 | Ebsco Industries, Inc * | " " | Birmingham, Al | 1-30-53 | 6000 | ( | A |
| 4 | Ebsco Industries, Inc * 65 | " " | Birmingham, Al | 1-30-53 | 12000 | ) | A |
| 5 | ~~Ebsco~~ Industries, Inc * 65 | " " | Birmingham, Al | 1-30-53 | 4800 | | A |
| 6 | Datatel, Inc 32 | computer time | Alexandria VA | 4-02-74 | 390 00 | | C |
| 7 | Sandia Laboratories | newsletter subscription | Albuquerque NM | 10-13-49 | 1200 | FEB | A |
| 8 | Can Manufacturers Inst, Inc | " " | Wash DC | 6-14-78 | 1200 | ( | A |
| 9 | FW Flavor Co, Inc * 60 | " " | Westwood Ma | 7-30-51 | 3600 | ) | A |
| 10 | FW Flavor Co Inc * 60 | " " | Westwood Ma | 7-30-51 | 2400 | | A |
| 11 | Moore Cottrell Subscr Agency * | " " | N. Conhtbn, NY | 6-12-78 | 1200 | | A |
| 12 | | | | | | | |
| 13 | | | | | | | |
| 14 | | | | | 63000 | | |
| 15 | | | | | | | |
| 16 | | | | | | | |
| 17 | * - Subscription service bureau | | | | | | |
| 18 | | | | | | | |
| 19 | ~~6~~ - Total verified by tape on reverse side | | | | | | |
| 20 | | | | | | | |
| 21 | All [illegible] verified with the | | | | | | |
| 22 | appropriate Secretary of State | | | | | | |
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FEC 215-445

G1D365 CCC 4070

MAR 3 9 11 : 49

NATIONAL DIRECT MAIL SERVICES, INC.

WASHINGTON, D.C. • COLUMBUS, OHIO

March 2, 1981

William E. Taylor, Esquire
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1180

Dear Mr. Taylor:

I appreciated the information you gave me during our phone conversation today.

It is my understanding that according to the records of the Republican National Committee, the following are three entries showing money received by them from National Direct Mail Services:

$480 in September, 1976
$200 in September, 1976
$ 15 in August, 1977

Because these receipts are dated approximately five years ago, it will take some time for our accounting staff to research our records. You have asked that we submit relevant material within ten (10) days of receipt of your letter. I am hereby requesting an extension of an additional ten working days in order to do the necessary research.

If you foresee any problems with this, please call me as soon as possible at 654-8700.

Thank you for your assistance.

Sincerely,

Sandra L. Leibson

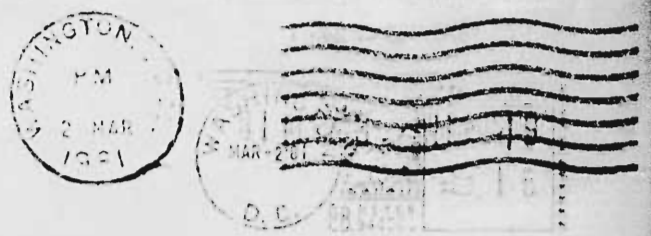
Sandra L. Leibson

SLL:l
cc: Robert P. Odell, Jr., President
David L. Stamman, Accountant

1 MAR 3 P12:25

WASHINGTON ADDRESS: 4733 BETHESDA AVENUE, SUITE 530, BETHESDA, MARYLAND 20014 • (301) 654-8700
COLUMBUS ADDRESS: FIFTY WEST BROAD STREET, COLUMBUS, OHIO 43215 • (614) 228-3269

NATIONAL DIRECT MAIL SERVICES, INC.
4733 BETHESDA AVENUE, SUITE 530, BETHESDA, MARYLAND 20014



William E. Taylor, Esquire
Federal Election Commission
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Teeter, President
Market Opinion Research
28 West Adams Street
Detroit, Michigan 48226

Re: MUR 1180

Dear Mr. Teeter:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on February 19, 1981, found reason to believe that the Market Opinion Research violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure

8204035217

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Teeter, President
Market Opinion Research
28 West Adams Street
Detroit, Michigan 48226

Re: MUR 1180

Dear Mr. Teeter:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on February 19, 1981, found reason to believe that the Market Opinion Research violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

2049352 7

8 2 0 4 0 5 3 7

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3
Add your address in the "RETURN TO" space on reverse

1. The following service is requested (check one)
- ☐ Show to whom and date delivered ____¢
- ☐ Show to whom, date, and address of delivery ____¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ____¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date, and address of delivery $____
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
MR. Robert Teeter, President
MARKET OPINION Research
2E West Adams Street
Detroit, Michigan 48226

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | CE 874 6 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

Janice Rodenbach

4. DATE OF DELIVERY: FEB 26 1981
POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:
CLERK'S INITIALS

2-23

MJR 1180 - Tyson

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Market Opinion Research, Co.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Market Opinion Research Co. (Market Opinion) int he amount of $800.00 for list samples purchased by Market Opinion from the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Market Opinion are contributions made by Market Opinion to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

8204035037

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Market Opinion Research Co. violated 2 U.S.C. § 441b.

8204053727

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
) MUR 1180
Market Opinion Research )

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on February 19, 1081, the Commission decided by a vote 4-1 to take the following actions regarding MUR 1180:

1. Find REASON TO BELIEVE that Market Opinion Research Inc. violated 2 U.S.C. § 441b(a) for making a corporate contribution.

2. Send the letter as submitted with the General Counsel's February 17, 1981 memorandum.

Commissioners McGarry, Reiche, Thomson, and Tiernan voted affirmatively in this matter. Commissioner Aikens dissented.

Attest:

2/19/81
Date

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 2-17-81, 11:31

8206403527

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE MWE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY, mc

DATE: FEBRUARY 19, 1981

SUBJECT: MUR 1180 - "No" For the Record Vote

Attached is a copy of Commissioner Aikens' vote sheet with comments regarding her vote in MUR 1180.

ATTACHMENT:
Copy of Vote Sheet

8204035017

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON D.C. 20463

81 FEB 18 P 5:27

Date and Time Transmitted: TUESDAY, 2-17-81
4:00

Commissioner McGARRY, AIKENS, TIERNAN, THOMSON, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: THURSDAY, FEBRUARY 19, 1981
4:00

MUR No. 1180, Memorandum to the Commission dated 2-17-81

( ) I approve the recommendation

( ) I object to the recommendation

COMMENTS: Voting "Yes" not to be placed on agenda

Date: 2-18-81 Signature: J. Aikens

A DEFINITE VOTE IS REQUIRED AND ALL BALLOTS (YES, NO, ABSTAIN, ETC.) SHALL BE RECORDED. PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN ABOVE.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
81 FEB 17 A11:31

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 17, 1981

MEMORANDUM: To The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1180 - failure to list Market Opinion Research under recommendation seven of First General Counsel's Report

On December 2, 1980, the Office of General Counsel presented its First General Counsel's report to the Commission in the above-referenced matter. Section IV of this report (p.9) lists funds received by the Republican National Committee (R.N.C.) from various corporations for the sale of goods and services, including Market Opinion Research Inc.. The Commission on this date found reason to believe that under the facts presented in this matter the sale of goods and services by the R.N.C. constituted the making of a corporate contribution by those corporations purchasing the goods and services. Market Opinion Research Inc. was listed in the body of the report as being one of those corporations that purchased goods and services from the R.N.C.. Through an oversight, however, Market Opinion Research Inc. was not listed with the other corporations in question in Recommendation 7 of the Report. Thus, the Commission has not found reason to believe against this corporation and, therefore, it is the Office of

8204053031

General Counsel's recommendation that the Commission find reason to believe that Market Opinion Research Inc. violated 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe that Market Opinion Research Inc. violated 2 U.S.C. § 441b(a) for making a corporate contribution.
2. send attached letter.

Attachment

1.letter.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Teeter, President
Market Opinion Research
28 West Adams Street
Detroit, Michigan 48226

Re: MUR 1180

Dear Mr. Teeter:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on , 1981, found reason to believe that the Market Opinion Research violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

RESPONDENT Market Opinion Research, Co.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

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The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from the Market Opinion are contributions made by Market Opinion to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

8204035528

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Market Opinion Research Co. violated 2 U.S.C. § 441b.

8204053538

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David M. Serotkin
48 North Walnut Street
Mount Clemens, Michigan 48948

Re: MUR 1180

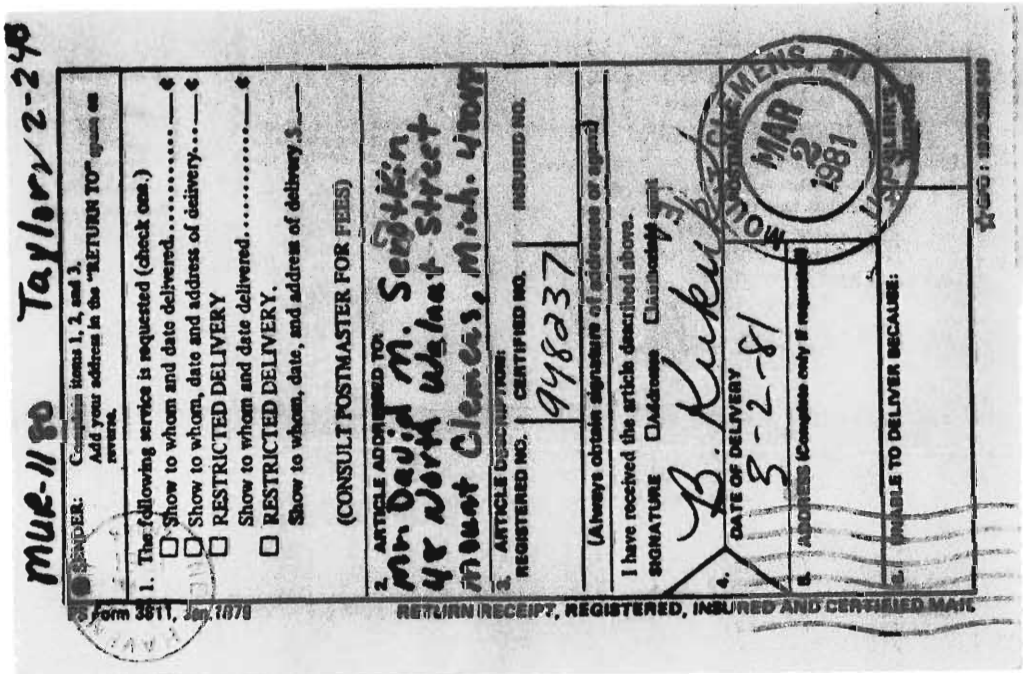
Dear Serotkin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record in 30 days.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David M. Serotkin
48 North Walnut Street
Mount Clemens, Michigan 48948

Re: MUR 1180

Dear Serotkin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record in 30 days.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040537

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes, Chairman
Franklin Mint Corporation
Franklin Center, Pennsylvania 19041

Re: MUR 1180

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Franklin Mint Corporation violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

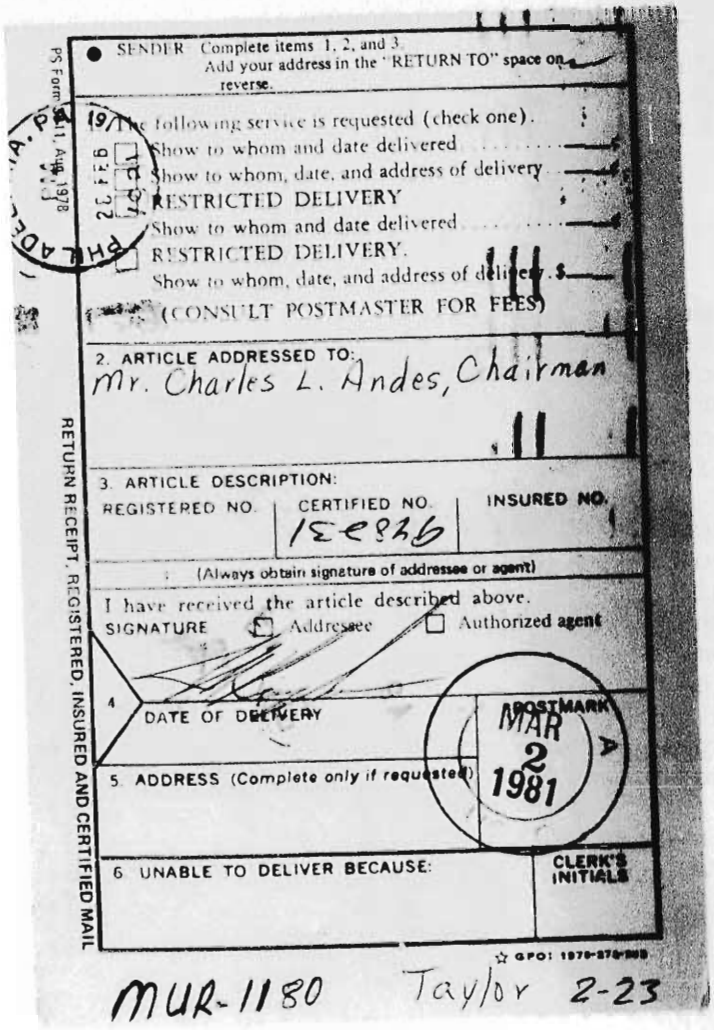
Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosure

2040353 7 86



● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered
☐ Show to whom, date, and address of delivery
☐ RESTRICTED DELIVERY
Show to whom and date delivered
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery $
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Charles L. Andes, Chairman

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 15E826 | INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY

POSTMARK MAR 2 1981

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆ GPO: 1978-276-[illegible]

MUR-1180 Taylor 2-23

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes, Chairman
Franklin Mint Corporation
Franklin Center, Pennsylvania 19041

Re: MUR 1180

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Franklin Mint Corporation violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

WETaylor:rrp:2/19/81
TJWhitehead

2040353290

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR. NO. 1180

STAFF MEMBER(S) & TEL. NO.
Taylor
202-523-4529

RESPONDENT Franklin Mint

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation, and in July of 1979 deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol: The R.N.C. provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

---

1/ The second check was received after the audit had been conducted.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the corporation would.

1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The R.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

2040353969

## FACTUAL BASIS AND LEGAL ANALYSIS

### Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corproation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever" to make a contribution or expenditure in connection with any election to . . . [Federal] office.

---

2/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . .[Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or state banks in accordance with banking laws and in exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission, in its regulations, has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expend their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a precentage of either total card holder sales or the finance charge balance of RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using certain types of tangible assets (See A/O 1979-76) and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the R.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bering the likeness of the candidates as the R.N.C.'s campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the R.N.C., in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corpoate contribution to the R.N.C.

2040652694

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Al Hackel, President
Acropolis Books Ltd.
2400 17th Street, N.W.
Washington, D.C. 20009

Re: MUR 1180

Dear Mr. Hackel:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that Acropolis Books Ltd. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

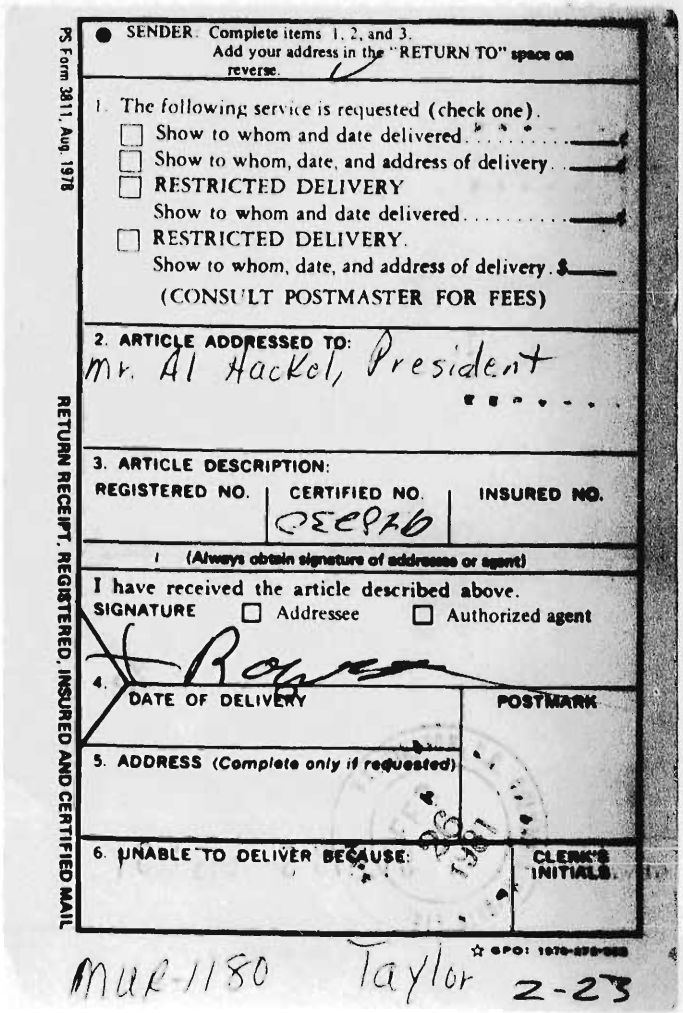
Sincerely,

John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure

2040335295



PS Form 3811, Aug. 1978

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered.....
- ☐ Show to whom, date, and address of delivery.....
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered.....
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery. $
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Al Hackel, President

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | CEE876 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY | POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆ GPO: 1978-272-865

MUR 1180 Taylor 2-23

2 0 4 0 3 5 3 2 9 6

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Al Hackel, President
Acropolis Books Ltd.
2400 17th Street, N.W.
Washington, D.C. 20009

Re: MUR 1180

Dear Mr. Hackel:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that Acropolis Books Ltd. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William F. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

Prepared by WFTaylor:rrp:2/19/81
Cleared by TJWhitehead

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

STAFF MEMBER(S) & TEL. NO.

RESPONDENT Acropolis Books Ltd.

Taylor
(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("R.N.C.") covering the period of January 1, 1976 through March 31, 1979.

On June 22, 1976, and on October 23, 1977, the R.N.C. deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as "refund/rebates" and not as a contribution. When the audit staff inquired about the checks, the R.N.C. explained that it was royalty payment resulting from an agreement entered into on August 25, 1975, for the sale of a book called REPUBLICAN HUMOR BOOK.

FACTUAL BASIS AND LEGAL ANALYSIS

The R.N.C. lisred on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the R.N.C. and Acropolis on August 25, 1975, whereby the R.N.C. would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK.

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

2040353498

The present transaction, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transactions as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties as much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using certain types of tangible assets (See A/O 1979-76) and, "the use of the political organization's good will and reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the comercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, Acropolis made royalty payments to the RNC for each copy sold of THE REPUBLICAN HUMOR BOOK, and in return for these royalty payments, the RNC allowed its name to be used and assisted in promoting the book. As such, the payments made by Acropolis, as in the "credit card program", supra, cannot be viewed simply as bargained for consideration, but rather constitute contributions in violation of § 441b of the Act.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Acropolis Books Ltd. violated 2 U.S.C. § 441b(a) for making a corporate contribution to the RNC.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert O'Dell, President
National Direct Mail Services Inc.
4733 Bethesda Avenue
Bethesda, Maryland 20014

Re: MUR 1180

Dear Mr. O'Dell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the National Direct Mail Services Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosure

2004053300

MUR-1180 Taylor 2-23

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
   - ☐ Show to whom and date delivered.....
   - ☐ Show to whom, date and address of delivery.....
   - ☐ RESTRICTED DELIVERY
     Show to whom and date delivered.....
   - ☐ RESTRICTED DELIVERY.
     Show to whom, date, and address of delivery.$

   (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Robert O'Dell, President

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | bee876 | |

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐Addressee ☐Authorized agent

4. B A Strickland

DATE OF DELIVERY 2-26-81

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO : 1979-288-848

P 274 553 501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert O'Dell, President
National Direct Mail Services Inc.
4733 Bethesda Avenue
Bethesda, Maryland 20014

Re: MUR 1180

Dear Mr. O'Dell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the National Direct Mail Services Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William L. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

Prepared by WLTAylor:rrp:2/19/81
Cleared by WJWhitehead

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT National Direct Mail Services Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from National Direct Mail Services Inc. (National) in the amount of $680.00 for envelopes the R.N.C. sold to National.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from National are contributions made by National to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that National Direct Mail Services Inc. violated 2 U.S.C. § 441b.

2204033304

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard M. Richards
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Richards:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

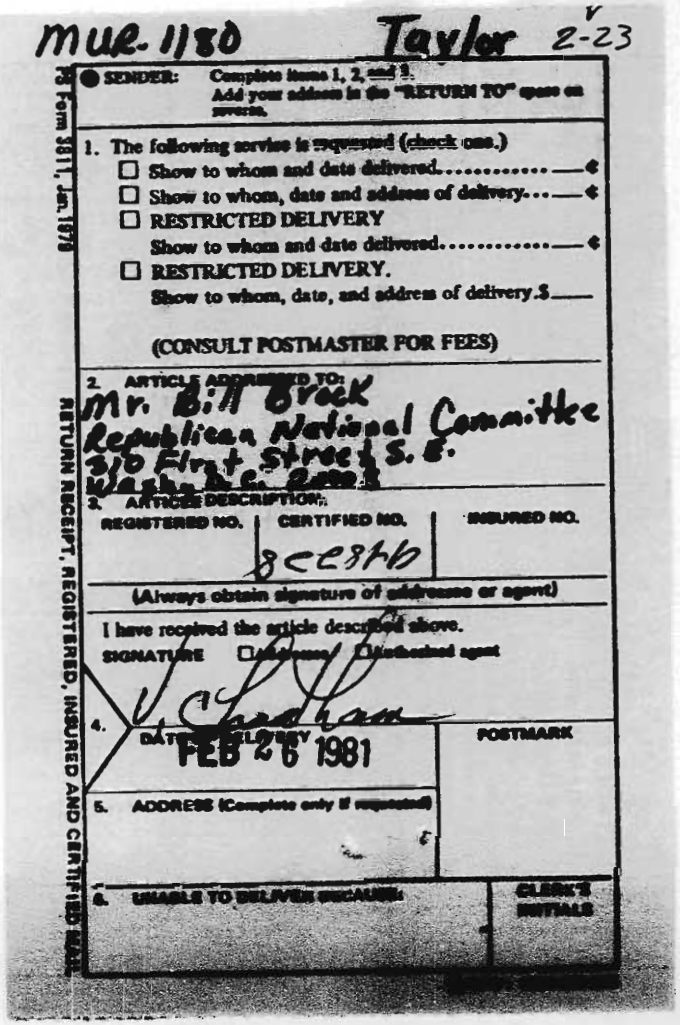
John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure

2040353503

MUR. 1180 Taylor 2-23



PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered.....¢
- ☐ Show to whom, date and address of delivery....¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered.....¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Bill Brock
Republican National Committee
310 First Street S.E.
Washington, D.C. 20003

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | 8ce8th | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

J. Graham

4. DATE OF DELIVERY
FEB 26 1981

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard M. Richards
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Richards:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

Prepared by WETaylor:rrp:2/19/81
Cleared by TJWhitehead

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180
STAFF MEMBER(S) AND TEL. NO.

RESPONDENT Republican National Committee

Taylor
(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("R.N.C.") covering the period of January 1, 1976, through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (See attachment I), and in July of 1979, deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the Committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976, with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol. The R.N.C. provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

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1/ The second check was received after the audit had been conducted.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the Corporation would:

1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The R.N.C. would grant the Corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the Corporation's advertising of the Medals as required under applicable Federal law.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

On June 22, 1976, and on October 23, 1977, the Committee deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as refund/rebates and not as contributions. When the audit staff inquired about the checks, the R.N.C. explained that it was a royalty payment resulting from an agreement entered into onAugust 25, 1975 for the sale of a book called REPUBLICAN HUMOR BOOK.

The R.N.C. provided the audit staff with a copy of the agreement that contains the following pertinent terms:

h) The Publisher [Acropolis] agrees that the retail price of this work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors.

---

2/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

[Mr. Shabik and Mr. Short] and the Committee [R.N.C.] on the following schedules:

A. On the sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory in Paragraph 1:

. . .

(iii) Two Dollars and Twenty-five cents ($2.25) per book to the Committee, as long as Stephen J. Shubik [author] shall receive thirty (30) cents per book, thereafter Two Dollars and fifty-five Cents ($2.55) per book to the Committee;

B. On sale through the normal book trade distribution channels a royalty upon all copies of the Work sold and paid for in exclusive territory specified in Paragraph 1: . . .

(iii) One Dollar ($1.00) to the Committee [R.N.C.] and One Dollar and Ten cents ($1.10) after Stephen J. Shubik [author] has recovered his expense.

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from sixty-six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporation and the labor union. The R.N.C. contends that these receipts are not contributions, but reimbursements for the production costs of the goods and services it provided, however, the R.N.C. failed to produce any records to establish the production costs of these goods and services.

For the 1976 Congressional election, the R.N.C. set up approximately 800 telephone banks (phone banks) throughout the country for the purpose of identifying voters who would vote for certain selected Republican candidates. In October of 1977, the R.N.C. filed an amended report listing the amount it expended on each of the candidates it selected for help. This report showed that the R.N.C. made $14,890.00 worth of expenditures on behalf of Mr. David Serotkin, a candidate for congress in the 12th District of Michigan.

## FACTUAL BASIS AND LEGAL ANALYSIS

### I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the

campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever. . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . .[Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or state banks in accordance with banking laws and in exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission, in its regulations, has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expend their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a precentage of either total card holder sales or the finance charge balance of RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the

possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using certain types of tangible assets (See A/O 1979-76) and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the RNC granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the RNC's campaign symbol and authorized the corporation to make reference to the RNC's designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the RNC, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission's approach in Advisory Opinon 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

II. The Acropolis Books Ltd., Royalty Payment

The RNC listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the RNC and Acropolis on August 25, 1975, whereby the RNC would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK. In section I of this report, we analyzed that Franklin Mints royalty payments were a corporate contribution; that analysis fits the situation here.

III. Sale of Goods and Services

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from some sixty-six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporatons and the labor union. It is the RNC's contention that these receipts are not contributions, but reimbursements for the production costs of goods and services it provided.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or any thing of value. . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office]. . .

It appears that the above payments to the R.N.C., even if to defray the expenses incurred by the R.N.C., are contributions to R.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the RNC, since the RNC is receiving funds that will be available for its political purpose. (See AO's 1979-76, 1979-17, 1978-46, 1975-15.)

In addition to R.N.C.'s receipt of prohibited contributions from the corporations and the labor union, the R.N.C. failed to list the receipt of the funds in question as contributions on its reports pursuant to 2 U.S.C. § 434(b)(3).

Based on the foregoing analysis, the Federal Election Commission has found:

1. reason to believe that R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint,

2. reason to believe that R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from Acropolis Books Ltd.,

3. reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting corporate contributions from sixty-six corporations and one labor union,

4. reason to believe that the R.N.C. violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)( ) for failing to list the receipt of the contributions in question on its reports, and

5. reason to believe that R.N.C. violated 2 U.S.C. § 441a(d) by making an excessive expenditure on behalf of Serotkin for Congress Committee.

8204035514

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFILD MAIL
RETURN RECEIPT REQUESTED

Dr. A. Goodwin, Director
American Medical Laboratories, Inc.
11091 Main Street
Fairfax, Virginia

Re: MUR 1180

Dear Dr. Goodwin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the American Medical Laboratories Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

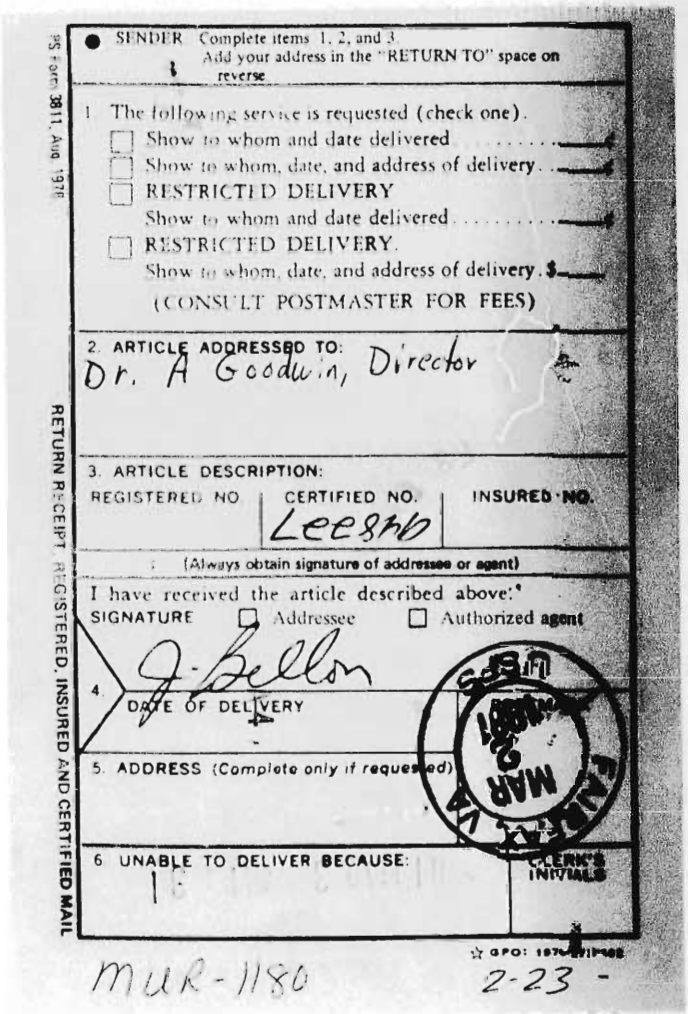
Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure



PS Form 3811, Aug. 1978

RETURN RECEIPT REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ..... ¢
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- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ..... ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery. $
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Dr. A Goodwin, Director

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | Lee870 | |

(Always obtain signature of addressee or agent)

I have received the article described above:
SIGNATURE ☐ Addressee ☐ Authorized agent
J. Bellon

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO: 1979-311-465

MAR 1979

MUR-1180

2-23 -

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. A. Goodwin, Director
American Medical Laboratories, Inc.
11091 Main Street
Fairfax, Virginia

Re: MUR 1180

Dear Dr. Goodwin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the American Medical Laboratories Inc. violated 2 U.S.C. § 44lb(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William L. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

WETaylor:rrp:2/19/81
TJWhitehead

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Americal Medical Laboratories Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from American Medical Laboratories Inc. (American Medical) in the amount of $11,110.00 for computer equipment purchased by American Medical from the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from American Medical are contributions made by American Medical to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

2040353513

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that American Medical Laboritories, Inc. violated 2 U.S.C. § 441b.

8204035519

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Douglas Bailey
Bailey, Deardourff and Associates, Inc.
60720 Old McLean Village Drive
McLean, Virginia 22101

Re: MUR 1180

Dear Mr. Bailey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Bailey, Deardourff and Associates Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

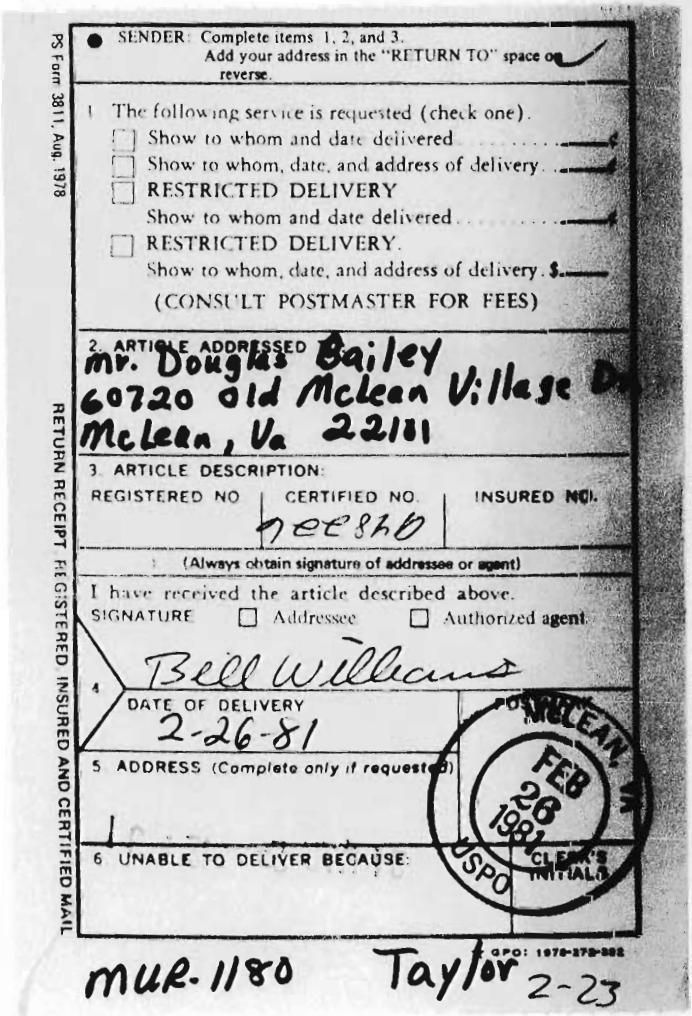
In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosure



PS Form 3811, Aug. 1978

RETURN RECEIPT REGISTERED INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered
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- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery. $
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
mr. Douglas Bailey
60720 old Mclean Village Dr.
Mclean, Va 22101

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | 7 0 0 8 2 0 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Bell Williams

DATE OF DELIVERY
2-26-81

POSTMARK
MCLEAN, VA
FEB 26 1981
USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

GPO: 1978-279-282

MUR-1180 Taylor 2-23

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Douglas Bailey
Bailey, Deardourff and Associates, Inc.
60720 Old McLean Village Drive
McLean, Virginia 22101

Re: MUR 1180

Dear Mr. Bailey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Bailey, Deardourff and Associates Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

WETaylor:rrp:2/19/81
TJWhitehead

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Bailey Deurdoff Assoc. Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Bailey Deurdouff Assoc. Inc. (Bailey Deurdouff) in the amount of $750.00 for pips listings purchased by Bailey Deurdouff from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Bailey Deurdouff are contributions made by Bailey Deurdouff to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

0 2 0 4 0 3 5 5 3 2 3

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Bailey Deurdouff Asso. Inc. violated 2 U.S.C. § 441b.

2040352821

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Services Company
Cities Services Building
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Cities Service Company violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

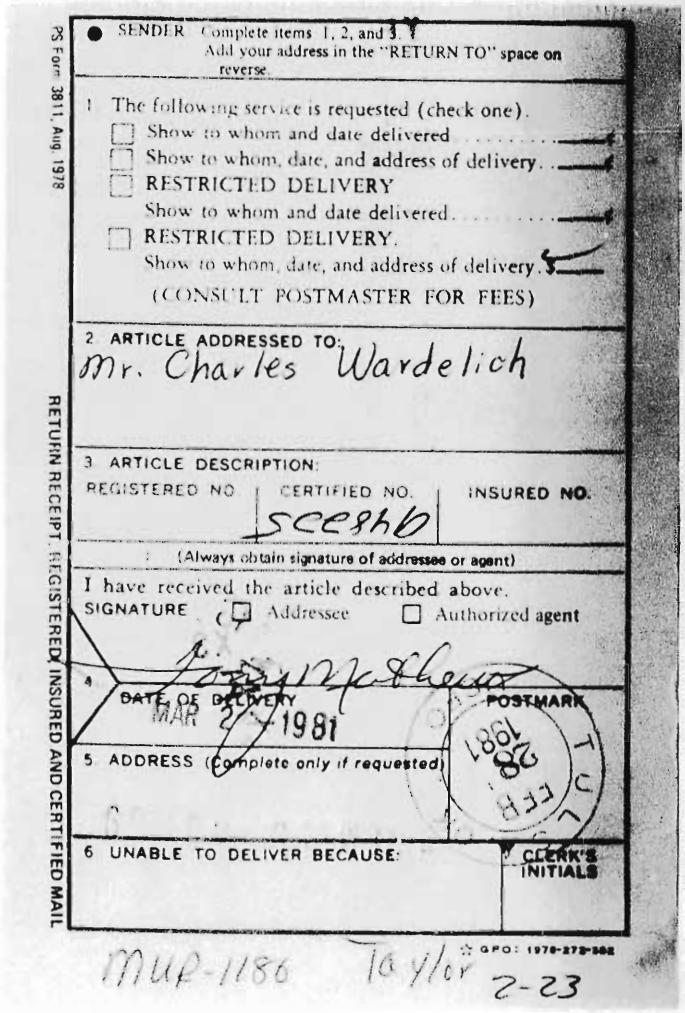
Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure



PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1 The following service is requested (check one).
- ☐ Show to whom and date delivered
- ☐ Show to whom, date, and address of delivery
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.
  (CONSULT POSTMASTER FOR FEES)

2 ARTICLE ADDRESSED TO:
Mr. Charles Wardelich

3 ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 5ce8h6 | INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4 DATE OF DELIVERY MAR 2 1981 POSTMARK FEB 28 1981

5 ADDRESS (Complete only if requested)

6 UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆ GPO: 1978-272-502

MUP-1186 Taylor 2-23

P 220 403 533 326

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Services Company
Cities Services Building
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Cities Service Company violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

WETaylor:rrp:2/19/81
TJWhitehead

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Cities Services Corp.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Cities Services Corp. (Cities Services) in the amount of $1,500.00 for present lists purchased by Cities Services from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Cities Services are contributions made by Cities Services to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Cities Services Corp. violated 2 U.S.C. § 441b.

8204035327

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ken Kendrick, Jr.
Datatel Incorporated
3700 Mount Vernon Avenue
Alexandria, Virginia

Re: MUR 1180

Dear Mr. Kendrick:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Datatel, Incorporated violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

John Warren McGarry

JOHN WARREN McGARRY
Chairman

Enclosure

1 2 0 4 2 5 5 3 3 3 1

MUR 1180 2-23

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered..... ¢
- ☐ Show to whom, date and address of delivery.... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered..... ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr Ken Kendrick Jr
Dot atel Inc.
Alex. Va.

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | hee846 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐Addressee ☐Authorized agent

X Signature

4. DATE OF DELIVERY
MAR 2 - 1981

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ken Kendrick, Jr.
Datatel Incorporated
3700 Mount Vernon Avenue
Alexandria, Virginia

Re: MUR 1180

Dear Mr. Kendrick:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Datatel, Incorporated violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

WETaylor:rrp:2/19/81
TJWhitehead

2040353332

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Datatel Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Datatel Inc. (Datatel) in the amount of $6,521.50 for the sale of computer time by the R.N.C. to Datatel.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Datatel are contributions made by Datatel to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Datatel Inc. violated 2 U.S.C. § 441b.

2040353341

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Bruce Mackey, President
Envelopes Unlimited Inc.
649 North Homer Lane
Rockville, Maryland 20850

Re: MUR 1180

Dear Mr. Mackey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Envelopes Unlimited Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosure

2040353535

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Bruce Mackey, President
Envelopes Unlimited Inc.
649 North Homer Lane
Rockville, Maryland 20850

Re: MUR 1180

Dear Mr. Mackey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Envelopes Unlimited Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Enclosure

WETaylor:rrp:2/19/81
TJWhitehead

2 0 4 0 5 5 3 3 3 6

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE February 23, 1981

MUR NO. 1180

RESPONDENT Envelopes Unlimited Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Envelopes Unlimited Inc. (Envelopes Unlimited) in the amount of $812.50 for computer services provided by the R.N.C. to Envelopes Unlimited.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Envelopes Unlimited are contributions made by Envelopes Unlimited to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Envelopes Unlimited Inc. violated 2 U.S.C. § 441b.

2040353333

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: THE FILE ON MUR 1180 - THE REPUBLICAN NATIONAL COMMITTEE

FROM: LENA L. STAFFORD, RECORDING SECRETARY, OCS LS

DATE: FEBRUARY 20, 1981

In the Federal Election Commission's Executive Session on February 18, 1981, Commissioners Thomson and Tiernan withdrew their objections in the above-captioned matter.

By unanimous consent, the Commission agreed to the following amendments with respect to MUR 1180:

1. Include a reference to AO 1979-76 in the first paragraph on page 5 of the Notification to the Republican National Committee, attached to the General Counsel's Memorandum dated February 3, 1980.

2. Correct the cite in the first paragraph of the letter to Mr. Bill Brock, attached to the above-named memorandum, to read "434(b)(3)."

3. Correct the language in the second paragraph of the letter to Mr. Bill Brock, attached to the above-named memorandum, with respect to "taken against your committee."

Pursuant to the actions detailed above, no objections remain on the record.

cc: General Counsel

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: FEBRUARY 5, 1981

SUBJECT: MUR 1180 - Memorandum to the Commission dated 2-3-81 with letters and notifications; OBJECTION

The above-named document was circulated on a 24 hour no-objection basis at 11:00, February 4, 1981.

Commissioner Tiernan submitted an objection at 5:09, February 4, 1981.

MUR 1180 will be placed on the Executive Session Agenda for Wednesday, February 18, 1981.

Commissioner Thomson submitted his objection at 12:49, February 5, 1981.

February 3, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1180

Please have the attached Memo to the Commission distributed to the Commission on a ~~48~~ 24 hour ~~tally~~ no-objection basis. Thank you.

Attachment

pakayson

cc: Taylor

2040353541

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 FEB 3 P3:12

February 3, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1180
The Republican National Committee

On December 2,1980, the Commission found reason to believe in the above-entitled matter. This finding of reason to believe necessitated changing the attached letters and notifications of reason to believe; they are being circulated for your approval.

Recommendation:

1. Approve attached letters and notifications.

Attachments

1. Letters with accompanying notifications.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David M. Serotkin
48 North Walnut Street
Mount Clemens, Michigan 48948

Re: MUR 1180

Dear Serotkin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record in 30 days.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040353443

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Al Hackel, President
Acropolis Books Ltd.
2400 17th Street, N.W.
Washington, D.C. 20009

Re: MUR 1180

Dear Mr. Hackel:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that Acropolis Books Ltd. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

8204055341

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.

RESPONDENT Acropolis Books Ltd.

Taylor
(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("R.N.C.") covering the period of January 1, 1976 through March 31, 1979.

On June 22, 1976, and on October 23, 1977, the R.N.C. deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as "refund/rebates" and not as a contribution. When the audit staff inquired about the checks, the R.N.C. explained that it was royalty payment resulting from an agreement entered into on August 25, 1975, for the sale of a book called REPUBLICAN HUMOR BOOK.

FACTUAL BASIS AND LEGAL ANALYSIS

The R.N.C. listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the R.N.C. and Acropolis on August 25, 1975, whereby the R.N.C. would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK.

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The present transaction, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transactions as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties as much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of the political organization's good will and reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the comercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, Acropolis made royalty payments to the R.N.C. for each copy sold of THE REPUBLICAN HUMOR BOOK, and in return for these royalty payments, the R.N.C. allowed its name to be used and assisted in promoting the book. As such, the payments made by Acropolis, as in the "credit card program", supra, cannot be viewed simply as bargained for consideration, but rather constitute contributions in violation of § 441b of the Act.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Acropolis Books Ltd. violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Services Co.
Cities Services Building
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Cities Service Company violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE

MUR NO. 1180

RESPONDENT Cities Services Corp.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Cities Services Corp. (Cities Services) in the amount of $1,500.00 for present lists purchased by Cities Services from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Cities Services are contributions made by Cities Services to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Cities Services Corp. violated 2 U.S.C. § 441b.

8204035349

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. A.Goodwin, Director
American Medical Laboratories, Inc.
11091 Main Street
Fairfax, Virginia

Re: MUR 1180

Dear Dr. Goodwin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the American Medical Laboratories, Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____ MUR NO. 1180

RESPONDENT Americal Medical Laboratories Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from American Medical Laboratories Inc. (American Medical) in the amount of $11,110.00 for computer equipment purchased by American Medical from the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from American Medical are contributions made by American Medical to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that American Medical Laboritories, Inc. violated 2 U.S.C. § 441b.

8204035532

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____ MUR NO. 1180

RESPONDENT Bailey Deurdoff Assoc. Inc.

STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Bailey Deurdouff Assoc. Inc. (Bailey Deurdouff) in the amount of $750.00 for pips listings purchased by Bailey Deurdouff from R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Bailey Deurdouff are contributions made by Bailey Deurdouff to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

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Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Bailey Deurdouff Asso. Inc. violated 2 U.S.C. § 44lb.

8204035514

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Douglas Bailey
Bailey, Deardourff and Associates, Inc.
60720 Old McLean Village Drive
McLean, Virginia 22101

Re: MUR 1180

Dear Mr. Bailey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Bailey, Deardourff and Associates Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Bruce Mackey, President
Envelopes Unlimited Inc.
649 North Homer Lane
Rockville, Maryland 20850

Re: MUR 1180

Dear Mr. Mackey:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Envelopes Unlimited Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180

RESPONDENT Envelopes Unlimited Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Envelopes Unlimited Inc. (Envelopes Unlimited) in the amount of $812.50 for computer services provided by the R.N.C. to Envelopes Unlimited.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Envelopes Unlimited are contributions made by Envelopes Unlimited to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the cor oration did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Envelopes Unlimited Inc. violated 2 U.S.C. § 441b.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes, Chairman
Franklin Mint Corporation
Franklin Center, Pa. 19041

Re: MUR 1180

Dear Mr. Andes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE

MUR. NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor

RESPONDENT Franklin Mint

202-523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation, and in July of 1979 deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol: The R.N.C. provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

---

1/ The second check was received after the audit had been conducted.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the corporation would.

1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The R.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

## FACTUAL BASIS AND LEGAL ANALYSIS

### Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corproation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever" to make a contribution or expenditure in connection with any election to . . . [Federal] office.

---

2/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

8204035361

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national of State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activited as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the R.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bering the likeness of the candidates as the R.N.C.'s campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the R.N.C., in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corpoate contribution to the R.N.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Brock
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Brock:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. §§ 441b(a), 434(b)(2), and 4334(b)(3). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____ MUR NO. 1180

STAFF MEMBER(S) AND TEL. NO.

RESPONDENT Republican National Committee — Taylor (202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("R.N.C.") covering the period of January 1, 1976, through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (See attachment I), and in July of 1979, deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the Committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976, with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol. The R.N.C. provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

---

1/ The second check was received after the audit had been conducted.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the Corporation would:

1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The R.N.C. would grant the Corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the Corporation's advertising of the Medals as required under applicable Federal law.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

On June 22, 1976, and on October 23, 1977, the Committee deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as refund/rebates" and not as contributions. When the audit staff inquired about the checks, the R.N.C. explained that it was a royalty payment resulting from an agreement entered into onAugust 25, 1975 for the sale of a book called REPUBLICAN HUMOR BOOK.

The R.N.C. provided the audit staff with a copy of the agreement that contains the following pertinent terms:

h) The Publisher [Acropolis] agrees that the retail price of this work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors.

---

2/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

[Mr. Shabik and Mr. Short] and the Committee [R.N.C.] on the following schedules:

A. On the sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory in Paragraph 1:

. . .

(iii) Two Dollars and Twenty-five cents ($2.25) per book to the Committee, as long as Stephen J. Shubik [author] shall receive thirty (30) cents per book, thereafter Two Dollars and fifty-five Cents ($2.55) per book to the Committee;

B. On sale through the normal book trade distribution channels a royalty upon all copies of the Work sold and paid for in exclusive territory specified in Paragraph 1: . . .

(iii) One Dollar ($1.00) to the Committee [R.N.C.] and One Dollar and Ten cents ($1.10) after Stephen J. Shubik [author] has recovered his expense.

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from sixty-six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporation and the labor union. The R.N.C. contends that these receipts are not contributions, but reimbursements for the production costs of the goods and services it provided; however, the R.N.C. failed to produce any records to establish the production costs of these goods and services.

For the 1976 Congressional election, the R.N.C. set up approximately 800 telephone banks (phone banks) throughout the country for the purpose of identifying voters who would vote for certain selected Republican candidates. In October of 1977, the R.N.C. filed an amended report listing the amount it expended on each of the candidates it selected for help. This report showed that the R.N.C. made $14,890.00 worth of expenditures on behalf of Mr. David Serotkin, a candidate for congress in the 12th District of Michigan.

## FACTUAL BASIS AND LEGAL ANALYSIS

### I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the

campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever. . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . .[Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or state banks in accordance with banking laws and in exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission, in its regulations, has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expend their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a precentage of either total card holder sales or the finance charge balance of RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the

possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the R.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the R.N.C.'s campaign symbol and authorized the corporation to make reference to the R.N.C.'s designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the R.N.C., in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission's approach in Advisory Opinon 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

II. The Acropolis Books Ltd., Royalty Payment

The RNC listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the RNC and Acropolis on August 25, 1975, whereby the RNC would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK. In section I of this report, we analyzed that Franklin Mints royalty payments were a corporate contribution; that analysis fits the situation here.

III. Sale of Goods and Services

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from some sixty-six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporatons and the labor union. It is the RNC's contention that these receipts are not contributions, but reimbursements for the production costs of goods and services it provided.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or any thing of value. . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office]. . .

It appears that the above payments to the R.N.C., even if to defray the expenses incurred by the R.N.C., are contributions to R.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the RNC, since the RNC is receiving funds that will be available for its political purpose. (See AO's 1979-76, 1979-17, 1978-46, 1975-15.)

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In addition to R.N.C.'s receipt of prohibited contributions from the corporations and the labor union, the R.N.C. failed to list the receipt of the funds in question as contributions on its reports pursuant to 2 U.S.C. § 434(b)(3).

Based on the foregoing analysis, the Federal Election Commission has found:

1. reason to believe that R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint,

2. reason to believe that R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from Acropolis Books Ltd.,

3. reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting corporate contributions from sixty-six corporations and one labor union,

4. reason to believe that the R.N.C. violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)( ) for failing to list the receipt of the contributions in question on its reports, and

5. reason to believe that R.N.C. violated 2 U.S.C. § 441a(d) by making an excessive expenditure on behalf of Serotkin for Congress Committee.

8204035377

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ken Kendrick, Jr.
Datatel Inc.
3700 Mount Vernon Avenue
Alexandria, Virginia

Re: MUR 1180

Dear Mr. Kendrick:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the Datatel, Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____ MUR NO. 1180

RESPONDENT Datatel Inc. STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Datatel Inc. (Datatel) in the amount of $6,521.50 for the sale of computer time by the R.N.C. to Datatel.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Datatel are contributions made by Datatel to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Datatel Inc. violated 2 U.S.C. § 441b.

8204065537

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert O'Dell, President
National Direct Mail Services Inc.
4733 Bethesda Avenue
Bethesda, Maryland 20014

Re: MUR 1180

Dear Mr. O'Dell:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 2, 1980, found reason to believe that the National Direct Mail Services Inc. violated 2 U.S.C. § 441b(a). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180

RESPONDENT National Direct Mail Services Inc.

STAFF MEMBER(S) & TEL. NO.

Taylor

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from National Direct Mail Services Inc. (National) in the amount of $680.00 for envelopes the R.N.C. sold to National.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment, distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from National are contributions made by National to the R.N.C. even if the contributors received something of value. See Commission Advisory Opinions ("AO") 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that National Direct Mail Services Inc. violated 2 U.S.C. § 441b.

8204035377

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )
)
Republican National Committee, ) MUR 1180
et al. )

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on December 2, 1980, do hereby certify that the Commission took the following actions in MUR 1180:

1. Decided by votes of 4-2 to -

a) Find reason to believe that the R.N.C. violated 2 U.S.C. §44lb(a) for accepting a corporate contribution from the Franklin Mint.

b) Find reason to believe that the Franklin Mint violated 2 U.S.C. §44lb(a) for making a corporate contribution to the R.N.C.

c) Find reason to believe that the R.N.C. violated 2 U.S.C. §44lb(a) for accepting a corporate contribution from Acropolis Books Ltd.

d) Find that the Acropolis Books Ltd. violated 2 U.S.C. §44lb(a) for making a corporate contribution to the R.N.C.

e) Find reason to believe that the R.N.C. violated 2 U.S.C. §44lb(a) for accepting corporate contributions from 66 corporations and one labor union.

f) Find reason to believe that the R.N.C. violated 2 U.S.C. §434(b)(2) and 2 U.S.C. §434(b)(3) for failing to list the receipt of the contributions in question on its reports.

g) Find reason to believe that the Cities Services Inc., Detalel Inc., Envelopes Unlimited Inc., National Direct Mail Service Inc., Bailey Deurdouff Assoc. Inc., and American Medical Laboratories Inc., violated 2 U.S.C. §44lb(a) for making a corporate contribution.

Commissioners Harris, McGarry, Reiche, and Tiernan voted affirmatively for the above decisions; Commissioners Aikens and Friedersdorf dissented.

2. Failed by a vote of 2-4 to pass a motion to find reason to believe that the Serotkin for Congress Committee violated 2 U.S.C. §441a(f) for accepting an excessive contribution.

   Commissioners Harris and Reiche voted affirmatively for the motion. Commissioners Aikens, Friedersdorf, McGarry, and Tiernan dissented.

3. Decided by a vote of 4-1 to find reason to believe that the R.N.C. has violated 2 U.S.C. §441a(d) by making an excessive expenditure on behalf of the Serotkin for Congress Committee.

   Commissioners Harris, McGarry, Reiche, and Tiernan voted affirmatively for the decision; Commissioner Friedersdorf dissented; Commissioner Aikens abstained on the vote.

4. Decided by a vote of 6-0 to send appropriate letters to the respondents consistent with the above findings.

Attest:

12-4-80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

0 4 0 3 5 3 7 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: NOVEMBER 20, 1980

SUBJECT: ADDITIONAL OBJECTIONS - MUR 1180 - First General Counsel's Report dated 11-17-80

You were notified previously of an objection by Commissioner Harris and later an objection by Commissioner Tiernan.

Commissioners Aikens, Friedersdorf, and Reiche have also submitted objections to MUR 1180.

This matter will be discussed in executive session on Tuesday, December 2, 1980.

A copy of Commissioner Reiche's vote sheet is attached for your information.

ATTACHMENT:
Copy of Vote Sheet

KUD

48 HOUR TALLY SHEET

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

'80 NOV 20 A10:56

Date and Time Transmitted: TUESDAY, 11-18-80
11:00

Commissioner FRIEDERSDORF, AIKENS, TIERNAN, McGARRY, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: THURSDAY, NOVEMBER 20, 1980
11:00

MUR No. 1180 - First General Counsel's Report dated 11-17-80

( ) I approve the recommendation

(✓) I object to the recommendation

COMMENTS: ~~Although I have read these materials, I prefer not to register a preference at this time.~~ I am concerned by the timing of this action.

Date: 11/19/80 Signature: Frank P. Reiche

A DEFINITE VOTE IS REQUIRED AND ALL SHEETS SIGNED AND DATED. PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN ABOVE.

8204016033

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: NOVEMBER 19, 1980

SUBJECT: ADDITIONAL OBJECTION TO MUR 1180, First General Counsel's Report dated 11-17-80

You were notified previously of an objection by Commissioner Harris to the above-named document.

Commissioner Tiernan submitted his objection at 2:46, November 19, 1980.

This matter will be discussed in executive session on Tuesday, December 2, 1980.

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: NOVEMBER 19, 1980

SUBJECT: MUR 1180 - First General Counsel's Report dated 11-17-80; Received in OCS 11-17-80, 4:10

The above-named document was circulated on a 48 hour vote basis at 11:00, November 18, 1980.

Commissioner Harris submitted an objection at 12:23, November 19, 1980.

This matter will be placed on the Executive Session Agenda for Tuesday, December 2, 1980.

November 17, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1180

Please have the attached First GC Report distributed to the Commission on a 48 hour tally basis. Thank you.

8204035638

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
FEC MAIL SECTION
80 NOV 17 P4:09

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 11-17-80

MUR # 1180
STAFF MEMBER(S)
Taylor

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENT'S NAME: Republican National Committee, Franklin Mint Corporation, Acropolis Books Ltd., Cities Services Co., Datatel Inc., Envelopes Unlimited Inc., National Direct Mail Service Inc., Bailey Deurdouff Assoc. Inc., American Medical Laboratories Inc.

RELEVANT STATUTE: 2 U.S.C. § 441b, 2 U.S.C. § 441a(d)

INTERNAL REPORTS CHECKED: Audit papers, Audit reports

FEDERAL AGENCIES CHECKED: None

STATEMENT OF FACTS

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (See attachment I), and in July of 1979 deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol: The R.N.C. provided the Audit staff with a copy of the agreement, (See attachment II), which contains the following terms:

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1/ The second check was received after the audit had been conducted.

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. 2/ Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the corporation would:

   1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

   2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 3/

f) The R.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

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2/ On approximately the same date, the corporation entered into an identical agreement with the Democratic National Committee.

3/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

On June 22, 1976 and on October 23, 1977, the committee deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as "refund/rebates" and not as a contribution. When the audit staff inquired about the checks; the R.N.C. explained that it was a royalty payment resulting from an agreement entered into on August 25, 1975 for the sale of a book called REPUBLICAN HUMOR BOOK.

The R.N.C. provided the audit staff with a copy of the agreement (see attachment III), that contains the following pertinent terms:

g) The Publisher [Acropolis] agrees that the retail price of this work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors [Mr. Shabik and Mr. Short] and the Committee [R.N.C.] on the following schedules:

A. On the sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory in Paragraph 1:
. . .

(iii) Two Dollars and Twenty-five cents ($2.25) per book to the committee, as long as Stephen J. Shubik [author] shall receive thirty (30) cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the committee;
. . .

B. On sale through the normal book trade distribution channels a royalty upon all copies of the Work sold and paid for in exclusive territory specified in Paragraph 1: . . .

(iii) One Dollar ($1.00) to the committee [R.N.C.] and One Dollar and Ten Cents ($1.10) after Stephen J. Shubik [author] has recovered his expense.

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from sixty-six corporations and one labor organization.

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These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporation and the labor union. The R.N.C. contends that these receipts are not contributions, but reimbursements for the production costs of the goods and services it provided; however, the R.N.C. failed to produce any records to establish the production costs of these goods and services.

For the 1976 Congressional election, the R.N.C. set up approximately 800 telephone banks ("phone banks") throughout the country for the purpose of identifying voters who would vote for certain selected Republican candidates. In October of 1977, the R.N.C. filed an amended report listing the amounts it expended on each of the candidates it selected for help. The R.N.C. exceeded its 2 U.S.C. § 441a(d) expenditures limitation in four Congressional races. Three of the candidates involved reimbursed the R.N.C.; one candidate refused (see attachment IV).

Listed below is a breakdown of these excessive expenditures.

| Candidate Name and Office Sought | 1976 441a(d)(3) Expenditures | 1976 441a(d)(3) Limitations | Excessive 441a(d)(3) Expenditures | Reimbursements Date | Reimbursements Amount |
|---|---|---|---|---|---|
| The Honorable Harrison Schmitt Senate/New Mexico | $22,124 | $21,820 | $ 304 | 6/13/77 | $304 |
| The Honorable Malcolm Wallop Senate/Wyoming | $22,215 | $21,820 | $ 395 | 2/14/78 | $395 |
| Mr. Newt Gingrich House/Georgia 6th District | $11,514 | $10,910 | $ 604 | 8/22/78 | $604 |
| Mr. David Serotkin House/Michigan 12th District | $14,890 | $10,910 | $ 3,908 | not returned | |

It is the Office of General Counsel's recommendation that no further investigation of this matter should be undertaken, except for the one candidate who refused to refund the excess § 441a(d) expenditure - Mr. David Serotkin.

FACTUAL AND LEGAL ANALYSIS

I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional

materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, the R.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the R.N.C.'s campaign symbol and authorized the corporation to make reference to the R.N.C.'s designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the Committee, in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporaton produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

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Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commerical transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Though the R.N.C. is in violation of 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, and the Franklin Mint is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution, it must be added, not as a defense, but in mitigation of the R.N.C.'s actions, that at the time of the making of the contract (August 27, 1976) between the Franklin Mint and the R.N.C., the Commission had not determined that a royalty paid by a corporation to a political committee is a corporate contribution. In fact, at the time of the making of the contract, the only advisory opinion issued concerning the receipt of a contribution by a political committee from the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise contributions through the sale of campaign items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission ever questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organization's goodwill and reputation to a corporation resulted in a corporate contribution in contravention of 2 U.S.C. § 441b(b)(2).

It is for the reasons mentioned, supra, that the Office of General Counsel recommends that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action. In addition, the Office of General Counsel recommends that the Commission find reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C., but take no further action.

II. The Acropolis Books Ltd., Royalty Payment

The R.N.C. listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the R.N.C. and Acropolis on August 25, 1975, whereby the R.N.C. would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK.

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In section I of the report, we analyzed that the Franklin Mint royalty payments were not a corporate contribution; that analysis fits the situation here. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for receiving a corporate contribution, but take no further action. In addition, the Office of General Counsel recommends that the Commission find reason to believe that Acropolis violated 2 U.S.C. § 441b(a) for making a corporate contribution, but take no further action.

III. Sale of Goods and Services

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from some six of six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporations and the labor union. It is the R.N.C.'s contention that these receipts are not contributions, but reimbursements for the production costs of goods and services it provided.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

It appears that the above payments to the R.N.C., even if to defray the expenses incurred by the R.N.C., are contributions to R.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the R.N.C., since the R.N.C. is receiving funds that will be available for its political purpose. (See AO's 1979-76, 1979-17, 1978-46, 1975-15.) Even if the Commission views these payments as a commercial transaction because of the fact something was received

in return for the payment of money to a political committee, to the extent the amount charged exceeds actual costs of the R.N.C., it is a contribution. See 11 C.F.R. § 100.4(a)(1)(iii)(A) and AO's 1979-18, 1976-22. 4/

Though the funds the R.N.C. received from the corporations and the labor union are, for the reasons mentioned above prohibited corporate and labor contributions, it should be added, not as a defense, but in mitigation of the R.N.C.'s acceptance of these prohibited contributions, that a majority of these contributions are under $50.00. Moreover, it does not appear that the R.N.C. was deliberately attempting to avoid the provisions of 2 U.S.C. § 441b, but simply attempting to recoup its out of pocket costs it incurred in producing the goods and services in question. Nonetheless, it is the Office of General Counsel's recommendation that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for receipt of the corporate and labor contributions.5/

In addition to the R.N.C.'s receipt of prohibited contributions from the corporations and the labor union, the R.N.C. failed to list the receipt of the funds in question as contributions on its reports pursuant to 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(3). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(3).

IV. Purchase of Goods and Services From The R.N.C.

As mentioned above, the R.N.C. records show that the R.N.C. received funds from the various corporations and the labor union. The most outstanding receipts are as follows:

a) Cities Services Corp., $1500. (precinct lists);

b) Datatel Inc., $6,521.50 (computer time);

c) Envelopes Unlimited $812.50 (computer services);

---

4/ The R.N.C. was unable to establish actual costs of the goods and services it sold.

5/ Unlike the royalty payments, which were one time transactions that have not been repeated, the sale of goods and services by the R.N.C. has been an ongoing occurrence. Furthermore, the R.N.C. could avoid violating the Act by ". . . establish[ing] and administer[ing] separate, segregated bank accounts through an auxiliary organization of the national party which accounts could be used for the deposit and disbursement of funds designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective Federal office." See AO 1979-17 pg. 7.

d) National Direct Mail Services, Inc. $680.00 (envelopes);

e) Market Opinion Research Inc. $800.00 (list sample);

f) Bailey Deurdouff Assoc., Inc. $750.00 (Pips listing)

g) American Medical Laboratories Inc. $11,100.00 (disc pacts with controller ) 6/

The funds received by the R.N.C. from the above-mentioned corporations are contributions made by these corporations to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Therefore, the Office of General Counsel recommends, for the reasons mentioned above, that the Commission find reason to believe that the above-mentioned corporations violated 2 U.S.C. § 441b, but take no further action.

V. Excessive § 441a(d)(3) Expenditures

The R.N.C. set up a series of phone banks in the 1976 campaign for the purposes of identifying voters favorable to selected Republican candidates for Federal office and then to urge these voters to vote for these particular candidates. In four Congressional races, the R.N.C. exceeded its § 441a(d) expenditure limitations. Upon the request of the R.N.C. three of the candidates refunded the excess amount; the fourth candidate, Mr. David Serotkin refused to do so.

The R.N.C. expended $14,890.00, pursuant to 2 U.S.C. § 441a (d) on behalf of Mr. Serotkin's candidacy for the House of Representives and in doing so exceeded § 441a(d) limitations by $3,908. This resulted in Mr. Serotkin's committee, The Serotkin for Congress Committee, receiving an excess contribution from the R.N.C. in violation of 2 U.S.C. § 441a(f). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Serotkin for Congress Committee violated 2 U.S.C. § 441a(f).

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6/ In audition to the corporations mentioned, there are 59 other corporations and one labor union that made contributions to the R.N.C. by purchasing goods and services for the R.N.C. All the contributions involved are under $50.00, and it is the Office of General Counsel's opinion that no action should be taken against these corporations and labor union.

## RECOMMENDATIONS

1. Find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action.

2. Find reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C. but take no further action.

3. Find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from Acropolis Books Ltd., but take no further action.

4. Find that the Acropolis Book Ltd., violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C. but take no further action.

5. Find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting corporate contributions from 66 corporations and one labor union.

6. Find reason to believe that the R.N.C. violated 2 U.S.C. § 434 (b)(2) and 2 U.S.C. § 434(b)(3) for failing to list the receipt of the contributions in question on its reports.

7. Find reason to believe that the Cities Services Inc., Detalel Inc., Envelopes Unlimited Inc., National Direct Mail Service Inc., Bailey Deurdouff Assoc. Inc., and American Medical Laboratories Inc., violated 2 U.S.C. § 441b(a) for making a corporate contribution, but take no further action.

8. Find reason to believe that the Serotkin for Congress Committee violated 2 U.S.C. § 441a(f) for accepting an excess contribution.

9. Send attached letters.

Attachments

I. Franklin Mint Check
II. Contract between R.N.C. and Franklin Mint
III. Contract between Acropolis Books and R.N.C.
IV. Serotkin letter
V. Letters

Franklin Mint Corporation Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976 1-23/210

Pay
to the order of Republican National Committee $20,000.00

Twenty thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR AMOUNTS $25,000.00 AND LARGER

⑈019608⑈ ⑆0210⑈0023⑆ 022 06 483⑈

FRANKLIN MINT CORPORATION
FRANKLIN CENTER PENNSYLVANIA 19091

August 11, 1976

Republican National Committee
310 First Street SE
Washington, D.C. 20003

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Republican Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

II

Your organization agrees to designate the above-described Republican Presidential Campaign medals as the Official Presidential Campaign Medals of the Republican National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Republican National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

day of August, 1976

Republican National Committee, except that we reserve the right to have prior approval of the design.

By: _____

(11)

Attachment IV
AUG 26 1975 1 of 8

AUTHORSHIP, PUBLICATION
AND
PROMOTION AGREEMENT

AGREEMENT made this 25th day of August, 1975, between Stephen J. Skubik, whose address is 1725 DeSales Street, NW, Washington, D.C. 20036; and Hal E. Short, whose address is 1522 K Street, NW, Washington, D.C. 20005 (Authors): the Republican National Committee, 310 First Street, SE, Washington, D.C. (Committee); and Acropolis Books, Ltd., 2400 17th Street, NW, Washington, D.C. (Publisher):

WITNESSETH

In consideration of the mutual covenants herein contained the parties agree as follows:

HE GRANT
ND THE
ERRITORY

1. The Authors hereby grant and assign to the Publisher and its successors, representatives and assignees, during the full term of the copyright and all renewals thereof, the full, sole and exclusive right to print, publish and sell under its own name:

REPUBLICAN HUMOR

(hereinafter called the Work) which title may be changed only by mutual consent in writing.

HE
ARRANTY

2. The Authors represent and guarantee to the Publisher that they are the sole authors of the said Work, that they are the owners of all the rights granted to the Publisher hereunder, that the said Work is original, has not been previously published in book form, and is not in the public domain; that it contains no libelous, obscene or other unlawful matter; and that it in no wise infringes upon the copy right or violates the right of privacy or any other right of any person or party whatsoever, and they agree to hold the Publisher harmless against any recovery finally sustained in any suit which may be brought or had against the Publisher, by reason of a

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(III)

violation of any proprietary right or copyright, or because of any libelous, obscene or other unlawful matter contained in the said Work.

THE MANUSCRIPT

3. The Authors agree to deliver a completed manuscript copy of the said Work, ready for typing, containing works and cartoons equivalent to 196 pages of printed material, not later than the 15th of October, 1975. If the Authors fail to deliver such copy by said date the Publisher may terminate this agreement by giving written notice to the Authors to such effect. The Publisher and Authors may, by mutual consent in writing, establish a new deadline for delivery.

PUBLICATION OF THE WORK

4. The Publisher shall, upon receipt of a manuscript, have the right and sole discretion to reject the Work for any reason, or to request changes or additions to it. The Authors may refuse to make any such changes or additions to it, and in such event this agreement shall be terminated. The Publisher shall within three months after the Authors have delivered a complete and satisfactory manuscript, publish said Work at its own expense and in such style and manner as it deems best suited to the sale thereof, and advertise and promote the sale thereof as and to the extent it deems best. The Publisher will use all customary means to promote and market the Work throughout the United States.

The expenses for which the Publisher shall be responsible, in addition to all others involved in publication, distribution, and promotion, include: artist's fees; costs of editing, typing, collating, proofreading and make-up by the person or persons engaged by the Authors; secretarial and mailing services supplied by the Committee to obtain material for the book and subsequently to help promote within the Republican Party the sale of the book. The artist's fees and editing, typing, collating, proofreading, and make-up costs will

(114)

be paid by the Publisher prior to the release of the book, such fees and costs to be considered advances against the royalties. The secretarial and mailing services supplied by the Committee will be ~~reimbursed by the Publisher by delivering one book for each three dollars of expenses incurred, such expenses to be~~ charged against the promotional expenses as per Paragraph 10.

THE COPYRIGHT

5. The Publisher, upon first publication of the Work, agrees to apply for copyright in the name of Stephen J. Skubik in the United States of America and under the Universal Copyright Convention ~~in the exclusive territory specified in Paragraph 1~~, and to imprint the copyright notice required by law in each copy of the Work. Stephen J. Skubik, using forms acceptable to the Publisher, agrees to furnish the Publisher promptly with any authorization or other document necessary to carry out the provisions hereof.

The Publisher shall, upon the termination of the first term, make timely application for renewal of copyright under then existing United States Copyright Law.

USE OF COPYRIGHT MATERIAL

6. If the Work includes excerpts of materials presently under copyright, the Authors, using forms acceptable to the Publisher, will obtain written permission from the owners of such copyrights to print the excerpts.

ADDITIONAL MATERIAL

7. The Authors agree to prepare and deliver, along with the manuscript: Title page, preface or foreword, table of contents and/or index, and complete and final copy for all illustrations properly prepared for reproduction.

PRINTERS PROOFS

8. The Publisher shall furnish the Authors with a proof of the Work which, except for such reasonable changes in styling as are required by the Publisher,

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conform to the completed manuscript as submitted by the Authors, unless changed by mutual consent. The Authors agree to return such proof to the Publisher with their corrections within ten days of the receipt thereof by them.

ROYALTIES, AND SHARE OF PROCEEDS

9. The Publisher agrees that the retail price of this Work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors and the Committee on the following schedules:

A. On sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

i) Thirty Cents ($0.30) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) Two Dollars and Twenty-five Cents ($2.25) per book to the Committee, as long as Stephen J. Skubik shall receive Thirty (30) Cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the Committee;

iv) All orders from the Committee and Republican organizations shall be accompanied by check for the full retail price.

B. On sales through the normal book trade distribution channels, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

III

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i) Ten Cents ($0.10) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) One Dollar ($1.00) to the Committee, and One Dollar and Ten Cents ($1.10) after Stephen J. Skubik has recovered his expenses.

C. The following shall be considered as subsidiary rights: sales to book clubs, publications by another publisher, publication of the Work in a ~~paperbound or~~ A.S.H. cheap edition, serial rights before and after book publication, dramatic and/or motion picture rights, translations, digests, abridgements, selections, anthologies, and mechanical, visual (such as microfilm and microprint), or sound

[illegible] television and broadcasting), and adaptations of said Work for commercial use. Subsidiary rights to publish are to be arranged by mutual consent of the Authors, Publisher and the Committee. The division of receipts from the sale of subsidiary rights shall be Forty percent (40%) to the Committee, Thirty percent (30%) to the Publisher and Thirty percent (30%) to the Authors, i.e., Ten percent (10%) to Hal Short, Twenty percent (20%) to Stephen J. Skubik until his out-of-pocket costs of creating the book are recovered, then his 20% will be added to the Committee. All compensation from sales of the Work under this Paragraph shall be excluded from the computation of the royalties payable under Paragraph (A) above AND PARAGRAPH (B) and shall be computed and shown separately in reports from the Publisher and/or Authors.

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D. No royalties shall be payable on free copies furnished to the Authors or to the Committee, or on copies for review, sample, or other similar purposes.

TION 10. The Authors will take the Work to the national print, T. V., and radio press for maximum publicity including talk shows, known comedians, etc. The Committee will bulletin all state, county, and city Republican Committee officials, and in addition will publicize the Work through State Republican publications, Young Republicans, Women's Federation, etc. One Dollar ($1.00) per book sold by the Publisher (under the provisions of Paragraph 9A) shall be remitted by the Publisher to the Committee to cover these promotional expenses of the Authors and the Committee, on sales made through the National Committee but not on sales through normal book distribution channels referred to in Paragraph 9B. The Committee shall be the final judge of the legitimacy and necessity of promotional expenses and shall reimburse such expenses from this promotional fund. After the reimbursement of all said expenses, the balance of such fund shall be credited to the Committee as additional royalties under this agreement.

11. The Publisher agrees to present to each Author 100 copies of the Work and to the Committee 1,000 copies of the Work for promotional purposes, such costs to be charges against the promotion fund as per Paragraph 10. at $1.15 per Copy. — A.SH.

'S 12. The Publisher will report on the sale of

TS the Work in February and July of each year for the six month period ending the prior December 31 and June 30 respectively on sales to the Committee, and in March and September on sales made through trade channels. With each report of sales, the Publisher will make settlement for any balance of royalties due.

ATION 13. a) In the event that the Work shall at any

ION TS time be out of print, the Authors may give notice thereof to the Publisher and in such event the Publisher shall declare

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within sixty days in writing whether or not he intends to bring out a new printing of the Work within six months. Failure to reprint the Work within six months after receipt of the Authors' notice shall cause all rights herein granted to revert to the Authors at the expiration of said period without further notice.

b) If the Publisher shall, during the existence of this agreement, default in the making of payment as herein provided; if the Publisher shall fail to comply with or fulfill with other terms and conditions hereof; or in the event of bankruptcy, this agreement shall terminate and the rights granted herein to the Publisher shall revert to the Authors and Committee. In such event all payments theretofore made to the Authors and Committee shall belong to the Authors and Committee without prejudice to any other remedy which the Authors and Committee may have.

c) Upon the termination of this agreement for any cause, all rights granted to the Publisher revert to the Authors and Committee for their use at any time, and

originally furnished by the Authors. The Authors shall have the right in such instance to purchase the plates, if any exist, from the Publisher at their metal value, and any or all of the remaining sheets or copies at a price not to exceed 50% of the manufacturing costs, exclusive of overhead.

CONFLICTING PUBLICATION

14. The Authors agree that during the term of this agreement they will not, without the written permission of the Publisher, publish or permit to be published any material in book or pamphlet form, based on the material in the Work, which is reasonably likely to interfere with its sale.

INSOLVENCY

15. If a petition in bankruptcy should be filed by or against the Publisher, or if it shall be judged insolvent by any court, or if the Publisher shall liquidate its business for any cause whatsoever, this agreement shall

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terminate automatically and without notice, and all rights granted hereunder shall thereupon revert to the Authors and to the Committee.

ARBITRATION

16. Any controversy or claim arising out of this agreement or the breach thereof, with the exception of a failure to pay royalties, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then obtaining, and judgement upon any award may be entered in the highest court of the forum, State or Federal, having jurisdiction. Such arbitration shall be held in the City of Washington, D.C., unless otherwise agreed by the parties.

This agreement shall be construed and interpreted according to the laws of the District of Columbia, and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives.

WAIVER

17. A waiver of any breach of any of the terms or conditions of this agreement by any of the parties thereto, shall neither be deemed a waiver of any repetition of such

of this agreement; shall be valid or binding unless it shall be in writing, and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals at Washington, District of Columbia, the day and year first written above.

BY: Carlos Tracks, Pres.
Aerostar Books Ltd.
2400 17th St. Washington D.C.
PUBLISHER

BY: [illegible]
1725 [illegible] St N
Washington D.C.
AUTHOR

BY: [illegible]
310 - 1st St SE
Washington D.C.
REPUBLICAN NATIONAL COMMITTEE

BY: [illegible]
1 [illegible] 15th K St NW
WASH. D.C.
AUTHOR

III

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LAW OFFICES
SEROTKIN AND BODEM
48 NORTH WALNUT STREET
MOUNT CLEMENS, MICHIGAN 48043

DAVID M. SEROTKIN
LOREN E. BODEM

TELEPHONE
(313) 469-0300

July 7, 1977

Ms. Arlene Triplett
Comptroller
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Dear Ms. Triplett:

My immediate response to your letter and to the previous telephone call from Jacquie Nystrom is that you must be kidding. However, on the assumption that you are not, this letter is in response on behalf of the Serotkin for Congress Committee.

The committee does not feel that it owes the Republican National Committee any money, and will not be sending any. I might add that it has none to send anyway.

The nature and amounts of the various contributions of the National Committee to our campaign were at all times at the discretion and under the control of the National Committee. The Serotkin for Congress Committee accepted them in reliance upon the National Committee's representations that the contributions were legal in every respect, including their amounts. We would not have accepted services in excess of any statutory maximum, because we could not afford to pay for them even before the election was held. Under the circumstances, therefore, we do not find any obligation on our part to pay.

Even if there was an obligation, we could not be certain as to the accuracy of your figures, since we again had no occasion to participate in the deliberations which produced it. We don't know what formula was applied or computations made. Our feeling that you must have made some mistake along the way is not diminished at all by your letter wherein you are unable even to spell my name correctly.

In addition to the above considerations, I would point out to you that our most recent committee disclosure filed with the Federal Elections Commission shows that the committee still has debts from the last election in excess of $42,000.

IV

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There is no way that we could pay anything to you, even if we were obligated to do so.

I would suggest the following possible approaches. The telephone banks to which you refer were operated to a major extent by our committee's volunteers. These were people who were primarily interested in supporting me, but cooperated at the telephone centers to work on behalf of the other Republican candidates being supported by that effort. I am sure that the value of our volunteers' services would more than offset the in kind services to our campaign which you claim went over the limit.

Secondly, the National Committee was permitted under the law to assist me with respect to the Primary Election, separately and in addition to any amounts or services provided for the General Election. I believe some of the contribution or services could legitimately be attributed to expenditures or obligations incurred with respect to the Primary Election.

I know that the Republican National Committee did not write the Federal Election Laws which are primarily responsible for the agonies being undergone by many candidates, former candidates, and their supporters. My campaign committee was composed entirely of volunteers who gave up a lot of their time and talent to serve on that committee. They don't need all these headaches, and I don't. Perhaps somewhere, sometime, the Republican National Committee will find an opportunity to publicize the inequities of the Federal Election Laws and the very real way in which they protect incumbency and stifle genuine democracy.

Very truly yours,

DAVID M. SEROTKIN

DMS/cmi

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Brock
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 1180

Dear Mr. Brock:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on October , 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 441b(a), 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(3). A report on the Commission's finding is attached for your information.

In the absence of any additional information, which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.

RESPONDENT Republican National Committee

Taylor
(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation (See attachment I), and in July of 1979 deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol: The R.N.C. provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

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1/ The second check was received after the audit had been conducted.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the corporation would:

1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The R.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

On June 22, 1976 and on October 23, 1977, the committee deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as "refund/rebates" and not as contribution. When the audit staff inquired about the checks; the R.N.C. explained that it was a royalty payment resulting from an agreement entered into on August 25, 1975 for the sale of a book called REPUBLICAN HUMOR BOOK.

The R.N.C. provided the audit staff with a copy of the agreement that contains the following pertinent terms:

h) The Publisher [Acropolis] agrees that the retail price of this work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors

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2/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

[Mr. Shabik and Mr. Short] and the Committee [R.N.C.] on the following schedules:

> A. On the sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory in Paragraph 1:
>
> . . .
>
> (iii) Two Dollars and Twenty-five cents ($2.25) per book to the committee, as long as Stephen J. Shubik [author] shall receive thirty (30) cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the committee;
>
> B. On sale through the normal book trade distribution channels a royalty upon all copies of the Work sold and paid for in exclusive territory specified in Paragraph 1: . . .
>
> (iii) One Dollar ($1.00) to the committee [R.N.C.] and One Dollar and Ten Cents ($1.10) after Stephen J. Shubik [author] has recovered his expense.

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from sixty-six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporation and the labor union. The R.N.C. contends that these receipts are not contributions, but reimbursements for the production costs of the goods and services it provided; however, the R.N.C. failed to produce any records to establish the production costs of these goods and services.

## FACTUAL BASIS AND LEGAL ANALYSIS

### I. Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corporation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office[ . . .

Section 441b(b)(2) contains a narrow exception for loans made by national or State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expend their cardholder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

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In the present transaction, the R.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the R.N.C.'s campaign symbol and authorized the corporation to make reference to the R.N.C.'s designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the R.N.C., in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, as in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporaton produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commerical transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Though the R.N.C. is in violation of 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, and the Franklin Mint is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution, it must be added, not as a defense, but in mitigation of the R.N.C.'s actions, that at the time of the making of the contract (August 27, 1976) between the Franklin Mint and the R.N.C., the Commission had not determined that a royalty paid

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by a corporation to a political committee is a corporate contribution. In fact, at the time of the making of the contract, the only advisory opinion issued concerning the receipt of a contribution by a political committee from the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise contributions through the sale of campaign items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission ever questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organization's goodwill and reputation to a corporation resulted in a corporate contribution in contravention of 2 U.S.C. § 441b(b)(2).

It is for the reasons mentioned, supra, that the Office of General Counsel recommends that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action. In addition, the Office of General Counsel recommends that the Commission find reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C., but take no further action.

II. The Acropolis Books Ltd., Royalty Payment

The R.N.C. listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the R.N.C. and Acropolis on August 25, 1975, whereby the R.N.C. would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK.

In section I of the report we analyzed that the Franklin Mints royalty payments were not a corporate contribution; that analysis fits the situation here. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for receiving a corporate contribution, but take no further action. In addition, the Office of General Counsel recommends that the Commission find reason to believe that Acropolis violated 2 U.S.C. § 441b(a) for making a corporate contribution, but take no further action.

III. Sale of Goods and Services

From January of 1976 through March of 1979, the R.N.C. deposited into its operating account funds in the amount of $24,206.48 it received from some six of six corporations and one labor organization. These funds were received in exchange for goods and services, such as books, seminars, and computer services sold by the R.N.C. to the corporations and the labor union. It is the R.N.C.'s contention that these receipts are not contributions, but reimbursements for the production costs of goods and services it provided.

These corporate and labor union receipts raise the specific issue of the applicability of 2 U.S.C. § 441b(a) which provides that:

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

It appears that the above payments to the R.N.C., even if to defray the expenses incurred by the R.N.C., are contributions to R.N.C. under the Act. The Commission has previously stated that the mere fact a person receives something of value in return does not in and of itself render a payment made to a political committee a commercial sale rather than a political contribution. Moreover, even if the primary purpose of the RNC in selling the goods and services in question is cost recovery or loss reduction, the amount of the payment by the purchaser still results in a contribution to the R.N.C., since the R.N.C. is receiving funds that will be available for its political purpose. (See AO's 1979-76, 1979-17, 1978-46, 1975-15. Even if the Commission views these payments as a commercial transaction because of the fact something was received in return for the payment of money to a political committee, to the extent the amount charged exceeds actual costs of the R.N.C., it is a contribution. See 11 C.F.R. § 100.4(a)(1)(iii)(A) and AO's 1979-18, 1976-22. 3/

Though the funds the R.N.C. received from the corporations and the labor union are, for the reasons mentioned above prohibited corporate and labor contributions, it should be added, not as a defense, but in mitigation of the R.N.C.'s acceptance of these prohibited contributions, that a majority of these contributions are under $50.00. Moreover, it does not appear that the R.N.C. was deliberately attempting to avoid the provisions of 2 U.S.C. § 441b, but simply attempting to recoup its out of pocket costs it incurred in producing the goods and services in question. Nonetheless, it is the Office of General Counsel's recommendation that the Commission find reason to believe that the R.N.C. violated

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3/ The R.N.C. was unable to establish actual costs of the goods and services it sold.

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2 U.S.C. § 441b(a) for receipt of the corporate and labor contributions.4/

In addition to the R.N.C.'s receipt of prohibited contributions from the corporations and the labor union, the R.N.C. failed to list the receipt of the funds in question as contributions on its reports pursuant to 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(3). Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the R.N.C. violated 2 U.S.C. § 434 (b)(2) and 2 U.S.C. § 434(b)(3).

Based on the foregoing analysis, the Federal Election Commission has found:

1. Reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action.

2. Reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from Acropolis Books Ltd., but take no further action.

3. Find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting corporate contributions from 66 corporations and one labor union.

4. Find reason to believe that the R.N.C. violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)() for failing to list the receipt of the contributions in question on its reports.

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4/ Unlike the royalty payments, which were one time transactions that have not been repeated, the sale of goods and services by the R.N.C. has been an ongoing occurrence. Furthermore, the R.N.C. could avoid violating the Act by ". . . establish[ing] and administer[ing] separate, segregated bank accounts through an auxiliary organization of the national party which accounts could be used for the deposit and disbursement of funds designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective Federal office." See AO 1979-17 pg. 7.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles L. Andes, Chairman
Franklin Mint Corporation
Franklin Center, Pa 19041

Re: MUR 1180

Dear Mr. Andes.

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR. NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
202-523-4529

RESPONDENT Franklin Mint

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On September 8, 1976, the R.N.C. deposited in its operating account a check for $20,000 from the Franklin Mint Corporation, and in July of 1979 deposited in its operating account another check for $8,705.00 both from the Franklin Mint Corporation 1/. When the Audit staff inquired about the first check, the committee explained that it was a royalty payment resulting from an agreement entered into during August of 1976 with the Franklin Mint Corporation ("the Corporation") for the use of the Republican party's campaign symbol: The R.N.C. provided the Audit staff with a copy of the agreement, which contains the following terms:

a) The Corporation would offer for sale gold and silver medals in four different forms, all of which would bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

b) The Corporation would offer the medals for sale to the general public and to its established collectors commencing in September of 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

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1/ The second check was received after the audit had been conducted.

c) The Corporation would spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential campaign medals. Any increase in this advertising budget would be subject to the Committee's approval.

d) The R.N.C. would agree to designate the medals as the official Presidential Campaign Medals of the Republican National Committee and would authorize the Corporation to make reference to this designation in its advertising materials.

e) In consideration of the R.N.C.'s agreement, the corporation would.

1) Pay the R.N.C. royalty of 15% of the net sales of the Campaign Medals with a minimum guaranteed royalty of $30,000.

2) Provide to the R.N.C. at no charge a quantity of medals with a retail value of $5,000. 2/

f) The R.N.C. would grant the corporation the exclusive right to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee, and would further provide for certifications to the media concerning the corporation's advertising of the medals as required under applicable Federal law.

g) The R.N.C. agreed to the Corporation's proposal but reserved the right to have prior approval of the design.

## FACTUAL BASIS AND LEGAL ANALYSIS

### Franklin Mint Royalty Payment

The Franklin Mint Corporation is a corporation duly organized under the laws of the state of Delaware. See Franklin Mint Corproation v. Franklin Mint, Ltd., 360 F. Supp. 478 (1973). Thus, the campaign medals transaction raises the specific issue of the applicability of 2 U.S.C. § 441b(a), which provides that:

> It is unlawful for any . . . corporation whatever" to make a contribution or expenditure in connection with any election to . . . [Federal] office.

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2/ The R.N.C. was uncertain whether the $5,000 worth of medals had ever been received, and the audit staff found no indication in the R.N.C.'s records that the medals were received.

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The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

Section 441b(b)(2) contains a narrow exception for loans made by national of State banks in accordance with banking laws and in the normal course of business. There is no other explicit statutory exception from § 441b(a) that would permit a political party organization to view payments from a corporation or national bank as consideration for services rendered rather than as prohibited contributions.

The Commission in its regulations has recognized that funds of a political committee could be invested and earn income. See 11 C.F.R. § 103.3(a). Similarly, the Commission has permitted the sale or lease of a committee's contributor list (AO 1979-18) and the sale of excess equipment and supplies acquired in the course of the campaign (AO 1979-24), provided that corporate purchaser or lessees pay the usual and normal charge for the goods or services provided by the committee. See also 11 C.F.R. § 100.7(a)(1)(iii)(A) and (B) (1980 regulations).

The present transaction, however, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activited as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

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In the present transaction, the R.N.C. granted the Corporation the exclusive right to mint and market commemorative medals bearing the likeness of the candidates as the R.N.C.'s campaign symbol and authorized the corporation to make reference to the Committee's designation of the medals as the "Official Presidential Campaign Medals of the Republican National Committee" in advertising materials. In so doing, the R.N.C., in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by the Corporation, in the "credit card program," supra, cannot be viewed simply as bargained for consideration but rather constitute contributions in violation of § 441b of the Act.

Alternatively, the present transaction may be analyzed in light of the Commission approach in Advisory Opinion 1976-50. In that opinion, a corporation was authorized to produce and market a shirt bearing a candidate's name. The corporation would pay all expenses to produce and sell the shirts and would remit $1 of the $7.98 purchase price as a political contribution by the purchaser to the candidate's campaign. The Commission concluded that the proposed commercial arrangement was prohibited by 2 U.S.C. § 441b in that the corporation was advancing funds to produce and market campaign materials with a portion of the proceeds paid over to the candidate. In the present transaction, the Corporation produced the medals, spent $100,000 on advertising the Republican National Committee and Democratic National Committee medals, and utilized their list of established collectors, thereby advancing funds and contributing valuable services to the Committee in violation of § 441b of the Act.

Finally, it should be noted that the narrow exception recognized by the Commission in Advisory Opinion 1978-46 is inapplicable to the present transaction. In that opinion, the Commission, after analyzing the question of whether amounts paid by corporate advertisers in convention programs and publications of a political party could be treated as commercial transaction, rather than political contributions, the Commission held that such proceeds were contributions and prohibited under 2 U.S.C. § 441b, although they could be placed in a separate bank account of a non-federal political party committee for use only in state and local elections if permitted by state law. Here, the Committee deposited the two checks received from the Corporation into its operating account, which the Committee used for federal campaign purposes.

Though the R.N.C. is in violation of 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, and the Franklin Mint is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution, it must be added, not as a defense, but in mitigation of the R.N.C.'s actions, that at the time of the making of the contract (August 27, 1976) between the Franklin Mint and the R.N.C., the Commission had not determined that a royalty paid by a corporation to a political committee is a corporate contribution by a political committee from the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise contributions through the sale of campaign

items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission ever questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organization's goodwill and reputaton to a corporation resulted in a corporate contribution in contravention of 2 U.S.C. § 441b(b)(2).

It is for the reasons mentioned, supra, that the Office of General Counsel recommends that the Commisison find reason to believe that the R.N.C. violated 2 U.S.C. § 441b(a) for accepting a corporate contribution from the Franklin Mint, but take no further action. In addition, the Office of General Counsel recommends that the Commission find reason to believe that the Franklin Mint violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C., but take no further action.

Based on the foregoing analysis, the Federal Election Commission has found:

Reason to believe that the Franklin Mint violated 2 U.S.C. § 441b (a)for making a corporate contribution to the R.N.C., but take no further action.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Al Hackel, President
Acropolis Books Ltd.
2400 17th Street, N.W.
Washington, D.C. 20009

Re: MUR 1180

Dear Mr. Hackel:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close the its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____ MUR NO. 1180

STAFF MEMBER(S) & TEL. NO. Taylor (202) 523-4529

RESPONDENT Acropolis Books Ltd.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

This matter was referred to the Office of General Counsel by the Audit Division and is based on an audit of the Republican National Committee ("RNC") covering the period of January 1, 1976 through March 31, 1979.

On June 22, 1976 and on October 23, 1977, the R.N.C. deposited in its operating account two checks in the amounts of $1,050.25 and $2,145.50 received from Acropolis Books, Ltd. (Acropolis). The R.N.C. reported the checks as "refund/rebates" and not as a contribution. When the audit staff inquired about the checks; the R.N.C. explained that it was a royalty payment resulting from an agreement entered into on August 25, 1975 for the sale of a book called REPUBLICAN HUMOR BOOK.

FACTUAL BASIS AND LEGAL ANALYSIS

The R.N.C. listed on its reports two checks in the amount of $1,050.25 and $2,145.50 received from Acropolis Books Ltd., (Acropolis), a corporation. These checks were received as part of an agreement entered into between the R.N.C. and Acropolis on August 25, 1975, whereby the R.N.C. would receive a royalty payment for each copy sold of THE REPUBLICAN HUMOR BOOK.

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value. . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . .

The present transaction, is similar in many respects to the proposed "credit card program" previously considered by the Commission in Advisory Opinion 1979-17. In that opinion request, the Commission considered several alternative plans under which the Republican National Committee would provide the prestige of its name, the loyalty of its members, the endorsement of its leadership and the use of its membership lists to several banks issuing credit cards such as a VISA card. As a result, the issuing banks would be able to expand their card holder base. In exchange, the banks would provide the RNC with either (a) the exclusive use of the monthly statement as a vehicle for mailing RNC educational/promotional materials to RNC credit card holders, (b) a one-time payment for each RNC card issued or account activated as a result of the solicitation, or (c) a negotiated fee on a monthly basis representing a percentage of either total card holder sales or the finance charge balance on RNC credit card accounts. The opinion request described the transaction as a "bargain struck at arms length by the parties", with benefits and consideration flowing back and forth between the parties much the same as in any commercial relationship. However, the Commission determined that the RNC proposal did not present the possibility of characterizing the amounts received by the RNC and the services rendered by the banks as bargained for consideration rather than contributions from the banks in violation of 2 U.S.C. § 441b. Fundamental to the Commission's conclusion that the plan would result in a violation of the Act was its recognition of the distinction between income that a political committee might produce using tangible assets and, "the use of a political organization's good will and the reputation of its national leadership to promote a commercial enterprise in exchange for a share of the income realized or anticipated by the commercial enterprise." AO 1979-17, pg. 5-6.

In the present transaction, Acropolis made royalty payments to the R.N.C. for each copy sold of THE REPUBLICAN HUMOR BOOK, and in return for these royalty payments, the R.N.C. allowed its name to be used and assisted in promoting the book. In so doing, the R.N.C., in essence, sold its good will and the reputation of its national leadership to the corporation in exchange for a share of the income realized or anticipated. As such, the payments made by Acropolis, as in the "credit card program", supra, cannot be viewed simply as bargained for consideration, but rather constitute contributions in violation of § 441b of the Act.

Though, Acropolis is in violation of 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C., it must be added, not as a defense, but in mitigation of the facts presented, that at the time of the making of the contract (August 27, 1975), the Commission had not determined that a royalty paid by a corporation to a political committee is a corporate contribution. In fact, at the time of the making of the contract, the only advisory opinion issued concerning the receipt of a contribution by a political committee for the sale of goods and services was AO 1975-15 that allowed a political committee (the Wallace Committee) to raise

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contributions through the sale of campaign items. It was not until AO 1976-50, decided on September 2, 1976, that the Commission even questioned the propriety of a contribution raised through the sale of goods and services, and it was not until AO 1979-17 that the Commission finally decided that the sale of a political organizations good will and reputation to a corporation resulted in a corporate contribution in contravention of 2 U.S.C. § 441b(b)(2).

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Acropolis Books Ltd. violated 2 U.S.C. § 441b(a) for making a corporate contribution to the R.N.C. but take no further action.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Douglas Bailey
Bailey Deardouff and Associates, Inc.
60720 Old McLean Village Drive
McLean, Va 22101

Re: MUR 1180

Dear Mr. Bailey:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Bailey Deurdouff Assoc. Inc. violated 2 U.S.C. § 441b, but has decided to take no further action.

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor

RESPONDENT Bailey Deurdouff Assoc. Inc.

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Bailey Deurdouff Assoc. Inc. (Bailey Deurdouff) in the amount of $750.00 for pips listings purchased by Bailey Deurdouff from the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Bailey Deurdouff are contributions made by R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. 1 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for acitivites not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David M. Serotkin
48 North Walnut Street
Mount Clemens, Michigan 48048

Re: MUR 1180

Dear Mr. Serotkin:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on October , 1980, found reason to believe that the Republican National Committee violated 2 U.S.C. § 41a(f). A report on the Commission's finding is attached for your information.

In the absence of any additional information which demonstrates that no further action should be taken against your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. Please submit any factual or legal material that you believe to be relevant within ten (10) days. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
William Taylor

RESPONDENT The Serotkin for Congress Committee

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

For the 1976 Congressional election, the Republican National Committee (R.N.C.) set up approximately 800 telephone banks ("phone banks") throughout the country for the purposes of identifying voters who would vote for certain selected Republican candidates. Among those candidates chosen by the R.N.C. for assistance was Mr. Serotkin, a candidate for Congress from Michigan's 12th Congressional District; a total of $14,890 was expended on behalf of Mr. Serotkin's candidacy by the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

The R.N.C. was limited, pursuant to 2 U.S.C. § 441a(d) of the prior Act, to expending $10,910.00 1/ on behalf of Republican candidates for the House of Representatives who were the party's nominee in the general election. Mr. Serotkin was one of the candidates the R.N.C. made expenditures on behalf of and did so in the amount of $14,890.00.

The R.N.C. in expending $14,890.00 made an excess in-kind contribution in the amount of $3,908.00 to Mr. Serotkin's principal campaign committee, The Serotkin for Congress Committee (the Committee), and the acceptance of this excess in-kind contribution by the committee was in violation of 2 U.S.C. § 441a(f). Upon realizing tht it had made an expenditure in excess of 2 U.S.C. § 441a(d), the R.N.C. requested that the committee refund $3,908.00, the excess amount expended by the R.N.C., but the committee refused.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that the Serotkin for Congress Committee violated 2 U.S.C. § 441a(f) for accepting an excess contribution.

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1/ The $10,000 limitation of 2 U.S.C. § 441a(d) of the former Act was adjusted to 10,910.00 for the 1976 election. See the Federal Election Commission Record Vol. 2, No. 6 June 28, 1976.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Teeter, President
Market Opinion Research
28 West Adams Street
Detroit, Michigan 48226

Re: MUR 1180

Dear Mr. Teeter:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William L. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

RESPONDENT Market Opinion Research, Co.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Market Opinion Research Co (Market Opinion) in the amount of $800.00 for list samples purchased by Market Opinion for the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from the Market Opinion are contributions made by Market Opinion to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Market Opinion Research Co. violated 2 U.S.C. § 441b, but has decided to take no further action.

2040355435

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Bruce Mackey, President
Envelopes Unlimited Inc.
649 North Homer Lane
Rockville, Md. 20850

Re: MUR 1180

Dear Mr. Mackey:

On , 1980, the Commission found reason to believe that your company may have violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE_____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

RESPONDENT Envelopes Unlimited Inc.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Envelopes Unlimited Inc. (Envelopes Unlimited) in the amount of $812.50 for computer services provided by the R.N.C. to Envelopes Unlimited.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Envelopes Unlimited are contributions made by Envelopes Unlimited to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

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Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Envelopes Unlimited Inc. violated 2 U.S.C. § 441b, but has decided to take no further action.

3204036531383

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. A. Goodwin, Director
American Medical Laboratories, Inc.
11091 Main Street
Fairrax, Virginia 22030

Re: MUR 1180

Dear Dr. Goodwin:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you hae any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

8204065439

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

RESPONDENT American Medical Laboratories Inc.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from American Medical Laboratories Inc. (American Medical) in the amount of $11,110.00 for computer equipment purchased by American Medical from the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or politicla party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from American Medical are contributions made by American Medical to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that American Medical Laboratories Inc. violated 2 U.S.C. § 441b, but has decided to take no further action.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert O'Dell, President
National Direct Mail Services Inc.
4733 Bethesda Avenue
Bethesda, Md 20014

Re: MUR 1180

Dear Mr. O'Dell:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regardint this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor

RESPONDENT National Direct Mail Services Inc.

(202) 523-4529

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from National Direct Mail Services Inc. (National) in the amount of $680.00 for envelopes the R.N.C. sold to National.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from National are contributions made by National to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

2 0 4 0 3 5 5 1 4 3

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that National Direct Mail Services Inc. violated 2 U.S.C § 441b, but has decided to take no further action.

8204035341

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ken Kendrick, Jr.
Datatel Inc.
3700 Mount Vernon Avenue
Alexandria, Va 22305

Re: MUR 1180

Dear Mr. Kendrick:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

2040365145

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE_____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

RESPONDENT Detatel Inc.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Datatel Inc. (Datatel) in the amount of $6,521.50 for the sale of computer time by the R.N.C. to Datatel.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Datatel are contributions made by Datatel to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

2040655146

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Datatel violated 2 U.S.C. § 441b, but has decided to take no further action.

8204035447

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles J. Wardelich, President
Cities Services Co.
Cities Service Bldg.
Tulsa, Oklahoma 74102

Re: MUR 1180

Dear Mr. Wardelich:

On , 1980, the Commission found reason to believe that your company violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above captioned matter. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file in this matter. This matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that the making of a corporate contribution nevertheless appears to be a violation of 2 U.S.C. § 441b and you should take immediate steps to insure that this activity does not occur in the future.

A report on the Commission's finding is attached for your information.

If you have any questions regarding this matter, please call William E. Taylor, the attorney assigned to this case at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

8204063143

FEDERAL ELECTION COMMISSION

NOTIFICATION OF REASON TO BELIEVE FINDING

DATE _____

MUR NO. 1180
STAFF MEMBER(S) & TEL. NO.
Taylor
(202) 523-4529

RESPONDENT Cities Services Corp.

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

BACKGROUND

The records of the Republican National Committee (R.N.C.) show that the R.N.C. received funds from Cities Services Corp. (Cities Services) in the amount of $1,500.00 for present lists purchased by Cities Services from the R.N.C.

FACTUAL BASIS AND LEGAL ANALYSIS

> It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office. 2 U.S.C. § 441b(a).

The term "contribution or expenditure" is defined in 2 U.S.C. § 441b to include:

> . . . any direct or indirect payment distribution, loan, advance, or gift of money or any services or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to [Federal office] . . .

The funds received by the R.N.C. from Cities Services are contributions made by Cities Services to the R.N.C. even if the contributors received something of value. See AO's 1979-76, 1979-17, 1978-46 and 1975-15. It should be added that the evidence indicates that the corporation did not realize they were making a contribution in contravention of 2 U.S.C. § 441b, but believed they were involved in an arm's length business transaction. Moreover, if the R.N.C. had deposited the funds received in these transactions in bank accounts opened and used only for activities not within the jurisdiction of the Act, there would be no prohibited contributions under 2 U.S.C. § 441b. See AO 1979-17, pg. 7.

Based on the foregoing analysis, the Federal Election Commission has found reason to believe that Cities Serices Corp. violated 2 U.S.C. § 441b, but has decided to take no further action.

8204032150

A-697

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1980

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: ORLANDO B. POTTER
STAFF DIRECTOR

FROM: BOB COSTA

SUBJECT: INTERIM AUDIT REPORT -
REPUBLICAN NATIONAL COMMITTEE-EXPENDITURES

Attached please find a copy of the interim audit report of the Republican National Committee-Expenditures for your review and comment.

Under the Track B procedures approved by the Commission, we plan to forward this report to the Commission upon return of the legal analysis (approximately two weeks from the date of your receipt of this report).

Should you have any questions, please contact either Mike Flott or Russell Bruner on extension 3-4155.

Attachment as stated

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

# INTERIM REPORT OF THE AUDIT DIVISION ON THE REPUBLICAN NATIONAL COMMITTEE-EXPENDITURES

## I. Background

### A. Overview

This report is based on an audit of the Republican National Committee-Expenditures ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(a)(8) of Title 2 of the United States Code which directs the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Act.

The Committee registered with the U.S. General Accounting Office on April 17, 1972, as the Republican National Committee. 1/ The Committee maintains its headquarters in Washington, D.C.

The audit covered the period January 1, 1976 through March 31, 1979, the final coverage date of the most recent report filed by the Committee at the time of the audit. During the period, the Committee reported a beginning cash balance of $135,163.67, total receipts of $60,064,650.71, total expenditures of $59,746,311.52, and a closing cash balance on March 31, 1979 of $453,502.86.

This audit report is based on documents and working papers which supports each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

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1/ The Republican National Committee changed its name to the Republican National Committee-Expenditures on January 12, 1976 in an amendment to its statement of organization filed with the Commission.

B. Key Personnel

The principal officers of the Committee during the period covered by the audit were Ms. Mary Louise Smith, Chairman, from January 1, 1976 through January 14, 1977; Mr. William E. Brock, Chairman, from January 15, 1977 to the present; and Mr. William J. McManus, Treasurer, from January 1, 1976 to the present.

C. Scope

The audit included such tests as verification of total reported receipts, expenditures and individual transactions; review of required supporting documentation and analysis of Committee debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

II. Interim Findings and Recommendations

A. Possible Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation or labor organization to make a contribution in connection with any Federal election to any political office; and unlawful for any political committee to knowingly accept or receive any such contribution.

1. Royalties Received From Corporations

The Audit staff noted two (2) cases in 1976 wherein the Committee received royalty payments from two (2) corporations. In the first case, we noted one (1) corporate check for $20,000.00 in the Committee's records that was deposited into its operating account on October 27, 1976. (See Attachment I) The Committee reported the check as a refund/rebate, but did not disclose the nature of it. When asked about the check, the Committee explained that it was a royalty payment resulting from an agreement entered into during August, 1976 with a corporation for the use of the party's campaign symbol. The Committee provided us with a copy of the agreement which proposed a 15% royalty on the net proceeds from the sale of 1976 Republican Presidential Campaign Medals. (See Attachment II) This agreement also provided the Committee with a guaranteed minimum royalty of $30,000.00 along with a quantity of medals at a retail value of $5,000.00. Aside from this check, the Audit staff noted no other receipts or expenditures which concerned this corporation during the period covered by the audit. 2/

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2/ However, subsequent to the fieldwork, the Committee informed the Audit staff that they had received and deposited another check in July of 1979 from the same corporation for $8,705.00. This check was considered the final payment on the agreement concerning the medals.

Further, the Committee was uncertain whether the $5,000.00 worth of medals had ever been received and there were no indications from our review of their records that they had. In the second case, we noted two (2) corporate receipts ($1,050.25 and $2,145.50) in payment of royalties on the sale of a book. (See Attachment III) These receipts were deposited into the Committee's operating account on June 22 and November 23 of 1976 respectively. The Committee also reported these receipts as refunds/rebates but did not disclose the nature of them. The Committee provided us with a copy of the agreement dated August 25, 1975 which set forth the terms concerning the authorship, publication and promotion of the book, but did not contain a guaranteed payment clause. (See Attachment IV) Aside from these two (2) receipts, the Audit staff noted no other financial activity which concerned this corporation during the period covered by the audit.

It appears that the activity in the above two (2) cases parallels that which was determined by the Commission in AO 1976-50 to be unlawful under the Act. (See Attachment V)* In that opinion Friends of Dick Lugar Committee authorized an Indiana corporation to produce and market a shirt bearing the candidate's name. One parallel element with respect to the production and marketing of the medals, books and shirts is that the Committee, like Friends of Lugar, was not involved in selling the medals or books and incurred no expenses in conjunction with their sales. 3/ In the Lugar opinion, the Commission stated that "the fact that expenses of producing and marketing the shirt are paid entirely by the corporation results in the Committee receiving something of value from the corporation. The corporation is effectively advancing funds to assist the Committee in a fund-raising effort and is also serving as a conduit in providing a contribution to the Committee for every shirt that is sold." Further, the Commission stated "for these reasons this activity is clearly distinguishable from the facts presented in Advisory Opinion 1975-15 wherein the Wallace campaign itself purchased and sold various campaign related items as a fundraising method. Therefore, this type of arrangement would be unlawful under the Act."

* Also refer to AO 1979-76 (not attached) which was recently approved by the Commission.

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3/ Although the agreement concerning royalties from the sale of books contained a provision for sales through the Committee, the Audit staff's review of their records disclosed no such activity (see Attachment IV section 9.A.).

2. Receipts From Sales of Goods and Services to Corporations and a Labor Organization

The Audit staff noted 92 receipts totaling $24,206.48 accepted from 66 corporations and one (1) labor organization in exchange for goods and services such as books, seminars, and computer services. The receipts were deposited into the Committee's operating account and reported as refunds/rebates. The Committee's reports did not disclose the nature of these refunds/rebates.

The Committee stated that the receipts were actually reimbursements for the production costs of the goods and services, and therefore not considered contributions. However, detailed records of the unit costs were unavailable for the Audit staff's review.

A parallel situation was addressed in a previous referral of a matter noted during the audit of Citizens For the Republic (CFTR). (See Attachment VI) Your Division's response to the CFTR referral indicated "such payments, at a minimum, would be contributions to the extent they exceed the actual cost." However, as hereinbefore mentioned, the unit costs with respect to the Committee's situation were unavailable.

Recommendation

The Audit staff recommends that these matters be referred to the Office of General Counsel for further consideration.

B. Excessive Expenditures On Behalf of Federal Candidates

Section 441a(d)(3) of Title 2 of the United States Code states, in part, that the national committee of a political party may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds the greater of two cents multipled by the voting age population of the State or $20,000 for election to the office of Senator and $10,000 for election to the office of Representative.

Section 104.7 of Title 11 of the Code of Federal Regulations states, in part, that a political committee making an expenditure on behalf of more than one candidate for Federal office shall allocate the expenditure(s) among the candidates on a reasonable basis and report the allocation for each Federal candidate. The treasurer shall retain all documents supporting the allocation.

On November 1, 1976, the Reports Analysis Division (RAD) sent a "Request For Additional Information" (RFAI) requesting the Committee to provide specific information regarding telephone expenditures for their National Phone Bank. In response to this RFAI, the Committee replied on February 4, 1977 "that the telephone expenditures for their National Phone Bank was a project in which approximately 800 telephone banks were set up throughout the United States to identify the attitude of those registered to vote on various candidates and issues. On separate calls those friendly to Republican candidates were encouraged to vote. The expenses of phone banks allocable to candidates is determined by the total cost of each phone bank (by individual phone bank) and the amount is apportioned among the several candidates." On October 25, 1977, the Committee filed an amended report disclosing the actual expense of its National Phone Bank allocated to each candidate that participated. This amended report also informed the Commission that the Committee had exceeded the expenditure limitations of 2 U.S.C. Section 441a(d) on behalf of four (4) Federal candidates (see Schedule below) and contained a copy of each letter sent by the Committee requesting reimbursement of the excessive expenditures from the four (4) Federal candidates. On February 7, 1978, RAD sent a RFAI requesting the current status concerning the reimbursements from the four (4) candidates. In response, the Committee informed the Commission that two (2) of the candidates had reimbursed them for the excessive expenditures, one (1) had agreed to reimburse them once additional funds were raised and the fourth had not responded to their letters.

Schedule of Excessive 441a(d)(3) Expenditures

| Candidate's Name and Office Sought | 1976 441a(d)(3) Expenditures | 1976 441a(d)(3) Limitations | Excessive 441a(d)(3) Expenditures | Reimbursements Date | Amount |
|---|---|---|---|---|---|
| The Honorable Harrison Schmitt Senate/New Mexico | $22,124 | $21,820 | $ 304 | 6/13/77 | $304 |
| The Honorable Malcolm Wallop Senate/Wyoming | $22,215 | $21,820 | $ 395 | 2/14/78 | $395 |
| Mr. Newt Gingrich House/Georgia 6th District | $11,514 | $10,910 | $ 604 | 8/22/78 | $604 |
| Mr. David Serotkin House/Michigan 12th District | $14,890 | $10,910 | $3,980 | --- | --- |

During the audit fieldwork, we asked the Committee for the documentation supporting the allocation method used for their National Phone Bank. The Committee informed us that they had sent eight (8) boxes of supporting documentation to storage but have been able to get only one (1) back. This was a result of the Committee's headquarters being under construction and the boxes being moved around several times. With the information the Committee provided, we were not able to determine that the method used by the Committee to allocate the phone bank expenses was reasonable. Further, we were not able to determine if the phone bank expenses were allocated to all the participating candidates. The Audit staff did note that three (3) of the candidates had reimbursed the Committee for the excessive amount of the expenditures. The fourth candidate wrote the Committee a letter which stated that he would not reimburse them for anything. (See Attachment VII).

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel for further consideration.

C. Unitemized Transfers

Section 434(b)(4) of Title 2 of the United States Code states that each report shall disclose the name and address of each political committee or candidate from which the reporting committee received, or to which that committee made, any transfer of funds, together with the amounts and dates of all transfers.

The Audit staff noted 536 receipts totaling $28, 283.81 from political committees in exchange for goods and services provided by the Committee. These receipts were reported as unitemized refunds/rebates. The Audit staff also noted 35 expenditures totaling $1,899.77 made to political committees in exchange for goods and services provided to the Committee. These expenditures were reported as unitemized operating expenditures.

The Audit staff informed the Committee that all transfers regardless of amount were required to be itemized on their reports. The Committee explained that they reported these funds per the nature of the transaction and not according to the entity making the refund/rebate. Further, the Committee stated the transfers were considered as a reimbursement of costs which they felt did not warrant itemization. However, detailed records of the unit costs were unavailable for the Audit staff's review. The Committee informed the Audit staff that they would not voluntarily file an amended report to itemize these transfers.

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel for further consideration.

8204030458

REPUBLICAN NATIONAL COMMITTEE

A Attachment I 1 of 2 E + (1)

VENDOR/GIVER FILE MAINTENANCE REQUEST

(CHECK ONE) ADD X CHANGE ___ DELETE ___

0 - NUMBER 1210101415101

1 - NAME Franklin Mint Credit

2 - STREET ADDRESS-1 Franklin Center

3 - STREET ADDRESS-2 ___

4 - CITY Franklin Center

5 - STATE Pa.

6 - ZIP CODE 19091

7 - OCCUPATION Corporate

8 - SELF EMPLOYED (CHECK ONE) X YES ___ NO

9 - PERIOD AMOUNT $ —

10 - YTD AMOUNT $ —

11 - (CHECK ONE) VENDOR ___ GIVER X

(GIVER ONLY)

12 - OCCUP-ADDRESS-1 same as above

13 - OCCUP-ADDRESS-2 ___

14 - OCCUP-CITY ___

15 - OCCUP-STATE ___

16 - OCCUP-ZIP CODE ___

8204035359

Deposited in Oct '76 on 10/27/76
see Bundle 30 of 15 p 119

PREPARED BY

APPROVED BY

320403516O

**Franklin Mint Corporation** Franklin Center, Pennsylvania 19091

19608

Date October 8, 1976 1-23/210

Pay
to the order of Republican National Committee $20,000.00

Twenty thousand and ----------00/100

Morgan Guaranty Trust Company
OF NEW YORK

COUNTERSIGNATURE REQUIRED FOR AMOUNTS $25,000.00 AND LARGER

⑈019608⑈ ⑆0210⑆0023⑆ 022 06 483⑈

Attachment II

E 2 (A)
184

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PENNSYLVANIA 19091
(215) 459-6184

June 25, 1979

Mr. J. Banning
Director of Accounting
Republican National Committee
310 First Street, SE
Washington, D.C. 20003

Dear Mr. Banning:

In accordance with your request enclosed is a copy of the agreement between the Republican National Committee and Franklin Mint Corporation relating to the sale of 1976 Republican Presidential Campaign Medals.

Sincerely yours,

FRANKLIN MINT CORPORATION

Howard P. Lucker
Associate Corporate Counsel

HPL:jad
Enclosure

3204033416

284
AUG 13 1976

FRANKLIN MINT CORPORATION
FRANKLIN CENTER PENNSYLVANIA 19091

August 11, 1976

Republican National Committee
310 First Street SE
Washington, D.C. 20003

Gentlemen:

This letter sets forth our proposal to your organization and, when accepted by you, will serve as the agreement between us relating to an offering and sale by Franklin Mint Corporation ("Franklin") of 1976 Republican Presidential Campaign Medals as described below. The medals will be offered for sale by Franklin in the following forms:

1. A sterling silver medal in a lucite display stand
2. A sterling silver medal with neck chain (pendant)
3. A sterling silver medal with 24kt gold electroplate (pendant)
4. An 18kt gold medal with neck chain (pendant)

The medals will bear a reproduction of the Republican Presidential and Vice-Presidential candidates on the obverse and the party's campaign symbol on the reverse.

Franklin will offer the medals for sale to the general public and to Franklin's established collectors commencing in September 1976 by means of direct mail and publication advertising with a closing date for acceptance of orders of November 2, 1976.

Franklin presently intends to spend an aggregate of $100,000 for publication advertising of the Republican and Democratic Presidential Campaign medals. Franklin agrees that any increase in said advertising budget shall be subject to your organization's approval.

Your organization agrees to designate the above-described Republican Presidential Campaign medals as the Official Presidential Campaign Medals of the Republican National Committee and authorizes Franklin to make reference to such designation in its advertising materials. In consideration thereof, and of the agreements of your organization hereunder, Franklin is willing to:

1. Pay to your organization a royalty equal to 15% of Franklin's net sales of said Republican National Committee 1976 Presidential Campaign Medals with a minimum guaranteed royalty of $30,000. "Net sales" shall mean Franklin's gross receipts from its sales of said medals less returns, allowances and sales or use taxes.

2. Provide to your committee at no charge a quantity of the medals equivalent in retail value to $5,000.

Your organization further agrees that Franklin shall be the exclusive organization authorized to mint and/or sell the Official 1976 Presidential Campaign Medals of the Republican National Committee.

Your organization further agrees to provide for certifications to the media concerning Franklin's advertising of the medals as required under applicable Federal law.

Would you kindly indicate your acceptance of the above agreement by signing the duplicate copy of this letter enclosed herewith.

Yours very truly,

FRANKLIN MINT CORPORATION

By: _____
Francis J. Fitzpatrick, Jr.
Vice President

Accepted and agreed to this

day of August, 1976

Republican National Committee, except that we reserve the right to have prior approval of the design.

By: _____

FEC / 903134398 4

PERIOD : 07/01/79 THRU 07/31/79

RUN DATE: 10135152 02 AUG 1979
PAGE 5/6

REPUBLICAN NATIONAL COMMITTEE - EXPENDITURES
SCHEDULE A LINE 18A

| NAME AND ADDRESS | OCCUPATION | PRINCIPAL PLACE OF BUSINESS | SELF EMP | YTD | DATE | AMOUNT | ELECTION |
|---|---|---|---|---|---|---|---|
| FRANKLIN MINT CORP. | MINTERS | Same | N | 8,705.00 | 07/10/79 | 8,705.00 | G |
| FRANKLIN CITY, PA 19091 | | | | | | | |
| *** T O T A L S *** | | | | | | 26,990.83 | |

4 of 4

1116

A E 7/1(2)

Attachment III

ACROPOLIS BOOKS LTD.

[illegible]

Royalty Statement
April 30, 1976

To: Republican National Committee

For: Republican Humor Book

For the Period Ending April 30, 1976

Helen Chenoweth 387-6800 Y62

| | | |
|---|---|---|
| Sales through the Rep. Nat'l. Committee 185 @ 2.25 | | $ 416.25 |
| Cash Sales 520 @ 1.00 | | 520.00 |
| Sales on Account 114 @ 1.00 | | 114.00 |
| Amount of Check Enclosed | | $1050.25 |

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

| DATE | | AMOUNT | |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL OF INVOICES | | | |
| LESS ___% DISCOUNT | | | |
| LESS | | | |
| TOTAL DEDUCTIONS | | | |
| AMOUNT OF CHECK | | | |

IF INCORRECT PLEASE RETURN
NO RECEIPT NECESSARY

ACROPOLIS BOOKS, LTD.
COLORTONE BUILDING
2400 - 17TH STREET, N. W., CTYD.
WASHINGTON, D. C. 20009
TEL. 202-DU-7-6800

4679

54-540 4

May 7 19 76

PAY TO THE ORDER OF Republican Nat'l. Committee $ 1050.25

COLORTONE 1050 DOLS 25 CTS DOLLARS

WASH. NATIONAL'S OLDEST NATIONAL BANK
THE FIRST NATIONAL BANK OF WASHINGTON
WASHINGTON, D. C.

Charles Brooks

⑈004679⑈ ⑆054⑆0004⑆ ⑈026 574 3⑈

Check reported as being deposited on 6/22/76
see Bundle 3 of 15 9 7/4 also one for $2,145.50 deposited on 11/23/76 3 of 15 P 126

Attachment IV
AUG 20 1975 1 of 8

# AUTHORSHIP, PUBLICATION AND PROMOTION AGREEMENT

AGREEMENT made this 25th day of August, 1975, between Stephen J. Skubik, whose address is 1725 DeSales Street, NW, Washington, D.C. 20036; and Hal E. Short, whose address is 1522 K Street, NW, Washington, D.C. 20005 (Authors): the Republican National Committee, 310 First Street, SE, Washington, D.C. (Committee); and Acropolis Books, Ltd., 2400 17th Street, NW, Washington, D.C. (Publisher):

WITNESSETH

In consideration of the mutual covenants herein contained the parties agree as follows:

HE GRANT ND THE ERRITORY

1. The Authors hereby grant and assign to the Publisher and its successors, representatives and assignees, during the full term of the copyright and all renewals thereof, the full, sole and exclusive right to print, publish and sell under its own name:

REPUBLICAN HUMOR

(hereinafter called the Work) which title may be changed only by mutual consent in writing.

HE ARRANTY

2. The Authors represent and guarantee to the Publisher that they are the sole authors of the said Work, that they are the owners of all the rights granted to the Publisher hereunder, that the said Work is original, has not been previously published in book form, and is not in the public domain; that it contains no libelous, obscene or other unlawful matter; and that it in no wise infringes upon the copy right or violates the right of privacy or any other right of any person or party whatsoever, and they agree to hold the Publisher harmless against any recovery finally sustained in any suit which may be brought or had against the Publisher, by reason of a

violation of any proprietary right or copyright, or because of any libelous, obscene or other unlawful matter contained in the said Work.

THE MANUSCRIPT

3. The Authors agree to deliver a completed manuscript copy of the said Work, ready for typing, containing works and cartoons equivalent to 195 pages of printed material, not later than the 15th of October, 1975. If the Authors fail to deliver such copy by said date the Publisher may terminate this agreement by giving written notice to the Authors to such effect. The Publisher and Authors may, by mutual consent in writing, establish a new deadline for delivery.

PUBLICATION OF THE WORK

4. The Publisher shall, upon receipt of a manuscript, have the right and sole discretion to reject the Work for any reason, or to request changes or additions to it. The Authors may refuse to make any such changes or additions to it, and in such event this agreement shall be terminated.. The Publisher shall within three months after the Authors have delivered a complete and satisfactory manuscript, publish said Work at its own expense and in such style and manner as it deems best suited to the sale thereof, and advertise and promote the sale thereof as and to the extent it deems best. The Publisher will use all customary means to promote and market the Work throughout the United States.

The expenses for which the Publisher shall be responsible, in addition to all others involved in publication, distribution, and promotion, include: artist's fees; costs of editing, typing, collating, proofreading and make-up by the person or persons engaged by the Authors; secretarial and mailing services supplied by the Committee to obtain material for the book and subsequently to help promote within the Republican Party the sale of the book. The artist's fees and editing, typing, collating, proofreading, and make-up costs will

0 2 0 4 0 3 5 3 4 6 7

be paid by the Publisher prior to the release of the book, such fees and costs to be considered advances against the royalties. The secretarial and mailing services supplied by the Committee will be ~~reimbursed by the Publisher by delivering one book for each three dollars of expenses incurred, such expenses to be~~ charged against the promotional expenses as per Paragraph 10.

THE COPYRIGHT

5. The Publisher, upon first publication of the Work, agrees to apply for copyright in the name of Stephen J. Skubik in the United States of America and under the Universal Copyright Convention ~~in the exclusive territory specified in Paragraph 1~~, and to imprint the copyright notice required by law in each copy of the Work. Stephen J. Skubik, using forms acceptable to the Publisher, agrees to furnish the Publisher promptly with any authorization or other document necessary to carry out the provisions hereof.

The Publisher shall, upon the termination of the first term, make timely application for renewal of copyright under then existing United States Copyright Law.

USE OF COPYRIGHT MATERIAL

6. If the Work includes excerpts of materials presently under copyright, the Authors, using forms acceptable to the Publisher, will obtain written permission from the owners of such copyrights to print the excerpts.

ADDITIONAL MATERIAL

7. The Authors agree to prepare and deliver, along with the manuscript: Title page, preface or foreword, table of contents and/or index, and complete and final copy for all illustrations properly prepared for reproduction.

PRINTERS PROOFS

8. The Publisher shall furnish the Authors with a proof of the Work which, except for such reasonable changes in styling as are required by the Publisher,

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conform to the completed manuscript as submitted by the Authors, unless changed by mutual consent. The Authors agree to return such proof to the Publisher with their corrections within ten days of the receipt thereof by them.

ROYALTIES, AND SHARE OF PROCEEDS

9. The Publisher agrees that the retail price of this Work will be Four Dollars and Ninety-Five cents ($4.95) and royalties will be paid to the Authors and the Committee on the following schedules:

A. On sales through the Republican National Committee, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

i) Thirty Cents ($0.30) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) Two Dollars and Twenty-five Cents ($2.25) per book to the Committee, as long as Stephen J. Skubik shall receive Thirty (30) Cents per book, thereafter Two Dollars and Fifty-five Cents ($2.55) per book to the Committee;

iv) All orders from the Committee and Republican organizations shall be accompanied by check for the full retail price.

B. On sales through the normal book trade distribution channels, a royalty upon all copies of the Work sold and paid for in the exclusive territory specified in Paragraph 1:

i) Ten Cents ($0.10) per book to Stephen J. Skubik until such time as all of his out-of-pocket costs of creating the book are recovered;

ii) Twenty-five Cents ($0.25) per book to Hal Short;

iii) One Dollar ($1.00) to the Committee, and One Dollar and Ten Cents ($1.10) after Stephen J. Skubik has recovered his expenses.

C. The following shall be considered as subsidiary rights: sales to book clubs, publications by another publisher, publication of the Work in a ~~paperbound or~~ cheap edition, serial rights before and after book publication, dramatic and/or motion picture rights, translations, digests, abridgements, selections, anthologies, and mechanical, visual (such as microfilm and microprint), or sound reproducing and recording rights (including television and broadcasting), and adaptations of said Work for commercial use. Subsidiary rights to publish are to be arranged by mutual consent of the Authors, Publisher and the Committee. The division of receipts from the sale of subsidiary rights shall be Forty percent (40%) to the Committee, Thirty percent (30%) to the Publisher and Thirty percent (30%) to the Authors, i.e., Ten percent (10%) to Hal Short, Twenty percent (20%) to Stephen J. Skubik until his out-of-pocket costs of creating the book are recovered, then his 20% will be added to the Committee. All compensation from sales of the Work under this Paragraph shall be excluded from the computation of the royalties payable under Paragraph (A) above and shall be computed and shown separately in reports from the Publisher and/or Authors.

A.S.H.

AND PARAGRAPH (B)

D. No royalties shall be payable on free copies furnished to the Authors or to the Committee, or on copies for review, sample, or other similar purposes.

TION 10. The Authors will take the Work to the national print, T. V., and radio press for maximum publicity including talk shows, known comedians, etc. The Committee will bulletin all state, county, and city Republican Committee officials, and in addition will publicize the Work through State Republican publications, Young Republicans, Women's Federation, etc. One Dollar ($1.00) per book sold by the Publisher (under the provisions of Paragraph 9A) shall be remitted by the Publisher to the Committee to cover these promotional expenses of the Authors and the Committee, on sales made through the National Committee but not on sales through normal book distribution channels referred to in Paragraph 9B. The Committee shall be the final judge of the legitimacy and necessity of promotional expenses and shall reimburse such expenses from this promotional fund. After the reimbursement of all said expenses, the balance of such fund shall be credited to the Committee as additional royalties under this agreement.

11. The Publisher agrees to present to each Author 100 copies of the Work and to the Committee 1,000 copies of the Work for promotional purposes, such costs to be charges against the promotion fund as per Paragraph 10.

at $1.15 per Copy. — A.S.H.

S 12. The Publisher will report on the sale of

TS the Work in February and July of each year for the six month period ending the prior December 31 and June 30 respectively on sales to the Committee, and in March and September on sales made through trade channels. With each report of sales, the Publisher will make settlement for any balance of royalties due.

ATION 13. a) In the event that the Work shall at any

ION time be out of print, the Authors may give notice thereof

ITS to the Publisher and in such event the Publisher shall declare

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within sixty days in writing whether or not he intends to bring out a new printing of the Work within six months. Failure to reprint the Work within six months after receipt of the Authors' notice shall cause all rights herein granted to revert to the Authors at the expiration of said period without further notice.

b) If the Publisher shall, during the existence of this agreement, default in the making of payment as herein provided; if the Publisher shall fail to comply with or fulfill with other terms and conditions hereof; or in the event of bankruptcy, this agreement shall terminate and the rights granted herein to the Publisher shall revert to the Authors and Committee. In such event all payments theretofore made to the Authors and Committee shall belong to the Authors and Committee without prejudice to any other remedy which the Authors and Committee may have.

c) Upon the termination of this agreement for any cause, all rights granted to the Publisher revert to the Authors and Committee for their use at any time, and the Publisher shall return to the Authors all property originally furnished by the Authors. The Authors shall have the right in such instance to purchase the plates, if any exist, from the Publisher at their metal value, and any or all of the remaining sheets or copies at a price not to exceed 50% of the manufacturing costs, exclusive of overhead.

CONFLICTING PUBLICATION

14. The Authors agree that during the term of this agreement they will not, without the written permission of the Publisher, publish or permit to be published any material in book or pamphlet form, based on the material in the Work, which is reasonably likely to interfere with its sale.

INSOLVENCY

15. If a petition in bankruptcy should be filed by or against the Publisher, or if it shall be judged insolvent by any court, or if the Publisher shall liquidate its business for any cause whatsoever, this agreement shall

terminate automatically and without notice, and all rights granted hereunder shall thereupon revert to the Authors and to the Committee.

ARBITRATION

16. Any controversy or claim arising out of this agreement or the breach thereof, with the exception of a failure to pay royalties, shall be settled by arbitration in accordance with the rules of the American Arbitration Association then obtaining, and judgement upon any award may be entered in the highest court of the forum, State or Federal, having jurisdiction. Such arbitration shall be held in the City of Washington, D.C., unless otherwise agreed by the parties.

This agreement shall be construed and interpreted according to the laws of the District of Columbia, and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives.

WAIVER

17. A waiver of any breach of any of the terms or conditions of this agreement by any of the parties thereto, shall neither be deemed a waiver of any repetition of such breach nor in any wise affect any other terms or conditions of this agreement; shall be valid or binding unless it shall be in writing, and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals at Washington, District of Columbia, the day and year first written above.

BY: Carlos Marks, Pres.
Aerobics Books Ltd.
2400 17th St. NW Washington D.C.
PUBLISHER

BY: [illegible]
1525 Newton St NW
Washington D.C.
AUTHOR

BY: [illegible]
310 - 1st St SE
Washington D.C.
REPUBLICAN NATIONAL COMMITTEE

BY: [illegible]
1522 K St NW
WASH. D.C.
AUTHOR

B20406530173

Attachment II

[¶5214] AO 1976-50: Providing Tee Shirts for Campaign Committee

[It is illegal for a corporation to produce tee shirts with the candidate's name on them and to provide the campaign committee with a contribution for each shirt sold. Answer to Gordon K. Durnil, Treasurer, Friends of Dick Lugar Committee.]

This letter responds to yours of July 6, 1976, requesting an advisory opinion as to the applicability of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), to the circumstances described in your letter. You advised that the Friends of Dick Lugar Committee (Committee) has authorized Logo 7, Inc., an Indiana corporation, to produce and market a shirt bearing the candidate's name. You further advised that the committee, apart from distributing order forms to campaign workers who in turn redistribute them to potential contributor/purchasers, is not involved in selling the shirts and will incur no expenses. The corporation will transmit to the Committee a $1.00 contribution, earmarked to the campaign, for the sale of each shirt. You requested an advisory opinion as to whether this type of arrangement with the corporation would be permitted under the Act.

2 U.S.C. §441b(a) states:

> "(a) It is unlawful for any . . . corporation whatever . . . to make a contribution or expenditure in connection with any election to . . . [Federal] office.

The term "contribution or expenditure" is defined in 2 U.S.C. §441b to include:

> "any direct or indirect payment, distribution loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to . . . [Federal office] . . ." (Emphasis added.)

The fact that expenses of producing and marketing the shirt are paid entirely by the corporation results in the Committee receiving something of value from the corporation. The corporation is effectively advancing funds to assist the Committee in a fundraising effort and is also serving as a conduit in providing a contribution to the Committee for every shirt that is sold. For these reasons


© 1976, Commerce Clearing House, Inc.



this activity is clearly distinguishable from the facts presented in Advisory Opinion 1975-15 wherein the Wallace campaign itself purchased and sold various campaign related items as a fundraising method. Therefore, this type of arrangement would be unlawful under the Act.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act to the specific factual situation set forth in your request. 2 U.S.C. §437f.

Dated: September 2, 1976.

[¶5215] AO 1976-51: Informal Discussion Group

[A group which discusses foreign policy and determines to make contributions to certain candidates is a political committee. Answer to Robert N. Thomson, Esquire.]

This is in response to your letter dated February 9, 1976, requesting an advisory opinion on behalf of the Democratic Senatorial Campaign Committee, a political committee registered pursuant to the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

The request sets out the following facts:

> There are a number of individuals, commonly acquainted, who live in various cities throughout the United States. These individuals share a common concern about a particular aspect of United States foreign policy. From time to time they communicate with one another by telephone to discuss the possibilities of petitioning their elected representatives and other decision-makers in the Federal government. Occasionally, these individuals may meet personally to discuss such matters.
>
> The individuals belong to no organized group. There is no group headquarters nor are there any group employees. The individuals maintain no joint bank account where funds are commingled. The individuals are bound together only by a common concern about a particular aspect of United States foreign policy, by personal friendship, and by a common ethnic heritage.

Attachment VI
1 of 5 A-518
Rec'd 8/27/79
Audit Division

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

August 24, 1979

MEMORANDUM TO: Bob Costa/Dan Boyle

THROUGH: Orlando B. Potter O.B.P. for
Staff Director

FROM: William C. Oldaker

SUBJECT: Audit of Citizens For The Republic

The Office of General Counsel has reviewed your memorandum of July 11, 1979, concerning certain matters noted during the field work of the audit of the Citizens for the Republic ("CFTR"), and referred to this Office for legal analysis and opinion. The Office of General Counsel is of the opinion that these matters noted by the auditors may involve violations of the FECA and therefore should be referred to this Office for possible compliance action.

The first issue concerns the receipt of a $25 per person charge to defray a "luncheon expense" which was paid by individuals and by corporations for their representatives attending CFTR seminars. (There was no charge for attending the seminars). You state in the memorandum that CFTR did not consider these receipts to be contributions, thus creating a possible reporting problem as well as a possible illegal corporate contribution.

In light of the Commission's determinations in Advisory Opinions 75-15 and 76-22 that payments made to a political committee are contributions even if something of value is

received in return, it would appear that such payments to defray luncheon expenses should have been reported as contributions by CFTR. This is especially true where such payments were made by corporations, as 2 U.S.C. § 441b defines a corporate contribution as "any direct or indirect payment ... to any candidate, campaign committee, ... in connection with any election...", and those funds received by CFTR would be available for use in connection with a federal election. See also, AO 79-17, 79-2, and 78-46. At minimum, such payments would be contributions to the extent they exceed the actual cost of the lunch charged to CFTR. Therefore, this issue should be referred to the Office of General Counsel for possible compliance action.

The second issue noted in the memorandum concerns the relationship of CFTR to the Citizens for the Republic Education Fund (Ed Fund). 1/ Your memorandum states that

---

1/ According to a statement of purpose and organization prepared for the auditors by the General Counsel of the Ed Fund (Attachment II of your memorandum), the Ed Fund is "an independent, non-profit research and education institution established to develop and disseminate to the public information on current issues of public policy and on citizen participation in the political ... process." The Ed Fund does not support candidates in state or federal elections. The Ed Fund is in the process of being incorporated under the laws of the State of California.

the Ed Fund does not make any direct solicitations for funds, and that apparently most contributions to the Ed Fund are a result of CFTR solicitations or corporate contributions to CFTR endorsed and deposited to the Ed Fund account. You further state that CFTR receipt and expenditure records indicate that CFTR paid $13,001.66 for expenses categorized as for the use of the Ed Fund, and that in December 1978 the Ed Fund transmitted seven checks for a total of $13,001.66 to CFTR for expenses incurred and services rendered from November 1977 through January 1979. One of these payments made on December 20, 1978, was an advance payment for "Seminar Services" to be provided in January 1979.

The above facts present several problems. First, with reference to the corporate contributions to CFTR that are deposited in the Ed Fund's account, such corporate payments would still appear to be corporate contributions made to CFTR in violation of 2 U.S.C. § 441b(a). Under the Act and the Commission's regulations, a political committee may not accept or receive corporate contributions. 2 U.S.C. § 441b, 11 CFR 114.2(c). To the extent CFTR endorses checks drawn on corporate funds and made payable to the committee, CFTR has "received" such a corporate contribution even if CFTR transfers these funds to another entity such as the Ed Fund.

The payments made in December 1978 by the Ed Fund to CFTR totalling over $13,000 also appear to be unlawful contributions in that they exceed the $5,000 contribution limit of 2 U.S.C. § 441a(a)(C). As stated previously, such payments, even as repayments for goods or services rendered, are considered contributions. See AOs 75-15 and 76-22. At the very least, the $2,000 paid as an advance for future expected services represents a direct contribution, 2 U.S.C. 431(e), and should have been reported as such. Furthermore, as the Ed Fund account contains corporate contributions and funds, payments by the Ed Fund to CFTR may be indirect corporate contributions prohibited by 2 U.S.C. § 441b(a). In light of the foregoing, the matter should be referred to the Office of General Counsel for possible compliance action.

One other point should be noted. Your memorandum states that the auditors informed CFTR's assistant treasurer that the Ed Fund could pay CFTR's expenses and then be reimbursed by CFTR. The assistant treasurer questioned whether such a procedure could result in Ed Fund expenditures to influence federal elections, but the staff replied such a procedure was apppoved by the Commission. However, this Office is not aware of Commission approval of this procedure in a factual situation such as the one presented. Although AO 76-72 sets out such a procedure, that Advisory Opinion Request was made by a state party committee and is not necessarily

applicable beyond that context. The situation presented here can be distinguished in significant aspects. CFTR and the Ed Fund are not party committees, nor do they represent two accounts of one committee. See 11 CFR 102.6. Rather, CFTR and Ed Fund are two separate entities. Thus, the Office of General Counsel does not agree with the advice and assurances given by the audit staff to the assistant treasurer concerning the payment of CFTR operating expenses by the Ed Fund.

8204053470

Attachment VII
1 of 2

LAW OFFICES
SEROTKIN AND BODEM
48 NORTH WALNUT STREET
MOUNT CLEMENS, MICHIGAN 48043

DAVID M. SEROTKIN
LOREN E. BODEM

TELEPHONE
(313) 469-0300

July 7, 1977

Ms. Arlene Triplett
Comptroller
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Dear Ms. Triplett:

My immediate response to your letter and to the previous telephone call from Jacquie Nystrom is that you must be kidding. However, on the assumption that you are not, this letter is in response on behalf of the Serotkin for Congress Committee.

The committee does not feel that it owes the Republican National Committee any money, and will not be sending any. I might add that it has none to send anyway.

The nature and amounts of the various contributions of the National Committee to our campaign were at all times at the discretion and under the control of the National Committee. The Serotkin for Congress Committee accepted them in reliance upon the National Committee's representations that the contributions were legal in every respect, including their amounts. We would not have accepted services in excess of any statutory maximum, because we could not afford to pay for them even before the election was held. Under the circumstances, therefore, we do not find any obligation on our part to pay.

Even if there was an obligation, we could not be certain as to the accuracy of your figures, since we again had no occasion to participate in the deliberations which produced it. We don't know what formula was applied or computations made. Our feeling that you must have made some mistake along the way is not diminished at all by your letter wherein you are unable even to spell my name correctly.

In addition to the above considerations, I would point out to you that our most recent committee disclosure filed with the Federal Elections Commission shows that the committee still has debts from the last election in excess of $42,000.

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There is no way that we could pay anything to you, even if we were obligated to do so.

I would suggest the following possible approaches. The telephone banks to which you refer were operated to a major extent by our committee's volunteers. These were people who were primarily interested in supporting me, but cooperated at the telephone centers to work on behalf of the other Republican candidates being supported by that effort. I am sure that the value of our volunteers' services would more than offset the in kind services to our campaign which you claim went over the limit.

Secondly, the National Committee was permitted under the law to assist me with respect to the Primary Election, separately and in addition to any amounts or services provided for the General Election. I believe some of the contribution or services could legitimately be attributed to expenditures or obligations incurred with respect to the Primary Election.

I know that the Republican National Committee did not write the Federal Election Laws which are primarily responsible for the agonies being undergone by many candidates, former candidates, and their supporters. My campaign committee was composed entirely of volunteers who gave up a lot of their time and talent to serve on that committee. They don't need all these headaches, and I don't. Perhaps somewhere, sometime, the Republican National Committee will find an opportunity to publicize the inequities of the Federal Election Laws and the very real way in which they protect incumbency and stifle genuine democracy.

Very truly yours,

DAVID M. SEROTKIN

DMS/cmi

9204053781

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1180

Date Filmed 9/29/82 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 1166/1186.

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# Republican National Committee

**E. Mark Braden**
House Counsel

**Catherine E. Gensior**
Deputy House Counsel

August 27, 1982

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 1166/1180

Dear Mr. Gross:

I am writing in response to your letter of August 16th in regard to MUR 1180. Your letter indicated that the Commission, on the 12th of August, 1982, accepted the conciliation agreement agreed to by the Republican National Committee.

You state in your letter that provisions of the Federal Election Campaign Act prohibit any information derived in connection with a conciliation attempt from becoming public without the written consent of the respondent and the Commission. The Republican National Committee has no objections to any information in relation to this matter becoming part of the public record.

If you have further questions in relation to this matter, please do not hesitate to contact me.

Very truly yours,

E. Mark Braden

EMB:jd

Republican
National
Committee

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1982

RECEIVED AT THE FEC
82 SEP 2

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1166/1180

8204036003