FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1349

Date Filmed 3-9-83 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

Conciliation materials exempt pursuant to 5 USC §552(b)(3); Comment sheet exempt pursuant to 5 USC §552(b)(5)

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
✓	(3) Exempted by other statute	___	(8) Banking Information
___	(4) Trade secrets and commercial or financial information	___	(9) Well Information (geographic or geophysical)
✓	(5) Internal Documents		

Signed Maura E. Hurt

date February 16, 1983

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 18, 1983

Maureen Duignan
Thomas Lemmer
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1142/1255, 1349, 1360
Charles Wick,
Mary Jane Wick,
Mercury Exploration Company,
Albert Prowiss,
Peter Hon,
Forrest Lattner,
Thomas Sefton,
Mrs. B.F. Weekley,
Thomas Trainer,
Tommy Thomas Chevrolet Co., Inc.,
North Hollywood Glass Company,
Richard J. Green,
Leonard W. Hardy,
Charles K. Fletcher,
Margaret B. Bartlett,
James M. Forgotson,
Frank M. Klamt,
Moran Interests

3040018013

Dear Ms. Duignan and Mr. Lemmer:

This is to advise you that the entire file in each of these matters has now been closed, and will become part of the public record within 30 days.

If you have any questions, please contact Maura White at 523-4057 or Anne Weissenborn at 523-4175.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 18, 1983

Bill D. Warren
Warren Properties, Inc.
5511 Parkcrest
Suite 107
Austin, Texas 78731

Re: MUR 1349
Warren Properties, Inc.

Dear Mr. Warren:

This is to advise you that the entire file in this matter has now been closed, and will become part of the public record within 30 days.

If you have any questions, please contact Maura White at 202-523-4057.

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 18, 1983

Ruth Jones
Ruth Jones, Ltd.
124 East 75th Street
New York, New York 10021

Re: MUR 1349
Ruth Jones, Ltd.

Dear Ms. Jones:

This is to advise you that the entire file in this matter has now been closed, and will become part of the public record within 30 days.

If you have any questions, please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304018

GCC# 9421

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 1142/1255,
Reagan for President Committee	)	1349, 1360
	)	

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. The Commission has found probable cause to believe that the Reagan for President Committee ("the Committee") violated 2 U.S.C. § 441a(f) in connection with MUR 1142/1255 and MUR 1349. The Commission has found reason to believe that the Committee violated 2 U.S.C. §§ 441a(f), 441b(a), and 434(b)(8) in connection with MUR 1360.

NOW, THEREFORE, the Commission and the Committee, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) with respect to MUR 1142/1255 and MUR 1349, and having participated in informal methods of conciliation prior to a finding of probable cause to believe with respect to MUR 1360, do hereby agree as follows:

I. The Federal Election Commission has jurisdiction over the Committee, and the subject matter of this case. This

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agreement is entered into pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) as to MURs 1142/1255 and 1349, and has the effect of an agreement entered into pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) with regard to MUR 1360. The Committee has had a reasonable opportunity to demonstrate that no action should be taken in this matter, and enters into this agreement voluntarily.

II. A. (1) The Committee registered with the Commission on March 5, 1979, as the principal campaign committee of Ronald Reagan for the 1980 presidential primary elections.

B. (1) Section 44la(f) of Title 2, United States Code, prohibits a political committee from knowingly accepting a contribution from an individual which aggregates in excess of $1,000 per election.

(2) Section 44la(a)(1)(A) of Title 2, United States Code, prohibits single or aggregated contributions in excess of $1,000 from any person to any candidate or authorized committee of that candidate with respect to any election to federal office.

(3) Section 103.3(b) of Title 11, Code of Federal Regulations, requires that contributions which appear to be illegal are to be returned within ten days of receipt or, if deposited, are to be noted as being possibly illegal and duly investigated. If the legality of a contribution cannot be established, it is to be refunded "within a reasonable time."

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(4) Section 100.7(c) of Title 11, Code of Federal Regulations, provides that, "any contribution or payment made by a married individual shall not be attributed to that individual's spouse, unless otherwise specified by that individual or by the individual's spouse."

(5) Section 104.8(c) of Title 11, Code of Federal Regulations, states that "absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee," and Section 104.8(d) provides that "a contribution which represents contributions by more than one person shall indicate on the written instrument, or on an accompanying written statement signed by all contributors, the amount to be attributed to each contributor."

C. (1) During 1979 and 1980, the Committee accepted certain contributions from 370 individuals, the aggregate amounts of which exceeded $1,000 from each person and which totalled $187,349.94. Of this amount, $120,856.94 ultimately was refunded by the Committee.

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Refund checks totalling $14,405 were not cashed by contributors to whom they were issued. The Committee reattributed a total of $66,493 of the $187,349.94 amount to persons other than the originally reported contributors.

(2) The Committee contends that because of the volume of receipts during the primary campaign, it established a computerized system to record and aggregate contributions for purposes of complying with the reporting requirements and contribution limits. During the campaign the Committee received $13,890,201 in contributions. The Committee further contends that when its computerized system indicated that an individual's contribution had placed him or her in excess of the limitation, it used best efforts to verify the fact, to obtain necessary documentation enabling it to reattribute where appropriate, and to refund excessive amounts not reattributable.

(3) The Commission has found that the Committee's acceptance of the contributions cited in section II, C(1), was a violation of 2 U.S.C. § 441a(f) and that the Committee did not refund contributions or obtain reattributions of contributions within a reasonable period of time after acceptance of the contributions at issue. The average time taken for issuance of the refunds here involved was nine months.

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The average time taken for making the reattributions involved herein was nine and one-half months. The Commission has considered the return of excessive contributions and reattributions as a factor in mitigation of the violation.

D. (1) Section 431(8)(A)(i) of Title 2, United States Code, defines a "contribution" as including any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

(2) Mr. Charles Wick was a volunteer worker who supervised the candidate's announcement dinner, which took place in New York, on November 13, 1979. During the period from September 12, 1979, through November 15, 1979, Mr. Wick paid expenses totalling $18,712.54 in connection with this event using his own cash, checks, and credit cards. Mary Jane Wick, a volunteer worker for the Committee, also paid expenses of $766.05 on December 31, 1979, in connection with this event using her personal check. Each of these individuals previously had contributed $1,000 to the Committee on March 26, 1979.

(3) On January 18, 1980, Mr. Wick submitted to the Committee a request for $19,478.59 for the expenses he paid ($18,712.54), and for the expenses paid by Mary Jane Wick ($766.05). On April 9, 1980, (i.e., 81 days after the date of the Wicks' invoice), the Committee

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reimbursed Charles Wick and Mary Jane Wick in the amount of $19,478.59.

(4) The Committee contends that all other expenses in connection with the November 13, 1979, fundraising event were paid directly by the Committee. The Committee further contends that it assumed reasonably that these were all of the expenses incurred in connection with the event, that the Committee had not authorized Mr. or Mrs. Wick to incur additional expenses or to pay for them with private funds, and that the Committee was not aware that Mr. and Mrs. Wick had paid expenses in excess of their contribution limitations until it received a request for reimbursement. The Committee contends further that its action after it received notice of the payment was reasonable, since Mr. Wick was reimbursed by the Committee 81 days from the date that he and Mrs. Wick submitted their expenses to the Committee. During that time, the Committee verified these expenses, confirmed the connection between these charges and the Committee's activities, and ultimately decided to authorize payment.

(5) The Commission has found that the Committee accepted contributions in excess of the limitation in violation of 2 U.S.C. § 441a(f) when Mr. and Mrs. Wick paid the above expenses during the period of

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September 12, 1979, through December 31, 1979 because such payments constituted advances, i.e., contributions, to the Committee, and the actions and knowledge of the Wicks may be imputed to the Committee.

E. (1) North Hollywood Glass Company ("NHGC") is a sole proprietorship owned and operated by Richard Gulbranson. It manufactures glass doors and windows. Between August 31, 1979, and October 31, 1979, NHGC incurred expenses totalling $5,680.00 with regard to the organization of a political fundraising event conducted on October 11, 1979. The expenses were incurred for such costs as printing, postage, caterers, and wages.

(2) By invoice dated October 31, 1979, the NHGC billed the Committee for the above expenses, and was reimbursed on December 3, 1979, i.e., within 33 days from the date on which NHGC's request for reimbursement was submitted.

(3) The Committee contends that it did not know that the NHGC had made expenditures on behalf of the Committee in excess of its limitation until it received NHGC's request for reimbursement. Furthermore, the Committee contends that upon receipt of information that expenses in excess of the limits had been incurred, it acted promptly to verify these expenses,

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confirm their connection with Committee activities, and reimburse the NHGC.

(4) The Commission has found that the NHGC made an excessive contribution to the Committee when it paid expenses of the fundraiser which totalled more than $1,000, and that, when these payments were made, the Committee accepted an excessive contribution in violation of 2 U.S.C. § 441a(f). The Commission has found that the NHGC incurred the above expenses on behalf of the Committee outside the ordinary course of its business and that the actions and knowledge of Mr. Gulbranson may be imputed to the Committee.

F. (1) On August 28, 1979, Charles K. Fletcher, the treasurer of the Committee for the State of Hawaii, made a $5,000 deposit using his personal funds. This deposit was made to the Hilton Hawaiian Village in connection with a fundraising event conducted in Hawaii on September 4, 1979. The Committee reimbursed Mr. Fletcher for the $5,000 deposit on January 25, 1980.

(2) The Committee contends that it had not authorized Mr. Fletcher to make the above deposit and had no actual knowledge that he had done so until it received notification to that effect. The Committee further contends that it acted reasonably after it learned of

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Mr. Fletcher's payment and promptly refunded his deposit.

(3) The Commission has found that the Committee accepted a contribution in excess of the limitation in violation of 2 U.S.C. § 441a(f) when Mr. Fletcher made a $5,000 deposit in connection with a fundraiser in Hawaii. The Commission has found that the actions and knowledge of Mr. Fletcher may be imputed to the Committee.

G. (1) Section 441b(a) of Title 2, United States Code, prohibits a federal political committee from knowingly accepting a contribution from a corporation.

(2) Luther Thomas, who is usually known as Tommy Thomas, was the Florida State Chairman of the Committee. During the period April 3, 1979, through August 26, 1980, he incurred travel and related expenses totalling $9,466.60 for hotels, airfare, telephones, meals, and car rentals. Tommy Thomas Chevrolet Co., Inc. ("TTCC"), an incorporated entity, which is wholly owned by Luther Thomas, paid these expenses. On September 30, 1980, the Committee received a letter from a Ms. Laurens P. Russell, an employee of TTCC, on TTCC letterhead which sought reimbursement for the above expenses. Ms. Russell stated that at the request of "Mr. Tommy Thomas" she was enclosing a "list of checks paid by Tommy Thomas

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Chevrolet" and "original documents substantiating the enumerated charges," which amounted to $9,466.60.

(3) Section 434(b)(8) of Title 2, United States Code, requires a political committee to report the amount and nature of an outstanding obligation.

(4) The Committee, on its 10 day pre-general election report, 30 day post-general election report, and 1980 Year-End Report, reported an obligation of $9,466.60 to the individual, Tommy Thomas. The date of the obligation was reported as September 30, 1980, and the nature of the obligation was reported as "travel expense." The Committee's April 15, 1981, Quarterly Report, reported an expenditure on February 12, 1981, of $9,180.29 to Tommy Thomas as reimbursement for travel expenses.

(5) The Committee contends that it never authorized Mr. Thomas to have TTCC pay the above expenses, and that it did not know that TTCC had done so until it received Ms. Russell's letter requesting reimbursement. The Committee also contends that it owed no obligation to TTCC and that its method of reporting was not unreasonable.

(6) The Commission has found that the Committee accepted a corporate contribution from TTCC in violation of 2 U.S.C. § 441b(a) when TTCC paid the expenses incurred by Tommy Thomas in the course of his

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activity on behalf of the Committee. The Commission has found that these expenses were incurred outside the ordinary course of TTCC business and that the actions and knowledge of Tommy Thomas may be imputed to the Committee. Further, the Commission has found that the Committee violated 2 U.S.C. § 434(b)(8) when it improperly reported an obligation to the individual, Tommy Thomas, rather than to TTCC.

III. Because the Committee and the Commission desire to conclude this matter without further formal proceedings on the unresolved issues, the Committee agrees to pay a civil penalty of Nine Thousand Five Hundred Dollars ($9,500) in connection with those matters referenced in Section II C, and Two Thousand Five Hundred Dollars ($2,500) in connection with those matters referenced in Section II D, E, F, and G, pursuant to 2 U.S.C. § 437g(a)(5)(A).

IV. A. Except as provided by IV C below, this agreement shall constitute a complete bar to any further action by the Commission with regard to matters addressed in this agreement.

B. The Committee 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.

C. 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 Section III of

this agreement has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

D. It is mutually agreed that this agreement shall become effective on the date that all parties hereto have executed same and the Commission has approved the entire agreement.

E. The Committee shall have fifteen days to comply with the requirements contained in Section III of this agreement.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: Kenneth A. Gross — February 3, 1983
Kenneth A. Gross — Date
Associate General Counsel

FOR THE COMMITTEE:

Curtis Mack — January 21, 1983
Curtis Mack — Date
Treasurer

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REAGAN FOR PRESIDENT
COMPLIANCE FUND
P.O. BOX 4207
ARLINGTON, VIRGINIA 22204

1732

15-3/540

Dec. 17 19 82

PAY TO THE ORDER OF Treasury of the United States $ 12,000.00

Twelve thousand dollars----------00/100 DOLLARS

The RIGGS NATIONAL BANK
of WASHINGTON D.C.
MAIN OFFICE
1503 PENNSYLVANIA AVENUE, N.W.

FOR MUR 1142/1255, 1349, 1360

Edmund L. Harrington

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 1142/1255, 1349
Reagan for President Committee	)	and 1360

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 3, 1983, the Commission decided by a vote of 6-0 to take the following actions in MURs 1142/1255, 1349 and 1360:

1. Approve the proposed conciliation agreement as submitted with the General Counsel's January 31, 1983, Memorandum to the Commission.

2. Take no further action against the Reagan for President Committee under former 2 U.S.C. § 434(b)(9) for its method of reporting repayments to persons who made advances.

3. Close the files in MURs 1142/1255, 1349 and 1360.

4. Send the letter as attached to the January 31, 1983 Memorandum to the Commission.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter.

Attest :

2-3-83
Date

Marjorie W Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary: 1-31-83, 1:37
Circulated on 48 hour tally basis: 2- 1-83, 11:00

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RECEIVED FEC
Gen Coun 95/6
83 FEB 17 P12:36

MUSICK, PEELER & GARRETT
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
SUITE 1175 RING BUILDING
1200 EIGHTEENTH STREET N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 775-1427

LOS ANGELES OFFICE
ONE WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA
(213) 629-7600

NEWPORT BEACH OFFICE
SUITE 900
4000 MACARTHUR BOULEVARD
NEWPORT BEACH, CALIFORNIA
(714) 752-8100

ELVON MUSICK 1890-1968
LEROY A. GARRETT 1906-1983

DENVER OFFICE
SUITE 1800
718 SEVENTEENTH STREET
DENVER, COLORADO
(303) 629-5721

WRITER'S DIRECT DIAL NUMBER

83 FEB 17 P2:24

February 9, 1983

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

Attention: Kenneth A. Gross, Esq.

Re: Reagan for President Committee -
MURs 1142/1255, 1349, 1360

Dear Mr. Gross:

I hereby request that the public record reflect that the Reagan for President Committee has authorized me to serve as the spokesman for the Committee with respect to any inquiries which may be directed to the Committee with respect to the above-captioned matters.

Yours truly,

Ronald E. Robertson
for Musick, Peeler & Garrett

RER:nb

cc: Mr. Curtis Mack
Treasurer
Reagan for President Committee

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 4, 1983

Ronald E. Robertson, Esquire
Musick, Peeler and Garrett
Suite 1175, Ring Building
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

Re: MURs 1142/1255, 1349 and 1360;
Reagan for President Committee

Dear Mr. Robertson:

On February 3, 1983, the Commission accepted the conciliation agreement signed by your client, Reagan for President Committee, in settlement of violations of 2 U.S.C. §§ 434(b)(8), 441a(f), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended. In addition, in connection with MUR 1142/1255, the Commission determined to take no further action against the Committee under former 2 U.S.C. § 434(b)(9) for its method of reporting repayments to persons who made advances.

Accordingly, the file has been closed in the above-referenced matters, and it will become public within thirty days. See 11 C.F.R. § 4.4(a)(3). 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

cc: John Duffy

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GCC 1671

MUR 1349

Arthur J. Dellinger, Sr.
Dellinger & Dellinger
Certified Public Accountants
9220 Sunset Boulevard
Suite 206
Los Angeles, CA 90069

June 17, 1982

82 JUN 17 P4:06

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

Dear Mr. Reiche:

The undersigned as the Treasurer of the Reagan for President Committee, the Reagan Bush Committee and the Reagan Bush Compliance Fund (hereinafter collectively referred to as the "Committees") hereby officially notifies the Commission that the Committees have designated Ronald E. Robertson of the law firm of Musick, Peeler & Garrett, 1200 18th Street, N.W., Suite 1175, Washington, D.C. 20036 as Special Counsel to represent the Committees before the Federal Election Commission with respect to all pending matters and the Committees have designated John J. Duffy of the law firm of Pierson, Ball & Dowd, 1200 18th Street, N.W., Suite 1000, Washington, D.C. 20036 as Associate Special Counsel with respect to all FEC matters.

In addition to myself it is contemplated that Angela M. (Bay) Buchanan and Scott Mackenzie will be conferring with your audit and legal staffs in connection with these pending matters.

All communication from the FEC's General Counsel should now be sent directly to Mr. Robertson with a copy to me at the address shown above.

All other correspondences from the Commission and its staff should be sent directly to me at the above address with copies to Mr. Robertson.

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No further communications from the Commission or its staff relating to the Committees are to be sent to Mr. Edward L. Wiedenfeld or the law firm of McKenna, Conner & Cuneo.

Thank you for your attention to these matters.

Yours truly,

Arthur J. Dellinger, Sr.
Treasurer
Reagan for President Committee
Reagan Bush Committee
Reagan Bush Compliance Fund

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 8, 1982

Edward Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

RE: MUR 1349
Charles Wick, Mary Jane Wick,
Reagan for President Committee

Dear Mr. Weidenfeld:

On April 6, 1982, the Commission determined that there is probable cause to believe that your client, the Reagan for President Committee ("Committee"), violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting excessive contributions from Charles Wick and Mary Jane Wick. The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it to the Commission within ten days. I will then recommend that the Commission approve the agreement.

The Commission also determined with respect to the Committee, to take no further action concerning violations of 2 U.S.C. §§ 432(c), 433(c) and 434(b) associated with the Oregon fundraising event. Moreover, there was an insufficient number of votes necessary for the taking of any further action against the Committee with respect to a violation of 2 U.S.C. § 434(b)(5)(A).

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In addition, the Commission determined to take no further action against Mary Jane Wick with respect to a violation of 2 U.S.C. § 441a(a)(1)(A), and there was an insufficient number of votes necessary for the taking of any further action against Charles Wick with respect to a violation of 2 U.S.C. § 441a(a)(1)(A). Should you wish to submit any materials concerning these matters to appear on the public record, please do so within ten days.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Maura White, the staff member assigned to this matter, at (202) 523-4057.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

RE: MUR 1349
Charles Wick, Mary Jane Wick,
Reagan for President Committee

Dear Mr. Weidenfeld:

On April 6, 1982, the Commission determined that there is probable cause to believe that your client, the Reagan for President Committee ("Committee"), violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting excessive contributions from Charles Wick and Mary Jane Wick. The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it to the Commission within ten days. I will then recommend that the Commission approve the agreement.

The Commission also determined with respect to the Committee, to take no further action concerning violations of 2 U.S.C. §§ 432(c), 433(c) and 434(b) associated with the Oregon fundraising event. Moreover, there was an insufficient number of votes necessary for the taking of any further action against the Committee with respect to a violation of 2 U.S.C. § 434(b)(5)(A).

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In addition, the Commission determined to take no further action against Mary Jane Wick with respect to a violation of 2 U.S.C. § 441a(a)(1)(A), and there was an insufficient number of votes necessary for the taking of any further action against Charles Wick with respect to a violation of 2 U.S.C. § 441a(a)(1)(A). Should you wish to submit any materials concerning these matters to appear on the public record, please do so within ten days.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Maura White, the staff member assigned to this matter, at (202) 523-4057.

Sincerely,

Charles N. Steele
General Counsel

4/8/82

Enclosure
Conciliation Agreement

2304043017

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1349
Reagan for President Committee,)
Charles Wick, Mary Jane Wick)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on April 6, 1982, do hereby certify that the Commission took the following actions in MUR 1349:

1. Decided by a vote of 4-2 to find probable cause to believe the Reagan for President Committee violated 2 U.S.C. §441a(f).

   Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioners Aikens and Elliott dissented.

2. Failed on a vote of 3-3 to pass a motion to find probable cause to believe Charles Wick violated 2 U.S.C. §441a(a)(1)(A).

   Commissioners Harris, McDonald, and Reiche voted affirmatively for the motion. Commissioners Aikens, Elliott, and McGarry dissented.

3. Decided in a vote of 6-0 to take no further action against Mary Jane Wick.

4. Failed on a vote of 3-2 to pass a motion to find probable cause to believe the Reagan for President Committee violated 2 U.S.C. §434(b)(5)(A).

   Commissioners Harris, McDonald, and Reiche voted affirmatively for the motion. Commissioners Aikens and Elliott dissented. Commissioner McGarry abstained on the vote.

5. Decided by a vote of 6-0 to take no further action against the Reagan for President Committee with respect to apparent violations of 2 U.S.C. §§432(c), 433(c), and 434(b).

CONTINUED

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6. Decided by a vote of 5-1 to reconsider the action taken with respect to #1 above.

   Commissioners Aikens, Elliott, McDonald, McGarry, and Reiche voted affirmatively for the decision to reconsider. Commissioner Harris dissented.

7. Failed on a vote of 3-3 to pass a motion to reject the General Counsel's recommendation with respect to #1 above and find no probable cause to believe the Reagan for President Committee violated 2 U.S.C. §44la(f).

   Commissioners Aikens, Elliott, and McGarry voted affirmatively for the motion. Commissioners Harris, McDonald, and Reiche dissented.

8. Decided on a vote of 4-1 to find probable cause to believe the Reagan for President Committee violated 2 U.S.C. §44la(f).

   Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioner Aikens dissented. Commissioner Elliott was not present at the time of the vote.

9. Decided on a vote of 4-0 to direct the Office of General Counsel to write a revised letter and conciliation agreements pursuant to the actions taken above.

   Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioner Aikens abstained on the vote. Commissioner Elliott was not present at the time of the vote.

Attest:

4/7/82
Date

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

8304030177

March 26, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1349

Please have the attached General Counsel's Report distributed to theCCommission for the agenda of April 6, 1982. Thank you.

Attachment

cc: White

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RECEIVED
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reagan for President Committee,) MUR 1349
Charles Wick, Mary Jane Wick)

82 MAR 26 P4:34

EXECUTIVE SESSION
APR 6 1982

GENERAL COUNSEL'S REPORT

I. Background

On April 7, 1981, the Commission determined that the Reagan for President Committee ("Committee") violated 2 U.S.C. §§ 441a(f), 434(b)(5)(A), 434(b), 432(c), and 433(c), and that Charles and Mary Jane Wick each violated 2 U.S.C. § 441a(a)(1)(A). The Wicks responded to the Commission's finding on May 19, 1981; the Committee responded on June 10, 1981, and July 14, 1981. On December 18, 1981, briefs recommending findings of probable cause to believe were mailed to the Committee and Charles Wick. Response briefs were filed on January 22, 1982, and an affidavit was submitted on January 29, 1982.

II. Legal Analysis

This matter involves the Committee's acceptance of excessive contributions of at least $18,712.54 and $766.05 from Charles and Mary Jane Wick, respectively, and the making of such contributions by the Wicks. (The Wicks incurred expenses totalling the above amounts on behalf of the Committee and were not reimbursed until several months thereafter). Also involved herein is the Committee's failure to: report the ultimate recipient of the expenditures incurred by the Wicks; amend its statement of organization timely; keep an account of certain

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expenditures; and, report certain contributions received and expenditures made. See the General Counsel's Briefs to the Committee and Charles Wick.

(a) Charles and Mary Jane Wick

The response briefs filed in this matter contain several defenses. The first argument raised is that reimbursable expenses incurred on behalf of a committee are not contributions. The respondents reason that the Act addresses the issue of unreimbursed expenses constituting a contribution, but does not address reimbursed expenses, and that "[t]his silence ... strongly implies that Congress intended that reimbursable expenditures ... are not contributions." According to the respondents, "[a]ccounting and cost control considerations support [their] interpretation," and "[t]here are no provisions in either the Act or its implementing regulations which contradicts this position."

It is the view of the General Counsel that the above argument is without merit and unsupported by statute. Contrary to the respondents' contention, the Act specifically addresses this situation by defining the term "contribution" to include advances. Because of this inclusion, and the fact that there is no provision within the Act or regulations which exempts this activity from the definition of contribution, it is the view of

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the General Counsel that under these circumstances an individual is prohibited from incurring expenses on behalf of a political committee in excess of the contribution limitations ($1,000 per candidate per election).

It should be noted that if individuals were allowed to make advances to political committees in excess of the contribution limitations, individuals who have access to substantial resources, like the Wicks, would be able to incur unlimited expenses on behalf of a committee, provided they are subsequently reimbursed. Such a situation is contrary to the contribution limitations, in the General Counsel's view, and is no different from the making of a loan which is clearly subject to the limitations.

The respondents' second argument, that the Wicks did not make an "advance" to the Committee because "they did not extend credit to the Committee for any length of time beyond normal business practice," is also meritless in the General Counsel's view. The respondents support their position by arguing that an "advance" is limited by definition to an extension of credit by any person for a length of time beyond normal business practice. The General Counsel finds such a position to be based upon an erroneous interpretation of the Act. Nowhere in the statute or regulations is the term "advance" defined in the manner stated

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by the respondents. Rather, the term is defined only as a "contribution." Moreover, while the regulation (11 C.F.R. § 100.7(a)(4)) cited by the respondents permits "persons" to extend credit to political committees provided the credit is not extended beyond normal business practice, that regulation and 11 C.F.R. § 114.10(a) applies only to businesses which provide either goods or services to the Committee in a vendor-vendee relationship, and not to individuals working as campaign volunteers.

The respondents' third argument that a contribution cannot be considered to have occurred because the Wicks did not have a "donative intent," is equally unconvincing. The respondents' view overlooks the fact that, by their very nature, advances and loans do not involve a donative intent. However, that there is no such intent does not alter the fact that advances and loans are contributions since both are included within the definition of "contribution."

Finally, the Committee argues that it must be demonstrated that it accepted the Wicks' alleged contributions knowing the contributions to be in violation of the limitations, in order to be found to have "knowingly" accepted a contribution from them. Again, the respondent's argument fails, in the General Counsel's view. It is the position of the General Counsel that the

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term "knowingly," as used in § 441a(f), means only that a committee knew all of the facts of the matter; it need not know that the action is in violation of the law to establish liability. This view has been consistently applied in all matters before the Commission involving the receipt of excessive contributions, and was recently upheld by the district court in Federal Election Commission v. California Medical Association, 502 F. Supp. 196, 203 (N.D. Cal. 1980).

It cannot be successfully argued that the Committee did not have knowledge of all of the facts in the instant matter, since the Wicks incurred the expenses at issue as agents of the Committee. It is a settled proposition of law that the principal is considered to have the knowledge that its agent possesses within the scope of the agency. W.R. Grace and Co. v. Western U.S. Industries, Inc., 608 F.2d 1214, 1218 (9th Cir. 1979). Therefore, even if other Committee officials were not aware of the exact amount of the expenses incurred by the Wicks at the time they were incurred, the Wicks had such knowledge, and as a result of the agency relationship, the knowledge is imputed to the Committee. In view of the foregoing, and the fact that the Committee did not reimburse Charles Wick for five to seven months after he incurred the expenses, it is the view of the General Counsel that there is probable cause to believe that Charles Wick and the Committee violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f), respectively.

With respect to Mary Jane Wick, it is the recommendation of the General Counsel that no further action be taken in this matter. This recommendation is based upon the fact that Mrs. Wick made an advance of $766.05 in excess of the limitations. Taking no further action insures consistency with other matters pending before the Commission which involve excess contributions to the Committee.

(b) Failure to Report the Ultimate Recipient of Expenditures

Concerning the Committee's failure to report the ultimate recipient of the expenditures incurred by the Wicks (see pages 2-3 and 11 of the General Counsel's Brief regarding the Committee), the Committee asserts that neither the Act nor its implementing regulations require such reporting. It is further argued that the Presidential Compliance Manual is not "binding" because it is not a regulation or an advisory opinion, and because such a requirement is in "direct conflict" with the Act and regulations.

The statute and regulations here at issue, 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i) require committees to report "each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made...." As early as 1976, and thus prior to the promulgation of the regulations, the Commission interpreted the term "expenditure" to exclude payments made to committee personnel

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for the purchase of goods and services from third parties. Instead, such payments were deemed intra-committee transfers. The "expenditure" was the payment made by that committee agent to the provider of the goods or services involved. Thus, the person receiving the reported expenditure would be of necessity the provider of the goods or services involved, not a committee agent. See Notice to All Candidates and Committees, September 29, 1976. ("An advance to staff is not an expenditure, but rather an intra-committee transfer. The actual use to which the advance is put must be itemized.").

The Commission's requirement that committees report the name of the person who provided the goods or services involved in an expenditure represents the only logical interpretation of both the statute and the Commission's own regulations. It is an established rule of administrative law that agencies may interpret their own statute and regulations, and that such interpretations are controlling unless "plainly erroneous or inconsistent with the regulation." Sutherland, Statutes and Statutory Construction, § 31.06, quoting Immigration and Naturalization Service v. Stanisic, 395 U.S. 62 (1969). The Committee's argument that the Commission's reporting requirement is without legal significance is, therefore, without foundation. To permit the reporting of payments to committee agents when the monies involved were used

to pay other parties would clearly run counter to the public disclosure purposes of the Federal Election Campaign Act.

Given the Committee's failure to report the ultimate recipient of the expenditures at issue, it remains the recommendation of the General Counsel that there is probable cause to believe a violation of 2 U.S.C. § 434(b)(5)(A) has occurred.

(c) Oregon Fundraising Event

The response brief filed by the Committee argues that it did not fail to amend its statement of organization timely, fail to keep an account of expenditures ($5,233.90) and fail to report certain contributions ($5,233.90) and expenditures ($5,233.90) associated with the fundraiser conducted by the Committee to Elect Reagan ("CER") since it used its "best efforts" to comply with the Act. The affidavit of Scott McKenzie, the former Assistant Treasurer of the Committee, states that the fundraiser was not authorized by the national office, nor did the national office have knowledge of CER's use of the Citizens Valley Bank as a campaign depository prior to its receipt of the fundraiser's proceeds. 1/ The affiant states further that he made numerous attempts by telephone to obtain the required information and

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1/ That the Committee amended its statement of organization to include the Citizens Valley Bank indicates, however, that the fundraiser was conducted in conjunction with Committee agents at the local level.

documentation, that his efforts were terminated when a Commission auditor told him that "sufficient steps" had been taken to obtain the information, and that he finally obtained the information in the Spring of 1981 after the reason to believe finding in this matter. 2/

The term "best efforts" is defined within recordkeeping responsibilities (11 C.F.R. § 102.9(d)) as one written effort per transaction to obtain a duplicate invoice, receipt, or check. Within the reporting responsibilities (11 C.F.R. § 104.7(a)), when it is demonstrated that best efforts were used, the report of a political committee will be considered to be in compliance with the Act. The treasurer of a political committee will not be considered to have exercised best efforts to obtain the identification of a contributor of more than $200 unless at least one written effort, or one oral request documented in writing, has been made. 11 C.F.R. § 104.7(b). Although contributions of more than $200 are not involved here, it is the view of the General Counsel that "best efforts" with respect to the reporting requirements should be interpreted consistently as one written request or as one oral request, contemporaneously documented, for the required information.

2/ Mr. McKenzie's statement that he was told by a Commission auditor that "sufficient steps" had been taken to obtain the information is incorrect, according to the auditor involved. Rather, Mr. McKenzie was told to continue to seek the information and that the matter would be referred to the Office of General Counsel.

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In the instant matter, the Committee did not make either written or contemporaneously documented oral requests for the information at issue; rather, the Committee made several undocumented oral requests. Hence, the Committee should not be considered to have exercised "best efforts" in this matter. However, since the Committee did make numerous attempts to comply with the recordkeeping and reporting requirements, amended its statement of organization fairly soon after required, and amended its reports once the records were obtained, it is the recommendation of the General Counsel that no further action be taken with respect to violations of 2 U.S.C. § 432(c), 433(c), and 434(b). (This recommendation alters the recommendation contained in the General Counsel's Brief.)

III. Discussion of Conciliation and Civil Penalties

reports to include the ultimate recipients of the expenditures incurred by Mr. Wick.

IV. RECOMMENDATIONS

1. Find probable cause to believe the Reagan for President Committee violated 2 U.S.C. § 441a(f).

2. Find probable cause to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A).

3. Take no further action against Mary Jane Wick.

4. Find probable cause to believe the Reagan for President Committee violated 2 U.S.C. § 434(b)(5)(A).

5. Take no further action against the Reagan for President Committee with respect to apparent violations of 2 U.S.C. §§ 432(c), 433(c), and 434(b).

6. Approve the attached letter and conciliation agreements.

26 March 1982
Date

Charles N. Steele
General Counsel

Attachments:
1. Proposed letter and Conciliation Agreements (2).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

RE: MUR 1349
Charles Wick, Mary Jane Wick,
Reagan for President Committee

Dear Mr. Weidenfeld:

On , 1982, the Commission determined that there is probable cause to believe that your client, Charles Wick, violated 2 U.S.C. §§ 441a(a)(1)(A), and that your client, the Reagan for President Committee, violated 2 U.S.C. §§ 441a(f) and 434(b)(5)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose conciliation agreements for each of your clients that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreements, please sign and return them to the Commission within ten days. I will then recommend that the Commission approve the agreements.

In addition, after considering the circumstances, the Commission has determined to take no further action against Mary Jane Wick, and to take no further action against the Reagan for President Committee concerning apparent violations of 2 U.S.C. §§ 432(c), 433(c), and 434(b) associated with the Oregon fundraiser. Should you wish to submit any materials concerning

Attachment p.1

these matters to appear on the public record, please do so within ten days..

The Commission reminds your clients that it is nevertheless a violation of: 2 U.S.C. § 441a(a)(1)(A) for an individual to contribute in excess of $1,000 to any candidate with respect to each election for federal office; 2 U.S.C. § 433(c) to fail to amend a statement of organization within ten days; 2 U.S.C. § 434(b) to fail to report receipts and expenditures; and, 2 U.S.C. § 432(c) to fail to keep an account of expenditures.

If you have any questions or suggestions for changes in the enclosed conciliation agreements, please contact Maura White, the staff member assigned to this matter, at (202) 523-4057.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreements (2)

3304030121

Attachment p 2

102736 Ccc# 7082

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MAUREEN DUIGNAN

WRITER'S DIRECT DIAL NUMBER
(202) 789-7566

82 JAN 27 P5:03

January 27, 1982

Ms. Marjorie W. Emmons
Secretary to the Commission
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1349: Response of the
Reagan for President Committee

Dear Ms. Emmons:

Enclosed for your records is the affidavit of Mr. Scott Mackenzie referred to in the Reagan for President Committee's response to the above-referenced matter.

Sincerely yours,

Maureen Duignan

Maureen Duignan

MD/sab
Enclosure
cc: Charles N. Steele, Esq.
w/enc.

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AFFIDAVIT

Scott Mackenzie, being duly sworn, deposes and states as follows:

1. During the period April 1979 through late January 1981, I was Assistant Treasurer of the Reagan for President Committee (the "Committee"). From late January 1981 through September 1981, I was Treasurer of the Committee.

2. As Assistant Treasurer and Treasurer, I was involved in the accounting, reporting and compliance functions of the Committee.

3. The purpose of this affidavit is to provide information concerning a fund-raising event held in Spring 1980 by the Linn County (Oregon) Committee to Elect Reagan ("CER")

4. In May 1980, the Committee received a check in the amount of $10,000 from the CER. To my knowledge, neither I nor any other RFPC official at the national office was aware at that time of how the CER obtained the $10,000 because the fund-raising event was not authorized by the national office.

5. The check was drawn on an Oregon bank and made payable to the Committee. At the time of receipt, this bank was not listed on the Committee's Statement of Organization. I had no knowledge of nor had I consented to the CER's use of this bank as a depository. To my knowledge, no other RFPC official at the national office had knowledge of or consented to the CER's use of this bank as a depository.

6. No supporting documentation was received with the check. Therefore, I immediately contacted CER officials by phone and requested all supporting data.

7. Thereafter, the Committee received a set of contributor cards supporting $14,417 of contributions. None of these contributions exceeded $25.00.

8. Because the contributor cards documented $4,417 of contributions not forwarded to the Committee, I again contacted CER officials to determine the proper accounting treatment for these contributions. No response was received. Thereafter, I made numerous other phone requests of the CER for contribution and expenditure details. These efforts included attempts to obtain bank statements, cancelled checks and paid invoices. However, no further information was provided.

9. The Committee amended its Statement of Organization on June 25, 1980, designating the Oregon bank as a campaign depository.

10. The Committee reported the check as an unitemized receipt on its monthly statement dated May 1980. This disclosure represented all information available to the Committee at that time.

11. My attempts to gain information from CER officials and other individuals and vendors involved in the fund raiser continued through late 1980.

12. During the audit of the Committee in late 1980, I informed Mr. Charles Hanshaw of the FEC audit staff of the problems the Committee had encountered with respect to the CER fund raiser. In response, Mr. Hanshaw stated that the Commission was satisfied that sufficient steps had been taken by the Committee to obtain the information and indicated that there was no need to pursue this matter further.

13. Because of my conversation with Mr. Hanshaw, until the receipt of MUR 1349, I believed that the fund raiser was no longer an issue. However, upon receipt of the MUR, I made another effort to obtain information concerning the fund-raising event.

14. From May 1980 through Spring of 1981, I made numerous phone calls to the CER in an attempt to obtain information concerning the fund raiser.

15. As a result of the Committee's efforts, in late Spring of 1981, the Committee finally succeeded in obtaining the financial records of the fund raiser. Examination of these records revealed that approximately $15,200 was raised and $5,200 of expenses were incurred at the event. The $10,000 received by the Committee represented net contributions.

16. The RFPC's July 15, 1981 quarterly report disclosed unitemized receipts of $5,233.90 and itemized expenditures of $5,233.90 associated with the event. Combined with the $10,000 of

contributions reported previously, I believe the Committee fully reported the results of the fund raiser in a timely fashion.

Scott Mackenzie

Subscribed and sworn before me this 21 day of January, 1982.

Notary Public

8304030125

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1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

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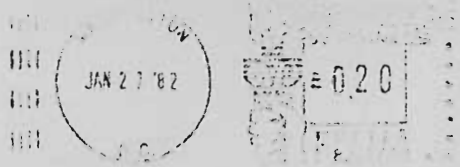

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Gcc# 7053

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MAUREEN DUIGNAN

WRITER'S DIRECT DIAL NUMBER
(202) 789- 7566

January 27, 1982

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Federal Election Commission
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Sincerely yours,

Maureen Duignan

Maureen Duignan

MD/sab
Enclosure
cc: Charles N. Steele, Esq.
w/enc.

82 JAN 29 A9:27

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COMMISSION SECRETARY

82 JAN 29 A9:00

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contributions reported previously, I believe the Committee fully reported the results of the fund raiser in a timely fashion.

Scott Mackenzie

Subscribed and sworn before me this 26 day of January, 1982.

Notary Public

LAURA A. INGLE
Notary Public, District of Columbia
My Commission Expires June 14, 1985

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JAN 27 '82

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Secretary to the Commission
Federal Election Commission
1325 K Street, N.W.
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ALBERT H. COLE
MAX GOLDEN*
JOEL P. SHEDD

ASHLEY SELLERS (1902-1977)
GILBERT A. CUNEO (1913-1978)

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C. STEVEN McMURRY*
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January 22, 1982

Ms. Majorie W. Emmons
Secretary of the Commission
Federal Election Commission
1325 K Street, N.W.
Washington D.C. 20463

Re: Mur 1349: Response of the Reagan for President Committee

Dear Ms. Emmons:

In accordance with the procedures of the Federal Election Commission ("Commission") set forth at 11 C.F.R. § 111.16,1/ counsel for the Reagan for President Committee ("Committee") hereby responds to the General Counsel's letter of December 18, 1981. That letter recommended that the Commission find probable cause to believe that the Committee violated: 2 U.S.C. § 441a(f), because of alleged acceptance of excessive contributions; 2 U.S.C. § 434(b)(5)(A), because of alleged failure to report the ultimate recipient of certain expenditures; and 2 U.S.C. §§ 432(c), 433(c) and 434(b), because of certain alleged violations arising out of a fund-raising event held in May 1980.

1/ Pursuant to 11 C.F.R. § 111.16(c), ten copies of the Committee's response are enclosed. Three copies of this response have also been furnished to the Office of the General Counsel.

Based upon the following factual and legal discussion and all previous responses submitted to the Commission on this matter, it appears that no violations of Title 2 have occurred. In summary, first, the allegation involving acceptance of excessive contributions is improper because 2 U.S.C. § 441a(f) requires that acceptance be made with knowledge that the contribution is prohibited. The Wicks made no contribution to the Committee. Moreover, even if a contribution is assumed to have been made, the Committee did not accept the contribution with knowledge that it was prohibited. Second, the allegation involving failure to report the ultimate payee of expenditures is improper because neither law nor regulation requires that such information be reported. And third, the allegations arising out of the fund-raising event are improper because the Committee exerted its best efforts to comply with all applicable accounting and reporting requirements.

For these reasons, it is respectfully requested that the Commission take no further action against the Committee with respect to the alleged violations of the above-cited statutory provisions.

ALLEGED RECEIPT OF EXCESSIVE CONTRIBUTIONS FROM CHARLES WICK AND MARY JANE WICK

FACTS

Mr. Charles Wick and Mrs. Mary Jane Wick (hereinafter "the Wicks") were actively involved as volunteers in Mr. Reagan's campaign effort; particularly, organizing the New York announcement dinner which kicked-off Mr. Reagan's campaign effort. As a result, Charles Wick incurred approximately $18,700 of expenses and Mary Jane Wick incurred approximately $765 of expenses on behalf of the Committee, during the period September 12, 1979 through November 15, 1979. The Wicks requested reimbursement for these expenses from the Committee on January 18, 1980. The reimbursement request detailed and supported each expenditure made by the Wicks for which reimbursement was requested.

The Committee subjected the request to its normal expense reimbursement screening process, including examination of the underlying documents for appropriateness of the expenditures and review and approval of the request by senior campaign officials. Reimbursement was made on April 9, 1980. Reimbursement was timely considering commencement of the primary elections, staff turnover and the size of the Wick's reimbursement request.

GENERAL COUNSEL'S ARGUMENT

The Commission found reason to believe that a violation of 2 U.S.C. § 441a(f) had occurred, because:

> [I]t is the view of the General Counsel that because both Mr. and Mrs. Wick had already contributed $1,000 to the Committee, they could not advance any additional sums to the Committee. The Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur expenses.
>
> While counsel for the Committee argues that because the Committee reimbursed the Wicks within three months of its receipt of their invoice no excessive contributions resulted, it continues to be the view of the General Counsel that the Committee accepted excessive contributions from Charles Wick and Mary Jane Wick from the moment the Wicks tendered payment for these services.

In the General Counsel's view, the expenses incurred by the Wicks were an advance and, by definition, a contribution, "as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction, which is also subject to contribution limitations." For these reasons, the General Counsel found "that there is probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Charles Wick and Mary Jane Wick."

ANALYSIS

1. Reimbursable Expenses Incurred On Behalf Of A Committee Are Not Contributions

The General Counsel states in its brief:

> The Act plainly contemplates that an 'advance . . . of money or anything of value' is a contribution. While past Commission announcements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, the Commission has never

> indicated that the advances made by such individuals are not contributions subject to the Act's limitation. [Footnote omitted.] This is no less so if the individual is expressly designated as an agent of the candidate or Committee. The candidate or Committee plainly enjoys the benefit of the goods or services from the moment they are purchased from the individual. In the General Counsel's view, a transaction constitutes a contribution as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction, which is also subject to the contribution limitations [footnote omitted].

This conclusion is unsupported by law or regulation. The Federal Election Campaign Fund Act (2 U.S.C. § 431 et. seq.) (the "Act") and its implementing regulations are silent as to whether reimbursable expenses incurred by a volunteer, agent or employee of a political committee on behalf of a committee are contributions. (See 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7.) The only issue addressed by either the Act or the implementing regulations is whether unreimbursed expenses incurred for travel or subsistence are contributions. See 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.7(b)(8). This silence, contrary to the General Counsel's assertion, strongly implies that Congress intended that reimbursable expenditures which are in fact reimbursed are not contributions.

Accounting and cost control considerations support this interpretation. During a campaign or in any business situation, the most appropriate method for controlling reimbursable expenditures is to require the individual incurring the expenses to make payment from his own funds, pending reimbursement after submission of required documentation (i.e., vouchers, receipts, etc.) and approval of the expenditures. This method is the most appropriate because it establishes the individual and not the campaign committee or business as the party bearing the burden of any improper expenditure.

The General Counsel fails to recognize this generally accepted principle. In fact, the General Counsel has taken the impractical and contrary position that "[t]he Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur the expenses." Adoption of this position will make it difficult for

a committee to exert proper control over the types of expenses incurred on the Committee's behalf.

The General Counsel also fails to recognize that such a position would significantly affect the operations of political committees, particularily presidential committees. Presidential committee activities are varied and spread over a wide geographical area. Hundreds of volunteers, agents and employees represent the committee on a nationwide basis. To require that these individuals incur expenses only with prior committee approval by means of advanced committee funds or by committee check would significantly limit campaign activities.

The Committee maintains that Congress intended to permit volunteers, agents and employees of a political committee to incur expenses, pending reimbursement, on behalf of a committee.2/ There are no provisions in either the Act or its implementing regulations which contradict this position. Accepted business practice supports this position. The Wicks incurred expenses expecting reimbursement, and the Committee reimbursed the Wicks. Therefore, the expenditures incurred by the Wicks were not contributions. Because no contribition was involved, the Committee cannot be found to have accepted a prohibited contribution.

2. The Expenses Incurred By The Wicks Were Not An Advance And Therefore Were Not A Contribution

The General Counsel states in his brief that "an individual volunteer who is not in the business of providing services to

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2/ Apparently, in April 1981, the General Counsel also shared this view. The General Counsel's brief supporting his reason to believe recommendation states:

> While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement [footnote omitted], the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. (Emphasis added.)

political committees, like Charles Wick, plainly is not within the intended scope of the exemption for extension of credit by vendors." The General Counsel further states:

> It is true that the Commission has allowed business and paid individual fundraisers to make advance payments to vendors in carrying out services on behalf of political committees without such advance payments being subject to the contribution limitation. [Citations omitted] The rationale for treating these situations differently is that such businesses and individuals are serving as vendors of services, and, as such, they may extend credit in the ordinary course of business for periods not to exceed normal business or trade practice. See 11 C.F.R. §§ 114.10(a); 100.7(a)(4).

Based upon this rationale, the General Counsel determined that the expenses incurred by the Wicks represented an advance which, by definition (see 2 U.S.C. § 431(8)(A)), is a contribution.

However, FEC regulations implementing 2 U.S.C. § 431(8)(A) limit the meaning of advance even further than stated by the General Counsel. 11 C.F.R. § 100.7(a)(4) defines the term advance to include only "[t]he extension of credit by any person for a length of time beyond normal business or trade practice . . . ." (Emphasis added.) The term "normal business or trade practice" modifies the length of time for extending credit and does not, as the General Counsel asserts, refer to the nature of the business conducted. In fact, 11 C.F.R. § 100.7(a)(4) nowhere refers to the type of business conducted. Moreover, the section refers to any extension of credit "by any person," which under 2 U.S.C. § 431(11), includes individuals as well as businesses. Therefore, under 11 C.F.R. § 100.7(a)(4), only the length of the extension of credit is relevant in determining whether the extension of credit constitutes an advance and thus a contribution.

Assuming the Wicks' expenditures represented an extension of credit, the Wicks clearly did not extend credit to the Committee for any length of time beyond normal business practice. As noted previously, the last expenses were incurred around the middle of November 1979 and the Committee was billed for these expenses on January 18, 1980. Attempts were made thereafter to collect the reimbursement. These facts clearly

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establish that the alleged "extension of credit" was not for any length of time greater than normal business practice.3/

Case law supports the conclusion that the Wicks' alleged "extension of credit" was not a contribution, because the Wicks had no donative intent when they incurred the expenses. Carson v. Commissioner of Internal Revenue, 641 F.2d 864 (10th Cir. 1981). In Carson, the plaintiff, an individual, made numerous direct campaign contributions to candidates for local office. The Commissioner sued Carson on the grounds that the contributions were gifts under the Internal Revenue Code and, therefore, subject to gift tax. The court held that the contributions were not a gift if made in the ordinary course of business. The court found "absence of donative intent is relevent under Treasury regulation in determining whether a transfer is made in the ordinary course of business." Id. at 866. Treasury regulation § 25.2512-8 states: " . . . a sale, exchange or other transfer made in the ordinary course of business (a transaction which is bonafide, at arms and free from donative intent), will be considered as made for an adequate and full consideration of money or monies worth." Therefore, in Carson, the intent of the person incurring the expenses was determinative as to whether the expenses were incurred in the ordinary course of business.

This standard is clearly analogous to the facts at issue. The Wicks incurred expenses on behalf of the Committee. No donative intent or intent to extend credit beyond a reasonable time was present when the expenses were incurred or thereafter; the Wicks and the Committee intended and expected that timely repayment would be made. Timely submission of the reimbursement request and receipt of the reimbursement support this position.

For these reasons, the Wicks made no advance to the Committee and hence no contribution. Therefore, the Committee cannot be found to have violated 2 U.S.C. § 441a(f), and the Commission should take no further action on this issue.

3/ The facts also establish that the Wicks "made a commercially reasonable attempt to collect the debt," which, pursuant to 11 C.F.R. § 100.7(a)(4), prevents treating the alleged extension of credit as a contribution, regardless of the duration of the extension of credit.

3. The Committee Did Not Knowingly Accept a Contribution In Violation of 2 U.S.C. § 441a(f)

The General Counsel recommended a finding of probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from the Wicks. "[I]t continues to be the view of the General Counsel that the Committee accepted excessive contributions from Charles Wick and Mary Jane Wick from the moment the Wicks tendered payment for these services."

2 U.S.C. § 441a(f) states: "No candidate or political committee shall knowingly accept any contribution . . . in violation of the provisions of this section." (Emphasis added.) The General Counsel did not allege that the Committee knowingly accepted the alleged contributions from the Wicks. Without such an allegation and facts to support the allegation, no violation of 2 U.S.C. § 441a(f) can be found. In fact, the Committeee did not knowingly accept any excessive contribution, and, therefore, the Committee did not violate 2 U.S.C. § 441a(f).

To establish a violation of 2 U.S.C. § 441a(f), the General Counsel must establish that the Committee: (1) accepted a contribution; (2) knowing the contribution to be in violation of 2 U.S.C. § 441a. Acceptance of a contribution usually occurs at the time the contribution is deposited. United States v. Chestnut, 533 F.2d 40 (2d Cir. 1976). Because the Committee never directly received any funds from the Wicks, it is the General Counsel's view that "a contribution from an individual to a political committee arises at the time the individual makes payment for the goods or services i.e., at the time cash, a check or credit card is tendered." Therefore, in the facts at issue, for the General Counsel to establish that the Committee violated 2 U.S.C. § 441a(f), the General Counsel must show that the Committee knew at the time the Wicks made payment that the alleged contribution violated one of the limits set forth in 2 U.S.C § 441a. Any knowledge gained by the Committee after payment for the goods by the Wicks is thus irrelevant to establishing a knowing acceptance.4/

4/ Closely analagous to the wording of 2 U.S.C. § 441a(f) are laws prohibiting the receipt of stolen property. Cases interpreting receipt of stolen property statutes hold that to be guilty of receiving stolen property, an individual must know at the time of receipt of the property that the (continued)

"Knowingly," as used in 2 U.S.C. § 441a(f), is not defined by either the Act or the Presidential Election Campaign Fund Act (26 U.S.C. § 9001 et seq.) (PECFA) or their implementing regulations. In general, case law finds a knowing violation when a person is shown to have knowledge of all of the facts which establish a violation. See, e.g., United States v. Keegan, 331 F.2d 257 (7th Cir.), cert. denied, 379 U.S. 828 (1964); Oregon-Washington R. & Nav. Co. v. United States, 205 F.2d 337 (9th Cir. 1913); United States v. Key Line Freight Line, Inc., 481 F. Supp. 91 (W.D. Mich. 1977), aff'd, 570 F.2d 97 (6th Cir. 1978).

Further support for this definition is found in Federal Election Commission v. California Medical Association, 502 F. Supp. 196 (N.D. Cal. 1980). In this case, the court found that the defendant political action committee knew all the facts (accepting in-kind contributions which it knew at the time of acceptance exceeded $5,000 -- a limit found in 2 U.S.C. § 441a) which rendered its conduct unlawful. The court found that "such knowledge is sufficient to create civil liability under 2 U.S.C. § 441a(f)." Id. at 203.

In the facts at issue, the Committee had no knowledge at the time of acceptance (payment for the goods or services) that the Wicks' alleged contributions exceeded $1,000 and, therefore, violated 2 U.S.C. § 441a. The Committee had no knowledge of the amounts involved until the expense reimbursement claim was received. Therefore, the Committee did not accept the alleged contribution knowingly.

Morever, a knowing violation will not occur because of a failure through inadvertance of negligence to become aware of all the facts which establish a violation. See United States v. Jewell, 532 F.2d 697 (9th Cir.), cert. denied, 426 U.S. 951 (1976); United States v. Haney Chevrolet, Inc., 371 F. Supp. 381 (N.D. Fla. 1974). Thus, even if it is assumed that the Committee through inadvertance or negligence failed to gain knowledge at the time of acceptance that the Wicks had incurred expenses

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property was stolen. See United States v. Lambert, 436 F.2d 552 (7th Cir. 1972); United States v. Butler, 494 F.2d 1246 (10th Cir. 1974); McGee v. State, 65 P.2d 207, 60 Okl. C.R. 436 (1937). Knowledge gained later that the property was stolen may establish the crime of possession of stolen property, but it does not establish the crime of receiving stolen property. See, United States v. Koran, 453 F.2d 144 (10th Cir. 1972). These cases are of particular value because "receiving" and "accepting" are synonomous in meaning. Standard Oil v. United States, 164 F.2d 376 (7th Cir. 1908), cert. denied, 212 U.S. 579 (1909).

exceeding the $1,000 limitation, a violation of 2 U.S.C. § 441a(f) still cannot be found.5/

Therefore, unless the General Counsel can show that the Committee had knowledge at the time of acceptance (the point in time which the Wicks incurred the expenses) that the alleged contribution in fact exceeded $1,000, the Committee cannot be found to have knowingly accepted an excessive contribution. The General Counsel has not offered and cannot offer such evidence. Therefore, the Committee can not be found to have violated 2 U.S.C. § 441a(f), and no further action should be taken on this issue.

5/ Recent proposed amendments to the Foreign Corrupt Practices Act of 1977 support the position that when a statute requires a civil penalty for a knowing violation, as does the Act, the word "knowingly" requires a showing of knowledge of all of the facts which establish a violation. The Committee on Banking, Housing and Urban Affairs stated:

> The Committee believes that the purpose of the FCPA accounting provisions was to proscribe knowing conduct, not unknowing conduct. Accordingly, the Bill provides that violations occur where a person 'knowingly' violates Section 13(b)(2). In adopting the standard, the Committee intends to assure that the accounting provision, as modified, is the basis for enforcement action only in cases where a conscious awareness of wrongdoing is present, and not in situations where mere negligence or other conduct not reflecting such an awareness results in some imperfection in a company's internal accounting control system or in unintentional circumvention of that system.

H.R. Rep. 97-209, 97th Cong., 1st Sess. 14 (1981). (Emphasis added).

FAILURE TO REPORT THE ULTIMATE RECIPIENT OF EXPENDITURES

FACTS

The expenses incurred by the Wicks, discussed above, were incurred on behalf of the Committee. The reimbursement request submitted to the Committee contained information documenting why the expenditures were incurred and the vendors involved. These records were retained by the Committee and made available to the auditors. The Committee's disbursement reports disclosed a disbursement to the Wicks made on April 9, 1980. The reports also disclosed the amount and stated that it was a reimbursement for "hotel accommodations, air travel and limousine service."

GENERAL COUNSEL'S ARGUMENT

The General Counsel alleges that the Committee failed to report the reimbursement to the Wicks in conformance with 2 U.S.C. § 434(b)(5)(A), because the "Committee simply reported an expenditure to Charles Wick on April 9, 1980, as a reimbursement for hotel accommodations, air travel and limousine services" without reporting the "ultimate recipient" of the expenditure, as required by the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 129-130, 138-139.

ANALYSIS

1. There is No Requirement in Law or Regulation That a Committee Report the "Ultimate Recipient" of an Expenditure

   a. The Financial Control and Compliance Manual Has No Legal Effect And Provides No Basis for an Enforcement Action

The General Counsel supports his recommendation of probable cause to believe that the Committee violated 2 U.S.C. § 434(b)(5)(A) by citing the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Funding (Primary Election Financing), July 1979 (hereinafter "the Manual"). However, the Commission is restricted to administering the Act through advisory opinions and formally promulgated regulations. The Manual is neither. Moreover, neither the Act nor its implementing regulations require reporting the "ultimate recipient." Therefore, the General Counsel's finding is improper.

The legislative history of the 1976 amendments to the Act make it very clear that Congress wished to restrict the Commission's ability to administer the Act. "[A]dvisory opinions and regulations shall be the only means through which the Commission may establish guidelines and procedures for carrying out the Act." H.R. Rep. No. 94-917, 94th Cong., 2nd Sess. 3 (1976), reprinted in Legislative History of Federal Election Campaign Act Amendments of 1976, at 803 (1977) (emphasis added). See, H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 18, reprinted in [1979] U.S. Code Cong. and Ad. News 2860, 2879 (wherein a section which allowed the Commission to formulate general policy with respect to the administration of the Act and Title 26 was deleted "to insure that the formulation of general policy is done through the regulatory process which is opened to public comment.") The purpose of this requirement is to prevent the Commission from administering the Act through de facto regulations which have not been reviewed by Congress.

The Manual is not an advisory opinion. See 2 U.S.C. § 437f. The Manual is also not a regulation. Congress states in 2 U.S.C. § 438(d) (and 26 U.S.C. §§ 9009(b) and 9039(b) and (c)) that the Commission may prescribe regulations concerning books, records and information; however, such regulations must be transmitted to the Congress for review prior to enforcement as regulations. The Manual was never transmitted to Congress and, therefore, does not have the status of a regulation.

Moreover, the Commission recognized that the Manual is not a regulation in the introduction to the Manual, stating that the Commission:

> [H]as undertaken to organize, in this manual, the essential compliance and financial control considerations in the hope that it will provide helpful guidance to those persons required to file reports.
>
> . . . .
>
> The manual is a guide for the candidate or committee for use in formulating an overall plan of financial controls to achieve compliance. It also includes suggested procedures which the candidate may find useful in the management and control of its internal activities.

It does not prescribe a standard system.

Rather, it offers a candidate an approach which can be modified as required to suit individual needs . . . .(Emphasis added.)

2 U.S.C. § 437g and 11 C.F.R. § 111 give the Commission authority to commence enforcement actions against possible violators of the Act, PECFA or their implementing regulations. The Manual is neither a statute nor a regulation, therefore it provides no basis for an enforcement action.6/

6/ Prior to 1980, 2 U.S.C. § 434(b) (Contents of Reports), stated in (b)(9) that a report should disclose:

> [T]he identification of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure . . . .

Under this provision, the audit section proposed to require the disclosure of the purpose/particulars of an expenditure. (See FEC Memorandum dated June 2, 1978, Agency Document No. 78-169, Commission Memorandum No. 1231.) In response to this proposal, the General Counsel stated: "We believe that a notice of the type proposed [requiring disclosure of purpose/particulars] is problematic from . . . the standpoint of . . . the Commission's authority to issue such a notice with the resulting expectation that noncompliance therewith may be subject to § 437g sanctions . . . ." (FEC Memorandum, undated, Agenda Document No. 78-193.)

In response to these comments, the audit division made several suggestions for incorporating into the regulations for reporting purposes definitions of "ultimate recipient" and "particulars." (FEC Memorandum dated September 28, 1978, Agenda Document No. 78-290.) Thereafter, the recommendations essentially were incorporated into the Manual.

The 1980 amendments did not change the substance of 2 U.S.C. § 434(b)(9). See 2 U.S.C. § 434(b)(5)(A). Consequently, the Committee contends that "guidelines" which

(continued)

b. No Law or Regulation Requires Reporting the "Ultimate Recipient"

The General Counsel alleges that the Committee violated the reporting requirements of 2 U.S.C. § 434(b)(5)(A). This section requires that reports which must be filed pursuant to 2 U.S.C. § 434(a) shall disclose:

> (5) the name and address of each
>
> (A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operations expense together with the date, amount, and purpose of such operating expenditures. (Emphasis added.)

11 C.F.R. § 104.3(b)(4) implements this requirement, stating:7/

> Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.
>
> (i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount and purpose of each expenditure.
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> (A) As used in 11 C.F.R. 104.3(b)(4) 'purpose' means a brief statement or description of why the disbursement was made.
>
> (Emphasis added.)

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were a "problematic" basis for enforcement proceedings under 2 U.S.C. § 434(b)(9), are an equally "problematic" basis for enforcement actions involving 2 U.S.C. § 434(b)(5)(A).

7/ 11 C.F.R. § 9006 requires authorized committees to report "pursuant to the requirements of 11 C.F.R. Part 104."

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Therefore, to determine if the Committee violated 2 U.S.C. § 434(b)(5)(A), the General Counsel must show that the Committee failed to report: (a) the name or address of the person to whom an expenditure exceeding $200 was made; and (b) the date, amount and purpose (e.g., dinner expense, travel, travel reimbursement, etc.) of the expenditure. The Committee complied with each of these requirements for the reimbursement to the Wicks. However, the General Counsel found instead that the Committee failed "to report the ultimate recipient of an expenditure." Because neither 2 U.S.C. § 434(b)(5) nor 11 C.F.R. § 104.3 contain such a requirement, the General Counsel's position is improper.

The Act and its implementing regulations do require a committee to retain documentation supporting expenditures in excess of $200 which disclose the payee (the individual supplying the goods or services). 2 U.S.C. § 432(c) (Recordkeeping) states that the treasurer of a political committee shall keep an account of:

> (5) the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursements, and the name of the candidate and the office sought by the candidate if any, for whom the disbursement was made, including a receipt, invoice, or cancelled check for each disbursement in excess of $200. (Emphasis added.)

11 C.F.R. § 102.9 (accounting for contributions and expenditures) implements 2 U.S.C. § 432(c), stating:8/

> (1) An account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of:
>
> > (i) the name and address of every person to whom any disbursement is made;

8/ 11 C.F.R. § 9003.5 and 9033.1 contain virtually identical documentation requirements.

> (ii) the date, amount, and purpose of the disbursement; and
>
> . . . .
>
> (iv) For purposes of 11 C.F.R. 102.9(b)(1), 'purpose' has the same meaning given the term at 11 C.F.R. 104.3(b)(3)(i)(A).
>
> (2) In addition to the account to be kept under 11 C.F.R. 102.9(b)(1), a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of $200 by or on behalf of, the committee, except that credit card transactions, shall be documented in accordance with 11 C.F.R. 102.9(b)(2)(iii).
>
> (i)(A) For purposes of 11 C.F.R. 102.9(b)(2), 'payee' means the person who provides the goods or services to the committee or agent thereof in return for payment....
>
> (Emphasis added.)

Therefore, the Act and its implementing regulations require a committee to retain documentation for each expenditure exceeding $200, disclosing: (a) the name and address of the person to whom the expenditure was made; (b) the date, amount and purpose of the expenditure; and (c) the identity of the person who provided the goods or services.

The Committee complied with these accounting requirements for the Wick reimbursement. The Committee accounted for and documented the reimbursement by retaining documentation disclosing that the Wicks received the reimbursement, and the amount, date and purpose ("hotel accommodations, air travel and limousine service") of the reimbursement. Moreover, the Wicks provided detailed supporting documentation disclosing the "ultimate recipient" with their expense voucher, and the Committee retained this documentation. In fact, the auditors examined this information.

In sum, the General Counsel alleges that the Committee violated the reporting requirements found in 2 U.S.C. § 434(b)

(5)(A) because the "ultimate recipients" of the expenditures made by the Wicks were not reported. However, 2 U.S.C. § 434(b)(5)(A) and its implementing regulations do not require that the "ultimate recipient" be reported. As the Committee complied with all requirements of 2 U.S.C. § 434(b)(5)(A), any finding of a violation of that section is improper. While it is true that a committee must document the ultimate recipient or payee of expenditures pursuant to 11 C.F.R. § 102.9(b), no violation of this regulation was alleged and, moreover, the Committee fully complied with its requirements.

For these reasons, the Committee did not violate 2 U.S.C. § 434(b)(5)(A) and the General Counsel should withdraw his finding of probable cause.

2. The Sections of the Manual Relied Upon by the General Counsel Have No Legal Effect

The General Counsel supports his determination of probable cause to believe that the Committee violated 2 U.S.C. § 434(b)(5)(A) by citing pages 129-130 and 138-139 of the Manual. As discussed above, the Manual is not binding upon a political committee and provides no basis for a 2 U.S.C. § 437g proceeding. However, even if it is assumed that the Manual is entitled to some legal significance, the guidelines cited by the General counsel fail to support his finding of probable cause.

The guidelines contained on pages 129 and 130 are inapplicable to the facts at issue because they provide guidelines for recordkeeping and reporting of advances. Because the expenditure made to the Wicks was a reimbursement, pages 129-130 are not applicable.9/

The guidelines found on pages 138 and 139 apply to reimbursements and require:

> Payments to credit card companies and expense reimbursements to individuals may be

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9/ Even if these guidelines are applicable and support the contention that the ultimate recipients of reimbursed expenses must be reported, they still have no legal effect for the reasons discussed in the following text.

reported on Schedule B-P for the appropriate line number without listing each individual payee and amount as a memo entry if the underlying expenses are, in fact for the individuals campaign-related travel and subsistence cost only. The terms 'travel expense' or 'travel expense reimbursement' are acceptable in identifying the particulars. Should the credit card invoice or the reimbursement report include expenditures for items other than travel and subsistence, each payee included in the invoice or reimbursement report with charges in excess of $100 must be separately listed on Schedule B-P as a memo entry.

The goal is to identify the ultimate recipient of the funds and the particulars of the goods or services provided.

As discussed above, 2 U.S.C. § 434(b)(5) and 11 C.F.R. § 104.3 require that the name and address of the individual receiving the reimbursement and the date, amount and purpose of the reimbursement be reported. It is only the accounting requirements found in 2 U.S.C. § 432(c) and 11 C.F.R. § 102.9 which require that documentation identifying the payee (the provider of the goods or services) be retained. Therefore, the guidelines found in the Manual which require that the "payee" or the "ultimate recipient" be reported are in direct conflict with 2 U.S.C. § 434(b)(5) and 11 C.F.R. § 104.3. Guidelines which are inconsistent with the statutory and regulatory provisions being implemented are not binding and, moreover, will not be accorded any legal effect. Bowles v. Seminole Rock and Sand Co., 325 U.S. 410 (1945). Therefore, the pages cited by the General Counsel have no legal effect and provide no basis for a 2 U.S.C. § 437g enforcement proceeding.

For this reason, the General Counsel's finding of probable cause should be withdrawn.

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OREGON FUND-RAISING EVENT

FACTS 10/

In May 1980, the Linn County (Oregon) Committee to Elect Reagan ("CER") held a fund-raising event. On May 19, 1980, the Committee received a $10,000 check from the CER drawn on an Oregon bank. The Committee received no supporting documentation with the check. Moreover, the event was unauthorized. The Committee reported the check as an unitemized receipt in May 1980.

Committee officials thereafter requested more complete information. As a result, the Committee received a set of contributor cards supporting an additional $4,417 in contributions. Thereafter, the Committee requested on several occasions information on the additional $4,417 of contributions reported. No response was received.

On June 25, 1980 the Committee notified the Commission of an amendment to its statement of organization filed pursuant to 2 U.S.C. § 433(c). The amendment listed the Oregon bank as a depository used by the Committee. Thereafter, the Committee continued its attempts to obtain information from the CER concerning the fund-raising event. These efforts were suspended when the auditors stated their satisfaction with Committee efforts.

However, receipt of this MUR revived the issue and the Committee again attempted to obtain information. Eventually, information was received which disclosed that approximately $15,200 was raised at the event and $5,200 of expenses was incurred. As a result of additional Committee efforts, further information was obtained, and this information was reported in the Committee's second-quarter report filed with the Commission on July 15, 1981.

GENERAL COUNSEL'S ARGUMENT

The General Counsel found probable cause to believe that a violation of 2 U.S.C. § 433(c) had occurred because:

10/ An affidavit from Scott Mackenzie verifying these facts will be furnished upon his return from a busines trip.

> The evidence available in this matter indicates that the Committee deposited funds into the Oregon depository prior to May 19, 1980, yet did not amend its Statement of Organization until June 25, 1980 (received by the Commission on June 30, 1980), more than thirty-seven days after it deposited its funds into the bank. In consideration of the foregoing, and in view of the fact that the Committee has not demonstrated that its best efforts were used to report the information in a timely manner, it is the position of the General Counsel that the Committee failed to amend its Statement of Organization within ten days and that there is probable cause to believe the Committee violated 2 U.S.C. § 433(c).

The General Counsel also found probable cause that the Committee violated 2 U.S.C. §§ 432(c) and 434(b) because:

> [T]he Committee has not provided any documentation in support of its contention that 'best efforts' were in fact used; the Committee has not submitted evidence of any written efforts to obtain information from either the Oregon Bank or vendors, or evidence of any other efforts to obtain the information required to be reported. It is, therefore, the view of the General Counsel that there is probable cause to believe that the Committee violated 2 U.S.C. § 432(c) by failing to keep an account of certain expenditures associated with the Oregon fund raising event, and violated 2 U.S.C. § 434(b) by failing to report certain contributions received and expenditures made in connection with the event.

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ANALYSIS

1. The Committee Used its Best Efforts to Amend Its Statement of Organization and to Account and Report for the Contributions and Expenditures Related to the Oregon Fund-Raising Event

2 U.S.C. § 432(i) and 11 C.F.R. §§ 102.9(d) and 104.7(a) provide that records maintained and reports submitted by a

committee will be considered in compliance with the Act, if a committee used its best efforts to obtain, maintain and submit the documentation required. The Committee contends that it used its best efforts to obtain and report information relating to the fundraiser and, therefore, did not violate the Act or its regulations. The auditors apparently agreed with the Committee's position. (See Mackenzie Affidavit, ¶ 12 (hereinafter M. aff'd. ¶ _____).)

The best efforts test was incorporated into the Act and its regulations to prevent political committees from being overburdened with administrative requirements. In Congress' view, such overburdening would defeat the purpose of the Act, i.e., to achieve substantial voluntary compliance with the provisions of the Act. See H.R. Rep. 96-422, 96th Cong. 1st Sess. 14 (1979). In fact, Congress views this test as so important to the intent of the Act that the Commission has been criticized for its failure to incorporate this test into its procedures.

> [T]he application of the best efforts test is essential to the enforcement of the recordkeeping and reporting provisions of the Act. It is the opinion of the Committee that the Commission has not adequately incorporated the best efforts test into its administrative procedures, such as systematic review of reports.

Id. The circumstances surrounding the accounting and reporting of information relating to the fundraiser, in the Committee's view, require that the best efforts test be applied and the Committee be found to have used its best efforts.

Application of the best efforts test has been impeded because 2 U.S.C. § 432(i) and 11 C.F.R. §§ 102.9(d) and 104.7(a) do not define what constitutes best efforts. Moreover, little administrative interpretation of "best efforts" is available. However, the legislative history of the 1979 amendments to the Act and PECFA and case law provide some guidance.

In discussing the best efforts test, Congress has stated:

> One illustration of the application of this test is the current requirement for a committee to report the occupation and principal place of business of individual contributors who give in excess of $100. If

> the committee does not report the occupation and principal place of business for each itemized individual contribution, the Commission's review and enforcement procedures must be geared to determining whether the committee exercised its best efforts to obtain the information. The best efforts test is crucial since contributor information is voluntarily supplied by persons who are not under the control of the committee.
>
> In a situation such as this, the first question is what efforts did the committee take to obtain the information. Did the solicitation contain a clear request for the occupation and principal place of business? If the committee made an effort to obtain the information in the initial solicitation and the contributor ignored the request, the Commission should not require the committee to make the same request two, three, or four times. On the other hand, if the best efforts test is not met, the committee must be required to take corrective action, such as contacting the contributor and requesting the information.

H.R. Rep. 96-422, 96th Cong. 1st Sess. 14 (1979).

Applying this standard to the facts at issue, the Committee clearly used its best efforts. The Committee contacted CER officials on numerous occasions. (M. aff'd. ¶¶ 6, 8, 11, 13, 14 & 15.) The event was unauthorized. (M. aff'd. ¶ 4.) Other individuals involved with the fundraiser were contacted. (M. aff'd. ¶ 8.) Despite these efforts, only limited information was obtained. (M. aff'd. ¶ 8.) Moreover, the Committee did amend its statement of organization and account for and report the contributions received based upon the limited information made available. (M. aff'd. ¶¶ 9 & 10.) Therefore, as viewed by Congress, the Committee clearly exercised its best efforts.

Case law shows that "'[b]est efforts,' like 'reasonable care' is a term which necessarily takes its meaning from the circumstances." Perma Research and Development Company v. Singer Company, 308 F. Supp. 743, 748 (S.D.N.Y. 1970). What courts appear to look for in the circumstances is a reasonable or good faith effort by a party to do that which the party is capable of

doing to fulfill its responsibilities. See Western Geophysical Company v. Bolt Associates, 584 F.2d 1164 (2d Cir. 1970); Bloor v. Falstaff Brewing Corp., 454 F. Supp. 258 (S.D.N.Y. 1978), aff'd, 601 F.2d 609 (2d Cir. 1979); U.C.C. § 2-306(2), Official Comment 5.

The circumstances surrounding the Oregon fund-raising event clearly demonstrate that the Committee exercised reasonable and good faith efforts in its attempt to obtain information necessary to fully account for and report the event. The facts show the following:

(1) the event was unauthorized (M. aff'd. ¶ 4);

(2) upon receipt of the contribution check, the Committee promptly requested supporting documentation (M. aff'd. ¶ 6);

(3) upon receipt of information disclosing that contributions received exceeded the amount initially provided to the Committee, the Committee requested on numerous occasions but did not receive, any further information (M. aff'd. ¶ 8);

(4) the Committee promptly amended its Statement of Organization (M. aff'd ¶ 9);

(5) the Committee accounted for and reported the contributions received in a manner appropriate to the circumstances (M. aff'd. ¶ 10);

(6) efforts to obtain additional information ceased when the auditors stated their satisfaction with Committee efforts (M. aff'd. ¶ 12);

(7) after receiving MUR 1349, the Committee performed further investigations and determined that even more contributions were involved (M. aff'd. ¶ 13);

(8) through its own efforts, the Committee examined bank statements and other reports to identify the amount and type of expenditures involved (M. aff'd. ¶ 15); and

(9) upon proper identification and categorization of expenses, the Committee promptly reported the information (M. aff'd. ¶ 16).

These facts clearly show that the Committee exercised its best efforts and did all that it reasonably could do to obtain information necessary to account for and report the results of the fund raiser.

For this reason, the General Counsel's finding of probable cause should be withdrawn.

CONCLUSION

The Reagan for President Committee requests that the Commission take notice that this response was prepared without certain information requested from the Commission (e.g., the meaning of "knowingly," "advance," etc.) up to six months ago. This lack of information has severely disadvantaged the preparation of this response. Under such circumstances and for the reasons stated above, the Reagan for President Committee respectfully requests that the Commission take no further action concerning the findings of probable cause involved herein.

Sincerely,

Edward L. Weidenfeld

cc: Charles N. Steele, Esq.

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January 22, 1982

Ms. Majorie W. Emmons
Secretary to the Commission
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Re: MUR 1349: Matter of Charles Z. Wick

Dear Ms. Emmons:

In accordance with the procedures of the Federal Election Commission ("Commission") set forth at 11 C.F.R. § 111.16,*/ counsel for Charles Z. Wick hereby responds to the General Counsel's letter of December 18, 1981. That letter recommended that the Commission find probable cause to believe that Mr. Wick violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution to the Reagan for President Committee ("Committee") in excess of $1,000. Based upon the following factual and legal discussion, and Mr. Wick's previous response submitted to the Commission by letter dated May 19, 1981, a probable cause finding is not warranted in this case. Accordingly, it is respectfully requested that the Commission take no further action against Mr. Wick and close its file in this matter.

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*/ Pursuant to 11 C.F.R. § 111.16(c), ten copies of Mr. Wick's response are enclosed. Three copies of this response have also been furnished to the Office of the General Counsel.

FACTS

As a volunteer with the Reagan For President Committee, Mr. Wick was principally responsible for organizing the New York Announcement Dinner for Mr. Reagan's candidacy. In connection with this responsibility, Mr. Wick incurred various campaign-related expenses during the period September 12, 1979 through November 15, 1979. In all, Mr. Wick incurred approximately $18,700 on behalf of the Committee. The majority of these expenses were charged to Mr. Wick's credit card accounts.

Upon receipt of his credit card bills, Mr. Wick carefully reviewed all expenditures so as not to charge the Committee for any personal expenses he may have incurred during the time period at issue. Following this review, Mr. Wick notified the Committee by letter dated January 18, 1980 of his request for reimbursement. This request, and its supporting documentation, detailed each expenditure made for which Mr. Wick requested reimbursement.

Upon receipt of Mr. Wick's request for reimbursement, the Committee examined all charges and supporting documents as a normal part of its reviewing procedure. Thereafter, Mr. Wick's reimbursement request was approved and paid by Committee check dated April 9, 1980. This reimbursement process took less than three months to complete, a reasonable period of time considering the primary campaign activities, changes in the Committee's accounting staff and the amount of Mr. Wick's reimbursement request.

GENERAL COUNSEL'S ARGUMENT

The General Counsel's brief recommends that the Commission find "probable cause to believe" that Mr. Wick violated 2 U.S.C. § 441a(a)(1)(A) by making contributions totalling $18,712.54 to the Reagan for President Committee. It is the General Counsel's position that the expenses incurred by Mr. Wick constituted an advance to the Committee. Because Mr. Wick already contributed $1,000 to the Committee, the General Counsel maintains that he could not advance any additional sums to the Committee. Accordingly, it is the General Counsel's position that there is probable cause to believe Charles Wick violated the contribution limitations set forth in the Federal Election Campaign Act of 1971, as amended ("the Act").

DISCUSSION

A. The Expenses Incurred By Mr. Wick Did Not Constitute An Advance and Therefore Did Not Constitute a Contribution to the Committee

Contrary to the General Counsel's allegations, Mr. Wick did not make a contribution to the Reagan for President Committee in violation of 2 U.S.C. § 441a(a)(1)(A). Rather, in connection with his campaign responsibilities, Mr. Wick incurred expenses for which he received reimbursement. Under such circumstances, no contribution ever arose.

It is the General Counsel's view that the alleged "advances" at issue constitute a contribution to the Committee as long as they remain unreimbursed; i.e., advances resemble a loan transaction subject to the Act's contribution limitations. However, unreimbursed expenses are not at issue in the instant matter. Mr. Wick has been reimbursed for those expenses he incurred on behalf of the Committee.

The Federal Election Campaign Act and its implementing regulations are silent as to whether expenses incurred by an employee, agent, or volunteer of a political committee constitute a contribution when they are reimbursed by the committee in the ordinary course of business. The Act and the regulations only address the issue of whether unreimbursed expenses incurred for travel or subsistence constitute contributions. See 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.7(b)(8). This silence as to the issue of reimbursed expenditures lends strong support to respondent's position that Mr. Wick's expenses did not constitute contributions to the Committee.

Accounting and cost control considerations support this result. During a campaign, the most appropriate method for controlling reimbursable expenditures is to require the individual incurring expenses to make payment from his own funds, pending reimbursement upon submission of appropriate supporting documentation. Indeed, this procedure is followed by many concerns with employees or agents who incur job-related expenses. The General Counsel's brief, however, fails to recognize this generally accepted principle. With respect to Mr. Wick's transactions, the General Counsel states that the "Committee should have either paid for the various expenses directly by Committee check or advanced funds to Mr. Wick to enable him to incur the expenses." Such a position is neither prudent nor realistic. If followed, it would be extremely difficult for a committee to exert proper control over the type of expenses a campaign worker could incur on its behalf.

The General Counsel's brief also fails to acknowledge the adverse impact its position would have on the operations of

political committees, particularly those involved in presidential elections. The activities of a presidential campaign committee are varied and widespread. Hundreds of employees, volunteers and agents represent the committee on a nationwide basis. To require each individual to incur expenses only upon obtaining prior approval by means of advanced Committee funds or by Committee check would unduly hamper and interfere with campaign activities.

It is respondent's position that an individual may incur expenses on behalf of a political committee and receive subsequent reimbursement without that amount being deemed an advance or contribution subject to the Act's limitation. There is no provision in either the Act or its implementing regulations which contradicts this result. In fact, the statutory and regulatory provisions cited above support this position by specifically providing that only unreimbursed expenses in excess of $1,000 should be treated as contributions. In the instant case, only reimbursed costs are at issue. Because Mr. Wick has received reimbursement from the Committee for the expenses he incurred on its behalf, no contribution is at issue.

It is interesting to note that the General Counsel's first brief in this matter applied a meaning to the term "advance" which corresponds with the respondent's interpretation. In the General Counsel's Factual and Legal Analysis accompanying the Commission's "reason to believe" notice dated April 29, 1981, it is stated that:

> While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee. [Emphasis added; footnote omitted.]

According to this excerpt, advances are deemed to be contributions subject to the Act's limitations only if they are not reimbursed within a reasonable time. Applying this standard to determine whether an advance constitutes a contribution, it is clear from the circumstances associated with Mr. Wick's transactions that no contribution ever arose as the Committee reimbursed him for his campaign-related expenses in a timely fashion. Under the General Counsel's original reasoning, therefore, the so-called "advances" made by Mr. Wick do not constitute contributions subject to the Act's limitation.

The General Counsel's subsequent recommendation to the Commission, however, unexplainedly deviates from its original position. In its brief dated December 18, 1981 recommending a "probable cause" finding, the statement quoted above is repeated verbatim except for one significant change -- the language referring to the reimbursement of advances has been deleted. This omission is noteworthy. Although the General Counsel's original brief recognized the difference between reimbursed and unreimbursed expenses in determining whether a contribution is at issue, its most recent submission to the Commission conveniently sidesteps this important distinction.

At this stage in the proceedings, it is manifestly unjust for the Office of the General Counsel to abruptly apply a different meaning to the term "advance" than that originally proffered. Such a deviation is particularly disturbing in light of the fact that the Commission has failed to respond to the Committee's requests for clarification of a number of issues which are significant to the resolution of Mr. Wick's case. Some of these requests, (which, for example, seek the meaning of "reasonable time", "advance", etc.), have been pending before the Commission for more than six months. To date, they are unanswered. As a result, respondent is at a severe disadvantage to contest the General Counsel's interpretation and application of the Act which, without known standards, can be altered to fit any given situation. Under such arbitrary circumstances, the General Counsel's recommendation for a finding of "probable cause" in this case should not be endorsed by the Commission.

B. The Expenses Incurred By Mr. Wick Do Not Constitute A Contribution Because The Advance Was Made In The Ordinary Course of Business

The brief of the General Counsel states that "an individual volunteer who is not in the business of providing services to political committees, like Charles Wick, plainly is not within the intended scope of the exemption for extension of credit by vendors." The brief further explains that in those instances where the Commission has permitted businesses and individuals to incur expenses in advance, the reason for doing so is that such businesses and individuals are serving as vendors of services. In those situations, the General Counsel maintains that credit may be extended in the ordinary course of business for periods not to exceed normal business or trade practice. See 11 C.F.R. §§ 114.10(a); 100.7(a)(4). Based on its limited interpretation, however, the General Counsel maintains that the expenses incurred by Mr. Wick do not satisfy these requirements and hence constitute an advance which, by definition, is a contribution. See 2 U.S.C. § 431(8)(A)(i).

The General Counsel's analysis of the meaning of "advance" is in conflict with the Act and its regulations. The definition of "contribution" does include an "advance". 2 U.S.C. § 431(8)(A)(i). However, the Federal Election Commission regulations implementing this provision further define the term "advance" as "[t]he extension of credit by any person for a length of time beyond normal business or trade practice . . . ." 11 C.F.R. § 100.7(a)(4). The term "normal business or trade practice" modifies the length of time for extending credit. It does not, as the General Counsel asserts, refer to the nature of the business activity conducted. Moreover, 11 C.F.R. § 100.7(a)(4) refers to the extension of credit "by any person," which under 2 U.S.C. § 431(11), includes individuals as well as businesses. In light of these provisions, therefore, only the time within which reimbursement is sought is relevant in determining whether the extension of credit constitutes an advance and thus a contribution.

Assuming arguendo that the expenses incurred by Mr. Wick represent an extension of credit, he clearly did not extend credit to the Committee for any length of time beyond normal business practice. As noted previously, the last expense at issue was incurred by Mr. Wick in mid-November of 1979. The Committee was billed for these expenses within two months. Thereafter, Mr. Wick contacted the Committee on several occasions in an effort to obtain reimbursement. Mr. Wick was paid by Committee check dated April 9, 1980. These facts clearly establish that the alleged "extension of credit" was not made for any length of time beyond normal business practice.

Even if it is assumed that Mr. Wick extended credit for longer than the normal business practice, his efforts to secure reimbursement from the Committee bring him into compliance with the provisions of 11 C.F.R. § 100.7(a)(4) as a "commercially reasonable attempt" was made "to collect the debt" at issue.

As can be seen from the above, Mr. Wick did not extend credit to the Committee for any length of time beyond normal business practice and made a commercially reasonable attempt to collect payment from the Committee. As a result, no "advance" or "contribution" ever arose.*/

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*/ This result is further supported by the case authority cited at page 7 of the Committee's response to the General Counsel's "probable cause" recommendation in MUR 1349, filed today with the Commission under separate cover.

CONCLUSION

Under the circumstances described in this response, Mr. Wick did not make an "advance" to the Committee and hence did not make a contribution in violation of 2 U.S.C. § 441a(a)(1)(A). Based on the above factual and legal discussion, therefore, it is respectfully requested that no further action be taken against Mr. Wick and that the file in this matter be closed.

Sincerely,

Edward L. Weidenfeld

cc: Charles N. Steele, Esq.

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DAVID S. BROWN*
VICTOR BRUNI*
JAMES A. CHERRY
DAVID A. CHURCHILL
SCOTT R. COOPER*
JOHN A. COURT
JOHN F. DAVIS*
MARY C. DELANEY*
MAUREEN DUIGNAN
LAWRENCE M. FARRELL
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CURTIS A. GRAHAM*
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JESSE S. ISHIKAWA*
MICHAEL T. JAMIR
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MARTIN H. KRESSE*
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SARA J. SMITH*
MARTIN E. STEERE*
JEFFREY E. STEINER*
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SONNIE A. SULLIVAN
CURTIS ULLMANN*
CHRISTIAN VOLZ
CHARLES E. WAGNURN, JR.*
ROBERT M. WAXMAN*
BARBARA G. WERTHER
LOUISE R. WISE
RENE E. YOSHIOKA*
DEAN J. ZIPSER*

*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-

January 22, 1982

Ms. Majorie W. Emmons
Secretary to the Commission
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Re: MUR 1349: Matter of Charles Z. Wick

Dear Ms. Emmons:

In accordance with the procedures of the Federal Election Commission ("Commission") set forth at 11 C.F.R. § 111.16,*/ counsel for Charles Z. Wick hereby responds to the General Counsel's letter of December 18, 1981. That letter recommended that the Commission find probable cause to believe that Mr. Wick violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution to the Reagan for President Committee ("Committee") in excess of $1,000. Based upon the following factual and legal discussion, and Mr. Wick's previous response submitted to the Commission by letter dated May 19, 1981, a probable cause finding is not warranted in this case. Accordingly, it is respectfully requested that the Commission take no further action against Mr. Wick and close its file in this matter.

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*/ Pursuant to 11 C.F.R. § 111.16(c), ten copies of Mr. Wick's response are enclosed. Three copies of this response have also been furnished to the Office of the General Counsel.

FACTS

As a volunteer with the Reagan For President Committee, Mr. Wick was principally responsible for organizing the New York Announcement Dinner for Mr. Reagan's candidacy. In connection with this responsibility, Mr. Wick incurred various campaign-related expenses during the period September 12, 1979 through November 15, 1979. In all, Mr. Wick incurred approximately $18,700 on behalf of the Committee. The majority of these expenses were charged to Mr. Wick's credit card accounts.

Upon receipt of his credit card bills, Mr. Wick carefully reviewed all expenditures so as not to charge the Committee for any personal expenses he may have incurred during the time period at issue. Following this review, Mr. Wick notified the Committee by letter dated January 18, 1980 of his request for reimbursement. This request, and its supporting documentation, detailed each expenditure made for which Mr. Wick requested reimbursement.

Upon receipt of Mr. Wick's request for reimbursement, the Committee examined all charges and supporting documents as a normal part of its reviewing procedure. Thereafter, Mr. Wick's reimbursement request was approved and paid by Committee check dated April 9, 1980. This reimbursement process took less than three months to complete, a reasonable period of time considering the primary campaign activities, changes in the Committee's accounting staff and the amount of Mr. Wick's reimbursement request.

GENERAL COUNSEL'S ARGUMENT

The General Counsel's brief recommends that the Commission find "probable cause to believe" that Mr. Wick violated 2 U.S.C. § 441a(a)(1)(A) by making contributions totalling $18,712.54 to the Reagan for President Committee. It is the General Counsel's position that the expenses incurred by Mr. Wick constituted an advance to the Committee. Because Mr. Wick already contributed $1,000 to the Committee, the General Counsel maintains that he could not advance any additional sums to the Committee. Accordingly, it is the General Counsel's position that there is probable cause to believe Charles Wick violated the contribution limitations set forth in the Federal Election Campaign Act of 1971, as amended ("the Act").

DISCUSSION

A. The Expenses Incurred By Mr. Wick Did Not Constitute An Advance and Therefore Did Not Constitute a Contribution to the Committee

Contrary to the General Counsel's allegations, Mr. Wick did not make a contribution to the Reagan for President Committee in violation of 2 U.S.C. § 441a(a)(1)(A). Rather, in connection with his campaign responsibilities, Mr. Wick incurred expenses for which he received reimbursement. Under such circumstances, no contribution ever arose.

It is the General Counsel's view that the alleged "advances" at issue constitute a contribution to the Committee as long as they remain unreimbursed; i.e., advances resemble a loan transaction subject to the Act's contribution limitations. However, unreimbursed expenses are not at issue in the instant matter. Mr. Wick has been reimbursed for those expenses he incurred on behalf of the Committee.

The Federal Election Campaign Act and its implementing regulations are silent as to whether expenses incurred by an employee, agent, or volunteer of a political committee constitute a contribution when they are reimbursed by the committee in the ordinary course of business. The Act and the regulations only address the issue of whether unreimbursed expenses incurred for travel or subsistence constitute contributions. See 2 U.S.C. § 431(8)(B)(iv) and 11 C.F.R. § 100.7(b)(8). This silence as to the issue of reimbursed expenditures lends strong support to respondent's position that Mr. Wick's expenses did not constitute contributions to the Committee.

Accounting and cost control considerations support this result. During a campaign, the most appropriate method for controlling reimbursable expenditures is to require the individual incurring expenses to make payment from his own funds, pending reimbursement upon submission of appropriate supporting documentation. Indeed, this procedure is followed by many concerns with employees or agents who incur job-related expenses. The General Counsel's brief, however, fails to recognize this generally accepted principle. With respect to Mr. Wick's transactions, the General Counsel states that the "Committee should have either paid for the various expenses directly by Committee check or advanced funds to Mr. Wick to enable him to incur the expenses." Such a position is neither prudent nor realistic. If followed, it would be extremely difficult for a committee to exert proper control over the type of expenses a campaign worker could incur on its behalf.

The General Counsel's brief also fails to acknowledge the adverse impact its position would have on the operations of

political committees, particularly those involved in presidential elections. The activities of a presidential campaign committee are varied and widespread. Hundreds of employees, volunteers and agents represent the committee on a nationwide basis. To require each individual to incur expenses only upon obtaining prior approval by means of advanced Committee funds or by Committee check would unduly hamper and interfere with campaign activities.

It is respondent's position that an individual may incur expenses on behalf of a political committee and receive subsequent reimbursement without that amount being deemed an advance or contribution subject to the Act's limitation. There is no provision in either the Act or its implementing regulations which contradicts this result. In fact, the statutory and regulatory provisions cited above support this position by specifically providing that only unreimbursed expenses in excess of $1,000 should be treated as contributions. In the instant case, only reimbursed costs are at issue. Because Mr. Wick has received reimbursement from the Committee for the expenses he incurred on its behalf, no contribution is at issue.

It is interesting to note that the General Counsel's first brief in this matter applied a meaning to the term "advance" which corresponds with the respondent's interpretation. In the General Counsel's Factual and Legal Analysis accompanying the Commission's "reason to believe" notice dated April 29, 1981, it is stated that:

> While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee. [Emphasis added; footnote omitted.]

According to this excerpt, advances are deemed to be contributions subject to the Act's limitations only if they are not reimbursed within a reasonable time. Applying this standard to determine whether an advance constitutes a contribution, it is clear from the circumstances associated with Mr. Wick's transactions that no contribution ever arose as the Committee reimbursed him for his campaign-related expenses in a timely fashion. Under the General Counsel's original reasoning, therefore, the so-called "advances" made by Mr. Wick do not constitute contributions subject to the Act's limitation.

The General Counsel's subsequent recommendation to the Commission, however, unexplainedly deviates from its original position. In its brief dated December 18, 1981 recommending a "probable cause" finding, the statement quoted above is repeated verbatim except for one significant change -- the language referring to the reimbursement of advances has been deleted. This omission is noteworthy. Although the General Counsel's original brief recognized the difference between reimbursed and unreimbursed expenses in determining whether a contribution is at issue, its most recent submission to the Commission conveniently sidesteps this important distinction.

At this stage in the proceedings, it is manifestly unjust for the Office of the General Counsel to abruptly apply a different meaning to the term "advance" than that originally proffered. Such a deviation is particularly disturbing in light of the fact that the Commission has failed to respond to the Committee's requests for clarification of a number of issues which are significant to the resolution of Mr. Wick's case. Some of these requests, (which, for example, seek the meaning of "reasonable time", "advance", etc.), have been pending before the Commission for more than six months. To date, they are unanswered. As a result, respondent is at a severe disadvantage to contest the General Counsel's interpretation and application of the Act which, without known standards, can be altered to fit any given situation. Under such arbitrary circumstances, the General Counsel's recommendation for a finding of "probable cause" in this case should not be endorsed by the Commission.

B. The Expenses Incurred By Mr. Wick Do Not Constitute A Contribution Because The Advance Was Made In The Ordinary Course of Business

The brief of the General Counsel states that "an individual volunteer who is not in the business of providing services to political committees, like Charles Wick, plainly is not within the intended scope of the exemption for extension of credit by vendors." The brief further explains that in those instances where the Commission has permitted businesses and individuals to incur expenses in advance, the reason for doing so is that such businesses and individuals are serving as vendors of services. In those situations, the General Counsel maintains that credit may be extended in the ordinary course of business for periods not to exceed normal business or trade practice. See 11 C.F.R. §§ 114.10(a); 100.7(a)(4). Based on its limited interpretation, however, the General Counsel maintains that the expenses incurred by Mr. Wick do not satisfy these requirements and hence constitute an advance which, by definition, is a contribution. See 2 U.S.C. § 431(8)(A)(i).

The General Counsel's analysis of the meaning of "advance" is in conflict with the Act and its regulations. The definition of "contribution" does include an "advance". 2 U.S.C. § 431(8)(A)(i). However, the Federal Election Commission regulations implementing this provision further define the term "advance" as "[t]he extension of credit by any person for a length of time beyond normal business or trade practice . . . ." 11 C.F.R. § 100.7(a)(4). The term "normal business or trade practice" modifies the length of time for extending credit. It does not, as the General Counsel asserts, refer to the nature of the business activity conducted. Moreover, 11 C.F.R. § 100.7(a)(4) refers to the extension of credit "by any person," which under 2 U.S.C. § 431(11), includes individuals as well as businesses. In light of these provisions, therefore, only the time within which reimbursement is sought is relevant in determining whether the extension of credit constitutes an advance and thus a contribution.

Assuming arguendo that the expenses incurred by Mr. Wick represent an extension of credit, he clearly did not extend credit to the Committee for any length of time beyond normal business practice. As noted previously, the last expense at issue was incurred by Mr. Wick in mid-November of 1979. The Committee was billed for these expenses within two months. Thereafter, Mr. Wick contacted the Committee on several occasions in an effort to obtain reimbursement. Mr. Wick was paid by Committee check dated April 9, 1980. These facts clearly establish that the alleged "extension of credit" was not made for any length of time beyond normal business practice.

Even if it is assumed that Mr. Wick extended credit for longer than the normal business practice, his efforts to secure reimbursement from the Committee bring him into compliance with the provisions of 11 C.F.R. § 100.7(a)(4) as a "commercially reasonable attempt" was made "to collect the debt" at issue.

As can be seen from the above, Mr. Wick did not extend credit to the Committee for any length of time beyond normal business practice and made a commercially reasonable attempt to collect payment from the Committee. As a result, no "advance" or "contribution" ever arose.*/

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*/ This result is further supported by the case authority cited at page 7 of the Committee's response to the General Counsel's "probable cause" recommendation in MUR 1349, filed today with the Commission under separate cover.

CONCLUSION

Under the circumstances described in this response, Mr. Wick did not make an "advance" to the Committee and hence did not make a contribution in violation of 2 U.S.C. § 441a(a)(1)(A). Based on the above factual and legal discussion, therefore, it is respectfully requested that no further action be taken against Mr. Wick and that the file in this matter be closed.

Sincerely,

Edward L. Weidenfeld

cc: Charles N. Steele, Esq.

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8304030241

FROM
McKENNA, CONNER & CUNEO
1575 EYE STREET, NORTHWEST
WASHINGTON, D. C. 20005

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

HAND DELIVERED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 6, 1982

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1349

Dear Mr. Weidenfeld:

This is in response to your letter dated January 4, 1982, in which you request on behalf of your clients, Charles Wick and the Reagan for President Committee, a 15 day extension of time in which to respond to the briefs of the General Counsel.

I have reviewed your request and agree to a 15 day extension of time. The responses of your clients are due, therefore, on January 22, 1982. If you have any questions please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

8304030242

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005
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(415) 433-0640

EDWARD L. WEIDENFELD

WRITER'S DIRECT DIAL NUMBER
(202) 789- 7640

Gcc#6019

HAND DELIVERED

January 4, 1982

Ms. Maura White
Federal Election Commission
1325 K Street, N.W.
Washington, D. C.

Re: MUR 1349

Dear Maura:

This is to confirm the December 23, 1981 telephone conversation you had with Maureen Duignan concerning the time within which to respond to the General Counsel's "probable cause" recommendations in connection with the above-referenced MUR. Pursuant to that conversation and the assurances you gave us, we hereby request an extension of time to and including January 22, 1982 within which to file our responses to the General Counsel's briefs.

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: Charles N. Steele, Esq.

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Ccc#6020

HAND DELIVERED

January 4, 1982

Ms. Maura White
Federal Election Commission
1325 K Street, N.W.
Washington, D. C.

2 JAN 5 P2:28

Re: MUR 1349

Dear Maura:

This is to confirm the December 23, 1981 telephone conversation you had with Maureen Duignan concerning the time within which to respond to the General Counsel's "probable cause" recommendations in connection with the above-referenced MUR. Pursuant to that conversation and the assurances you gave us, we hereby request an extension of time to and including January 22, 1982 within which to file our responses to the General Counsel's briefs.

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: Charles N. Steele, Esq.

December 18, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1349

Please have the attached Memo and Briefs distributed to the Commission on an informational basis. Thank you.

Attachment

cc: White

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LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
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Charles N. Steele, Esq.
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8040382

Ms. Maura White
Federal Election Commission
1325 K Street, N.W.
Washington, D. C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 DEC 18 P4: 52

December 18, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1349

Attached for the Commission's review are two briefs which state the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of each brief and a letter notifying the respondents' counsel of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe in regard to Charles Wick and the Reagan for President Committee, were mailed on December 18, 1981. Following receipt of the respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments:

Briefs (2)
Letter (1)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 18, 1981

Edward Weidenfeld
McKenna, Conner, & Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1349

Dear Mr. Weidenfeld:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on April 7, 1981, found reason to believe that your client Charles Wick violated 2 U.S.C. § 44la(a)(1)(A), and the Reagan for President Committee violated 2 U.S.C. §§ 44la(f), 432(c), 433(c), 434(b), and 434(b)(5)(A), 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 Charles Wick and the Reagan for President Committee violated the Federal Election Campaign Act of 1971, as amended ("the Act").

Submitted for your review are two briefs 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 as to whether there is probable cause to believe your clients violated the Act. The Commission may or may not approve the General Counsel's recommendations.

If you are unable to file a responsive brief within 15 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 20 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 Maura White at (202)523-4057.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Briefs (2)

8040802350

BEFORE THE FEDERAL ELECTION COMMISSION

November 24, 1981

In the Matter of	)	
	)	MUR 1349
Charles Wick	)	

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

This matter was referred to the Office of General Counsel by the Audit Division based upon information obtained during the post-primary audit of the Reagan for President Committee ("Committee"). On April 7, 1981, the Commission determined that there is reason to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A). Notification of the Commission's finding was mailed to Mr. Wick on April 29, 1981. Counsel for Mr. Wick filed a response on May 19, 1981.

This matter involves an advance to the Committee from Charles Wick; the amount of the advance is $18,712.54 plus the monetary difference between coach and first class airfare for four campaign-related airplane flights taken by Mary Jane Wick. Mr. Wick incurred the expenses on the Committee's behalf during the period of September 12, 1979, through November 15, 1979, and sought reimbursement from the Committee on January 18, 1980. Mr. Wick was reimbursed by the Committee on April 9, 1980, in the amount of $18,712.54 (plus $766.05 for limousine services paid for by Mary Jane Wick).

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The response of Charles Wick argues that he did not make an excessive contribution to the Committee, and that he acted "reasonably in light of the circumstances then prevailing in [his] dealings with the Committee." The only relevant time period insofar as the Wicks are concerned, the response maintains, is the period from September 12, 1979, the date the expenses began to be incurred, through January 18, 1980, the date that the Wicks submitted an invoice to the Committee. The response states that many of the charges involved were billed to Mr. Wick's American Express account and that the "billing cycle and procedures account for a substantial time interval." It is further argued that Mr. Wick experienced a three week illness during this period, both Mr. and Mrs. Wick were "committed to extremely demanding schedules" during this period, and that their "request for reimbursement was timely filed once all the data was available and the Wicks had an opportunity to prepare a reimbursement request." The response concludes that "[o]nce the request for reimbursement was filed with the Committee, the Wicks had no power to force the Committee, short of litigation into payment" and "[e]ven had the Wicks chosen to litigate, given the procedural requirements and court delays, payment would not have been made prior to the date when the Wicks were reimbursed."

II. Legal Analysis

(a) The law applicable

Section 441a(a)(1)(A) of Title 2, United States Code,

states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. The term "contribution" is defined at 2 U.S.C. § 431(8)(A) (former 2 U.S.C. § 431(e)) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office (emphasis added).

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

(b) Application of the law to the facts

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, the Commission has never

indicated that the advances made by such individuals are not contributions subject to the Act's limitations.1/ This is no less so if the individual is expressly designated as an agent of the candidate or committee. The candidate or committee plainly enjoys the benefit of the goods or services from the moment they are purchased by the individual. In the General Counsel's view, the transaction constitutes a contribution as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction, which is also subject to the contribution limitations.2/

1/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter. However, in no way does the manual suggest that the expenses being reimbursed are not advances by the persons who made them and hence subject to the Act's contribution limitations.

2/ It is true that the Commission has allowed businesses and paid individual fundraisers to make advance payments to vendors in carrying out services on behalf of political committees without such advance payments being subject to the contribution limitations. See Advisory Opinions 1979-36 (direct mail firm hired by committee may incur costs and later bill committee if normal industry practice and done in ordinary course of business) and 1980-17 (individual paid, under contract with committee, to raise funds avoids contribution if all receipt-verified expenses incurred are reimbursed on a timely basis). The rationale for treating these situations differently is that such businesses and individuals are serving as vendors of services, and, as such, they may extend credit in the ordinary course of business for periods not to exceed normal business or trade practice. See 11 C.F.R. §§ 114.10 (a); 100.7(a)(4). An individual volunteer who is not in the business of providing services to political committees, like Charles Wick, plainly is not within the intended scope of the exemption for extension of credit by vendors.

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In the General Counsel's view, a contribution from an individual to a political committee arises at the time the individual makes payment for the goods or services, i.e., at the time cash, a check, or a credit card is tendered. At that point the vendor receives either money, a negotiable instrument, or a firm contractual right to payment, and the candidate or committee receives goods or services through the efforts of the individual. At that point, also, there will be a written receipt or other documentation available to evidence the date, amount, purpose, and payee of the transaction. See 2 U.S.C. § 432(c)(5).

In the instant matter, it is the view of the General Counsel that because Charles Wick had already contributed $1,000 to the Committee, he could not advance any additional sums to the Committee.3/ The Committee should have either paid for the various expenses directly by committee check or advanced funds to Mr. Wick to enable him to incur the expenses.4/ It, therefore,

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3/ Charles Wick contributed $1,000 to the Committee on March 26, 1979. Mr. Wick also incurred expenses on the Committee's behalf using his own cash, checks, and credit cards throughout the period of September 12, 1979, through November 15, 1979. Mr. Wick's expenses totalled $18,712.54 plus the monetary difference between coach and first class airfare for four airplane flights taken by Mary Jane Wick.

4/ The law permits a sufficient amount of flexibility for individuals wishing to perform volunteer activities on behalf of a committee. In the General Counsel's view, it would not be impermissible for individuals who had not reached their contribution limit to advance funds to a candidate or committee as long as the advance did not cause an excessive contribution. Thus, for example, individuals authorized by a candidate's committee to carry out committee activities will ordinarily be able to make expenditures from their personal funds for items which are needed on short notice. Such expenditures, however, will not be able to exceed $1,000 when aggregated with any other outstanding contributions by the individual. Additionally, Commission Regulations at 11 C.F.R. § 100.7(b)(8) permit an individual to make unreimbursed payments of up to $1,000 for transportation expenses incurred on behalf of a federal candidate with respect to a single election, and permit an individual to make unreimbursed payment from his or her personal funds for usual and normal subsistence expenses incidental to volunteer activity.

continues to be the position of the General Counsel that Charles Wick made an excessive contribution to the Committee from the moment he tendered payment for the services. This matter is aggravated by the fact that the amount of the excessive contribution involved is $18,712.54 (plus certain airfare charges), by the fact that five to seven months elapsed before Mr. Wick was reimbursed, and by the fact that Mr. Wick has not yet been reimbursed for the difference between the cost of coach and first class airfare on four campaign-related airplane flights. Hence, it is the view of the General Counsel that there is probable cause to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A).

III. General Counsel's Recommendations

1. Find probable cause to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A).

18 December 1981
Date

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

November 24, 1981

In the Matter of	)	
	)	MUR 1349
Reagan for President Committee	)	
	)	

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

This matter was referred to the Office of General Counsel by the Audit Division based upon information obtained during the post-primary audit of the Reagan for President Committee ("Committee"). On April 7, 1981, the Commission determined that there is reason to believe the Committee violated 2 U.S.C. §§ 441a(f), 434(b)(5)(A), 434(b), 432(c), and 433(c). Notification of the Commission's findings was mailed to the Committee on April 29, 1981. The Committee's preliminary response was received by the Office of General Counsel on June 10, 1981; an additional response was submitted on July 14, 1981.

This matter involves the Committee's receipt of an excessive contribution of at least $18,712.54 from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick; the Wicks' contributions result from advances made by them to the Committee. Also involved in this matter is the Committee's failure to report the ultimate recipient of certain expenditures made by the Wicks, and in regard to an Oregon fundraising event, failure to amend its statement

of organization within ten days, failure to report $5,233.90 in receipts and expenditures, and failure to maintain records relating to expenditures totalling $5,233.90.

In regard to the Committee's receipt of excessive contributions from Charles and Mary Jane Wick, the Committee's response states that "it did not accept any contributions from the Wicks in violation of 2 U.S.C. § 441a(f)." The response argues that because the Committee reimbursed the Wicks less than three months after the Wicks submitted their invoice to the Committee, the Committee "paid the Wicks' expense report within a reasonable time following their request for reimbursement." 1/ Counsel supports this argument by stating that every detail of the invoice submitted by the Wicks had to be verified by the Committee, that a large number of reimbursement reports were being processed, and that there was a major staff turnover during this period.

Concerning the reporting of the ultimate recipient of the expenditures incurred by Charles and Mary Jane Wick, the Committee's response states that it is "unfair" for the Commission to assert that the Committee's "failure to itemize its expenditures in excess of $200 is a knowing violation when such information has been freely made available to the

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1/ The Wicks submitted their invoice or "expense report" to the Committee on January 18, 1980. The Committee reimbursed the Wicks on April 9, 1980.

Commission staff." 2/ The basis for the Committee's argument appears to be the fact that a request for additional information (RFAI) was not sent to the Committee prior to the Commission's determination. Counsel concludes its argument by asserting that because the expenditure information has been made available to the Commission's staff, the Commission's finding is not only "unnecessary and serious" but "unwarranted."

With respect to the Commission's findings that the Committee failed to amend its statement of organization within ten days to include an Oregon depository 3/, the response of the Committee contends that its statement of organization was amended within a "timely fashion." Counsel argues that although it took "some time to track down the people involved" in the Oregon fundraising event, the Committee "reported all the information it had available to the FEC as promptly as possible." Furthermore, it is the position of the Committee that "the time within which it took ... to obtain the necessary

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2/ Based upon documentation obtained by the Audit Division, it appears that the Committee should have reported as a memo entry a $14,926.61 expenditure to the Mayfair Regent, a $299.35 expenditure to National Car Rental, the names of the various airlines and costs of airplane tickets for flights taken by Mary Jane Wick, and a $766.05 expenditure to Madden's Limousine Service.

3/ While the Committee received a check in the amount of $10,000 dated May 19, 1980, drawn on an account in Citizens Valley Bank located in Albany, Oregon, it did not amend its statement of organization to include the depository until June 25, 1980 (received by the Commission on June 30, 1980).

information and file its amended statement was reasonable under the circumstances," and that "the Committee used its best efforts to obtain the necessary information to be reported to the Commission."

The supplemental response of the Committee contends that it did not fail to keep an account of all disbursements or fail to report certain contributions and expenditures in connection with the Oregon fundraiser as it "used its best efforts to obtain information" and "reported all the information it received to the Commission." The Committee's reply explains that although the Committee received a $10,000 check from the Committee to Elect Reagan with no accompanying contributor data, the Committee did subsequently receive, in response to a Committee inquiry, "a set of contributor cards which reflected a total of $14,417 in contributions." The Committee's response contends that while it made repeated attempts to contact the Oregon staff to determine how the remaining $4,417 should be accounted for, the "Committee was unable to obtain the information it sought." 4/ The response further states that upon the Committee's receipt of the reason to believe notification, the Committee made "another concerted effort," which was successful, to obtain the financial information associated

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4/ The response also asserts that statements made by an FEC auditor left Scott MacKenzie, presently the Committee's treasurer, "with the impression that the Commission was satisfied that sufficient steps had been taken by the Committee to obtain the information."

with the fundraiser. The Committee's reply notes that its review of the records it obtained recently has revealed that approximately $15,200, rather than $14,417 was raised at the event; it is the view of the Committee that the expenditures related to the fundraising event totalled approximately $5,200. In conclusion, the response argues that it is "clearly erroneous" to cite the Committee for violating the Act since "only recently has it been possible to determine how to properly account" for the expenditures involved. 5/

II. Legal Analysis

(a) The law applicable

The term "contribution" is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money, or anything of value made by any person for the purpose of influencing any election for federal office (emphasis added).

Section 44la(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 44la(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations.

5/ The Committee's reply states that a "more detailed account" of the receipts and expenditures involved in this matter will be included on its July 15, 1981, quarterly report. The Committee's July 15, 1981, quarterly filing reports receipts of $5,233.90 and expenditures of $5,233.90 which were apparently incurred during the period of April 8, 1980, through August 18, 1980, in connection with the Oregon fundraiser.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7 (b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6). Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

Pursuant to 2 U.S.C. § 434(b)(5)(A) a political committee is required to report the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure. The Commission has required a committee to report the ultimate recipient of an expenditure unless the expenditure was incurred in connection with the travel and subsistence costs of a committee agent to whom an advance or reimbursement was made. Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 129-130, 138-139.

Section 433(b)(6) of Title 2, United States Code, requires a political committee to include on its statement of organization

a listing of all banks or other depositories used by the committee. A political committee is further required by 2 U.S.C. § 433(c) to report any change in information previously submitted in a statement of organization no later than ten days after the date of the change. Pursuant to 2 U.S.C. § 432(c), the treasurer of a political committee is required to keep an account of all contributions received and all disbursements made by the committee. Section 434(b) of Title 2, United States Code, requires a political committee to report all contributions received and all expenditures made by the committee.

Pursuant to 2 U.S.C. § 432(i) and 11 C.F.R. § 104.7(a), when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Federal Election Campaign Act of 1971, as amended ("the Act") for the political committee, any report or any records of such committee shall be considered in compliance with the Act. Pursuant to 11 C.F.R. § 102.9(d), in performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain, and submit the required information and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed in compliance with the Act. With regard to requirements concerning receipts, invoices, and cancelled checks, the treasurer shall not be deemed to have exercised best efforts to obtain, maintain, and submit the records

unless he or she has made one written effort per transaction to obtain a duplicate copy of the invoice, receipt or cancelled check.

(b) Application of the law to the facts

1. Receipt of excessive contributions from Charles Wick and Mary Jane Wick

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations. 6/ This is no less so if the individual is expressly designated as an agent of the candidate or committee. The candidate or committee plainly enjoys the benefit of the goods or services from the moment they are purchased by the individual. In the General Counsel's view, the transaction constitutes a contribution as long as the advance

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6/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter. However, in no way does the manual suggest that the expenses being reimbursed are not advances by the persons who made them and hence subject to the Act's contribution limitations.

is unreimbursed and, in that sense, it resembles a loan transaction, which is also subject to the contribution limitations.7/

In the General Counsel's view, a contribution from an individual to a political committee arises at the time the individual makes payment for the goods or services, i.e., at the time cash, a check, or a credit card is tendered. At that point the vendor receives either money, a negotiable instrument, or a firm contractual right to payment, and the candidate or committee receives goods or services through the efforts of the individual. At that point also, there will be a written receipt or other documentation available to evidence the date, amount, purpose, and payee of the transaction. See 2 U.S.C. § 432(c)(5)

In the instant matter, it is the view of the General Counsel that because both Mr. and Mrs. Wick had already contributed $1,000

7/ It is true that the Commission has allowed businesses and paid individual fundraisers to make advance payments to vendors in carrying out services on behalf of political committees without such advance payments being subject to the contribution limitations. See Advisory Opinions 1979-36 (direct mail firm hired by committee may incur costs and later bill committee if normal industry practice and done in ordinary course of business) and 1980-17 (individual paid, under contract with committee, to raise funds avoids contribution if all receipt-verified expenses incurred are reimbursed on a timely basis). The rationale for treating these situations differently is that such businesses and individuals are serving as vendors of services, and, as such, they may extend credit in the ordinary course of business for periods not to exceed normal business or trade practice. See 11 C.F.R. §§ 114.10 (a); 100.7(a)(4). An individual volunteer who is not in the business of providing services to political committees, like Charles Wick, plainly is not within the intended scope of the exemption for extension of credit by vendors.

to the Committee, they could not advance any additional sums to the Committee.8/ The Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur the expenses.9/

While counsel for the Committee argues that because the Committee reimbursed the Wicks within three months of its receipt of their invoice no excessive contributions resulted, it continues to be the view of the General Counsel that the Committee accepted excessive contributions from Charles Wick and Mary Jane Wick from the moment the Wicks tendered payment

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8/ Charles Wick and Mary Jane Wick each contributed $1,000 to the Committee on March 26, 1979. Additionally, Charles Wick incurred expenses on the Committee's behalf using his own cash, checks, and credit cards throughout the period of September 12, 1979, through November 15, 1979. Mr. Wick's expenses totalled $18,712.54 plus the monetary difference between coach and first class airfare for four airplane flights taken by Mary Jane Wick. Mary Jane Wick incurred an expense of $766.05 on December 31, 1979, when she paid for limousine services by personal check.

9/ The law permits a sufficient amount of flexibility for individuals wishing to perform volunteer services on behalf of a committee. In the General Counsel's view, it would not be impermissible for individuals who had not reached their contribution limit to advance funds to a candidate or committee as long as the advance did not cause an excessive contribution. Thus, for example, individuals authorized by a candidate's committee to carry out committee activities will ordinarily be able to make expenditures from their personal funds for items which are needed on short notice. Such expenditures, however, will not be able to exceed $1,000 when aggregated with any other outstanding contributions by that individual. Additionally, Commission Regulations at 11 C.F.R. § 100.7(b)(8) permit an individual to make unreimbursed payments of up to $1,000 for transportation expenses incurred on behalf of a federal candidate with respect to a single election, and permit an individual to make unreimbursed payment from his or her personal funds for usual and normal subsistence expenses incidental to volunteer activity.

for the services. This matter is aggravated by the fact that the amounts of the excessive contributions involved are $18,712.54 (plus certain air fare charges) and $766.05, by the fact that Charles Wick and Mary Jane Wick were not reimbursed for periods ranging from three to seven months after they incurred expenses, and by the fact that Charles Wick has not yet been reimbursed for the difference between the cost of coach and first-class airfare on four campaign-related airplane flights. Therefore, it is the view of the General Counsel that there is probable cause to believe the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Charles Wick and Mary Jane Wick.

(2) Failure to report the ultimate recipient of expenditures

Respondent's argument that it is "unfair" to allege a violation of 2 U.S.C. § 434(b)(5)(A) because a RFAI was not sent to the Committee and because the information is available to the Commission, does not alter the fact, in the General Counsel's view, that the Committee violated the Act. Neither the Act nor Commission regulations require the mailing of a RFAI prior to a Commission determination of reason to believe that a violation has occurred, and the mailing of such a letter is sent on an informational basis only. Thus, it continues to be the view of the General Counsel that there is probable cause to believe the Committee violated 2 U.S.C. § 434(b)(5)(A).

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(3) Oregon Fundraising

The argument put forth by the respondent that it did not violate 2 U.S.C. § 433(c) as it amended its statement of organization within a "timely fashion," does not vitiate the violation in the view of the General Counsel. The Act specifically requires that statements of organization be amended within ten days of any change in information. The evidence available in this matter indicates that the Committee deposited funds into the Oregon depository prior to May 19, 1980, yet did not amend its statement of organization until June 25, 1980 (received by the Commission on June 30, 1980), more than 37 days after it deposited funds into the bank. In consideration of the foregoing, and in view of the fact that the Committee has not demonstrated that its best efforts were used to report the information in a timely manner, it is the position of the General Counsel that the Committee failed to amend its statement of organization within ten days and that there is probable cause to believe the Committee violated 2 U.S.C. § 433(c).

While the Committee argues that it did not violate 2 U.S.C. §§ 432(c) and 434(b) because it used its "best efforts" to obtain the financial information which is required to be maintained and reported, the Committee has not provided any documentation in support of its contention that "best efforts" were in fact used; the Committee has not submitted evidence of any written efforts to obtain information from either the Oregon bank or vendors, nor evidence of any other

efforts to obtain the information required to be reported. It is, therefore, the view of the General Counsel that there is probable cause to believe the Committee violated 2 U.S.C. § 432(c) by failing to keep an account of certain expenditures associated with the Oregon fundraising event, and violated 2 U.S.C. § 434(b) by failing to report certain contributions received and expenditures made in connection with the event.

III. General Counsel's Recommendations

1. Find probable cause to believe the Reagan for President Committee, violated 2 U.S.C. §§ 441a(f), 434(b)(5)(A), 433(c), 432(c), and 434(b).

15 December 1981
Date

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1981

Edward Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1349

Dear Mr. Weidenfeld:

On April 7, 1981, the Commission found reason to believe that your client, Mercury Exploration Company, violated 2 U.S.C. § 441b(a) in connection with the use of its facilities by Reagan for President Committee volunteers. The Commission also found reason to believe that your client, the Reagan for President Committee, violated 2 U.S.C. § 441b(a) in connection with its use of the facilities of Warren Properties Realtors and Mercury Exploration Company to conduct volunteer activities, and 2 U.S.C. § 434(b) in connection with its apparent failure to report the receipt of an in-kind contribution from Chapman and Company. The responses you filed on behalf of the Mercury Exploration Company and the Reagan for President Committee were received by the Commission on June 8, 1981, and June 10, 1981, respectively.

After considering the circumstances of this matter, the Commission has determined to take no further action against the Mercury Exploration Company and the Reagan for President Committee in connection with the Committee's use of these business and corporate facilities to conduct volunteer activities. The Commission reminds you, however, that it is nevertheless a violation of 2 U.S.C. § 441b(a) if a political committee makes use of corporate facilities and does not reimburse the corporation in an amount equal to the normal and usual charge prevailing in the commercial market for the use of the corporate facilities. Furthermore, it is a

violation of 2 U.S.C. § 434(b) to fail to report the receipt of in-kind contributions. If you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8204030271

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1349

Dear Mr. Weidenfeld:

On April 7, 1981, the Commission found reason to believe that your client, Mercury Exploration Company, violated 2 U.S.C. § 441b(a) in connection with the use of its facilities by Reagan for President Committee volunteers. The Commission also found reason to believe that your client, the Reagan for President Committee, violated 2 U.S.C. § 441b(a) in connection with its use of the facilities of Warren Properties Realtors and Mercury Exploration Company to conduct volunteer activities, and 2 U.S.C. § 434(b) in connection with its apparent failure to report the receipt of an in-kind contribution from Chapman and Company. The responses you filed on behalf of the Mercury Exploration Company and the Reagan for President Committee were received by the Commission on June 8, 1981, and June 10, 1981, respectively.

After considering the circumstances of this matter, the Commission has determined to take no further action against the Mercury Exploration Company and the Reagan for President Committee in connection with the Committee's use of these business and corporate facilities to conduct volunteer activities. The Commission reminds you, however, that it is nevertheless a violation of 2 U.S.C. § 441b(a) if a political committee makes use of corporate facilities and does not reimburse the corporation in an amount equal to the normal and usual charge prevailing in the commercial market for the use of the corporate facilities. Furthermore, it is a

violation of 2 U.S.C. § 434(b) to fail to report the receipt of in-kind contributions. If you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White at 202-523-4057.

Sincerely,

Charles N. Steele
General Counsel

MW 7/27/81

By: Kenneth A. Gross
Associate General Counsel

3504380273

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1981

Bill D. Warren
Warren Properties Realtors
5511 Parkcrest
Suite 107
Austin, Texas 78731

Re: MUR 1349

Dear Mr. Warren:

On April 7, 1981, the Commission found reason to believe that Warren Properties Realtors violated 2 U.S.C. § 441b(a) in connection with the use of its facilities by Reagan for President Committee volunteers. The response you filed on behalf of Warren Properties Realtors was received by the Commission on May 18, 1981.

After considering the circumstances of this matter the Commission has determined to take no further action against Warren Properties Realtors. The Commission reminds you, however, that it is nevertheless a violation of 2 U.S.C. § 441b(a) if a corporation permits its facilities to be used by a candidate's agents in connection with federal election activities and is not reimbursed for such use in an amount equal to the normal and usual charge prevailing in the commercial market for the use of the corporate facilities. If you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4175.

Sincerely,

Charles N. Steele
General Counsel

by: Kenneth A. Gross
Associate General Counsel

Bill D. Warren
Warren Properties Realtors
5511 Parkcrest
Suite 107
Austin, Texas 78731

Re: MUR 1349

Dear Mr. Warren:

On April 7, 1981, the Commission found reason to believe that Warren Properties Realtors violated 2 U.S.C. § 441b(a) in connection with the use of its facilities by Reagan for President Committee volunteers. The response you filed on behalf of Warren Properties Realtors was received by the Commission on May 18, 1981.

After considering the circumstances of this matter the Commission has determined to take no further action against Warren Properties Realtors. The Commission reminds you, however, that it is nevertheless a violation of 2 U.S.C. § 441b(a) if a corporation permits its facilities to be used by a candidate's agents in connection with federal election activities and is not reimbursed for such use in an amount equal to the normal and usual charge prevailing in the commercial market for the use of the corporate facilities. If you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Laura White, the staff member assigned to this matter, at 202-523-4175.

Sincerely,

Charles N. Steele
General Counsel

MW 1/27/81

By: Kenneth A. Gross
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1349
Reagan for President Committee, et al.)

AMENDED CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on July 21, 1981, do hereby certify that the Commission decided by a vote of 5-0 to reject the recommendations contained in the General Counsel's July 13, 1981 report and to take no furhter action with respect to Warren Properties Realtors, Mercury Exploration Company, and the Reagan for President Committee in connection with phone bank operations.

Commissioners Aikens, Harris, McGarry, Reiche, and Thomson voted affirmatively for the decision; Commissioner Tiernan was not present at the time of the vote.

Attest:

7/27/81
Date

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

8304580276

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1349
Reagan for President Committee, et al.)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on July 21, 1981, do hereby certify that the Commission decided by a vote of 5-0 to reject the recommendations contained in the General Counsel's July 13, 1981 report and to take no further action with respect to MUR 1349.

Commissioners Aikens, Harris, McGarry, Reiche, and Thomson voted affirmatively for the decision; Commissioner Tiernan was not present at the time of the vote.

Attest:

7-21-81
Date

Marjorie W. Emmons
Secretary of the Commission

8304080277

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: JULY 15, 1981

SUBJECT: ADDITIONAL OBJECTION - MUR 1349 Memorandum to the Commission dated July 13 , 1981

You were notified previously of an objection by Commissioner Reiche.

Commissioner Aikens submitted an objection at 1:47, July 15, 1981.

This matter will be discussed in executive session on Tuesday, July 21, 1981.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS /JODY CUSTER
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: JULY 15, 1981

SUBJECT: ADDITIONAL OBJECTION - MUR 1349 Memorandum to the Commission dated 7-13-81

You were notified previously of an objection by Commissioners Reiche and Aikens.

Commissioner Thomson submitted an additional objection at 2:31, July 15, 1981 .

This matter will be discussed in executive session on Tuesday, July 21, 1981.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: JULY 15, 1981

SUBJECT: OBJECTION - MUR 1349 Memorandum to the Commission dated July 13, 1981

The above-named document was circulated on a 48 hour vote basis at 4:00, July 13, 1981.

Commissioner Reiche submitted an objection at 10:06, July 15, 1981.

This matter will be placed on the Executive Session Agenda for Tuesday, July 21, 1981.

July 13, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1349

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

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SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 JUL 13 A10:03

July 13, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1349

On April 7, 1981, the Commission found reason to believe that Warren Properties Realtors and the Mercury Exploration Company violated 2 U.S.C. § 441b(a), and that the Reagan for President Committee ("committee") violated 2 U.S.C. §§ 441b(a) and 434(b), in connection with the committee's use of business and corporate telephones and office facilities. Questions were subsequently issued to the committee wherein the committee was asked to provide the fair market value of each of the corporate (Warren Properties Realtors and Mercury Exploration Company) and business (Chapman and Company) facilities used by committee volunteers. 1/ The committee's response, however, which was received on June 10, 1981, does not provide the information requested by the Commission. Instead, the response states that because the facilities were used for no more than a few days duration and after normal business hours, "[t]here does not appear to be any commercial market for such usage."

As it is necessary to determine the amount of apparent corporate and unreported contributions received by the committee, the General Counsel recommends that the Commission approve the attached orders to answer questions concerning the fair market value of the corporate and business facilities. As specific information is requested in regard to the operation of the two corporations and one business, it appears that these entities, rather than the committee, will best be able to respond.

1/ While Warren Properties Realtors was incorporated in April, 1980, at the time the facilities were used, it is not now incorporated.

Recommendation

1. Approve the attached letters and orders to the Mercury Exploration Company, Chapman and Company, and Warren Properties Realtors.

Attachments:
Letters(3)
Orders(3) and questions

8304030230

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C.

Re: MUR 1349

Dear Mr. Weidenfeld:

On April 29, 1981, your client, Mercury Exploration Company, was mailed notification that the Commission had found reason to believe that it had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. While we acknowledge your letter dated June 5, 1981, the Commission has determined that additional information is necessary in this matter.

Consequently, the Federal Election Commission has issued the attached order which requires you to provide information which will assist it in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended. Responses to the enclosed questions must be submitted under oath and within 15 days of your receipt of this order.

If you have any questions please direct them to Maura White, the staff member handling this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

By: _____
Kenneth A. Gross
Associate General Counsel

Enclosures
Order
Questions

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mercury Exploration) MUR 1349
Company)

ORDER TO SUBMIT WRITTEN ANSWERS

To: Frank Darden
Mercury Exploration Company
Suite 1212 Ridglea Bank Building
Fort Worth, Texas 76116

Pursuant to 2 U.S.C. § 437d(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within 15 days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this day of , 1981.

John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions (2 pages)

3304023

1a. Please state the amount of the monthly rent, if any, paid by the Mercury Exploration Company for office space in both April 1980 and May 1980.

b. Please state the amount of office space used by Reagan for President Committee volunteers to conduct telephoning, and the percentage that this space is to the total amount of office space rented or owned by the Mercury Exploration Company.

c. Please state whether or not the monthly rent paid by the Mercury Exploration Company includes the cost of utilities. If the answer is no, or if the Mercury Exploration Company does not rent office space, please state the fair market value of the utilities used by Reagan for President Committee volunteers.

2. If the Mercury Exploration Company owns its office space, rather than rents or leases such space, please state the fair market value in the commerical market in Fort Worth, Texas, of such space for the time such space was used by Reagan for President Committee volunteers.

3. Please state the monthly telephone service charge of the Mercury Exploration Company, the number of telephones on the corporation's premises, and whether there were any additional phone charges to the corporation for the cost of the phone calls made by Reagan for President Committee volunteers.

4a. Please list all office furniture (e.g. desks, chairs) and machines, if any, used by Reagan for President Committee volunteers.

b. Please state the fair market value in the commercial market in Fort Worth, Texas, of the furniture and machines for the time such furniture and machines were used by Reagan for President Committee volunteers.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bill D. Warren
Warren Properties Realtors
5511 Parkcrest
Suite 107
Austin, Texas 78731

Re: MUR 1349

Dear Mr. Warren:

On April 29, 1981, you were mailed notification that the Commission had found reason to believe that Warren Properties Realtors had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. While we acknowledge your letter dated May 11, 1981, the Commission has determined that additional information is necessary in this matter.

Consequently, the Federal Election Commission has issued the attached order which requires Warren Properties Realtors to provide information which will assist it in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. However, it is required that you submit the information under oath and that you do so within fifteen days of your receipt of this order.

If you have any questions please direct them to Maura White, the staff member handling this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

By: _____
Kenneth A. Gross
Associate General Counsel

Enclosures
Order
Questions

6 6 0 4 0 3 0 2 3 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter)
)
Warren Properties) MUR 1349
Realtors)

ORDER TO SUBMIT WRITTEN ANSWERS

To: Bill D. Warren
Warren Properties Realtors
5511 Parkcrest, Suite 107
Austin, Texas 78731

Pursuant to 2 U.S.C. § 437d(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within 15 days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this day of , 1981.

John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions (2 pages)

1a. Please state the amount of the monthly rent, if any, paid by Warren Properties Realtors, Inc. for office space in April 1980.

b. Please state the amount of office space used by Reagan for President Committee volunteers to conduct telephoning, and the percentage that this space is to the total amount of office space rented or owned by Warren Properties Realtors, Inc.

c. Please state whether or not the monthly rent paid by Warren Properties Realtors, Inc. includes the cost of utilities. If the answer is no, or if Warren Properties does not rent office space, please state the fair market value of the utilities used by Reagan for President Committee volunteers.

2. If Warren Properties Realtors, Inc. owns its office space, rather than rents or leases such space, please state the fair market value in the commercial market in Austin, Texas, of such space for the time such space was used by Reagan for President Committee volunteers.

3. Please state the monthly telephone service charge of Warren Properties Realtors, Inc., the number of telephones on the corporation's premises, and whether there were any additional phone charges to Warren Properties Realtors, Inc. for the cost of the phone calls made by Reagan for President Committee volunteers.

4a. Please list all office furniture (e.g. desks, chairs) and machines, if any, used by Reagan for President Committee volunteers.

b. Please state the fair market value in the commercial market in Austin, Texas, of the furniture and machines, for the time such furniture and machines were used by Reagan for President Committee volunteers.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chapman and Company
3212 - 34th Street
Lubbock, Texas 79410

Re: MUR 1349

Dear Sir or Madam:

The Federal Election Commission, established in April, 1975, has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended. It is the understanding of the Commission that during several days in May and/or June 1980 Chapman and Company permitted volunteers for the Reagan for President Committee to use approximately 24 of the company's telephones located on its premises. The enclosed order, which requires you to provide certain information, has been issued to you in connection with the Commission's investigation into the use of business telephones by the Reagan for President Committee.

The Commission does not consider you a respondent in this matter, but rather as a witness only. Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) will apply. This section of the Act prohibits the making public of any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. However, it is required that you submit the information under oath and that you do so within 15 days of your receipt of this order.

If you have any questions please direct them to Maura White, the staff member handling this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

By: _____
Kenneth A. Gross
Associate General Counsel

Enclosures
Order
Questions

8004080290

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan for President Committee, et al.	)	MUR 1349
	)	

ORDER TO SUBMIT WRITTEN ANSWERS

To: Chapman and Company
3212 - 34th Street
Lubbock, Texas 79410

Pursuant to 2 U.S.C. § 437d(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within 15 days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this day of , 1981.

John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions(2 pages)

1. Please state the dates that Reagan for President Committee volunteers used the telephones and facilities of Chapman and Company, the hours per day the facilities and telephones were used, and the number of volunteers who used the facilities and telephones each day.

2a. Please state the amount of the monthly rent, if any, paid by Chapman and Company for office space in each month that the business' facilities or telephones were used by Reagan for President Committee volunteers.

b. Please state the amount of office space used by Reagan for President Committee volunteers to conduct telephoning, and the percentage that this space is to the total amount of office space rented or owned by Chapman and Company.

c. Please state whether or not the monthly rent paid by Chapman and Company includes the cost of utilities. If the answer is no, or if Chapman and Company does not rent office space, please state the fair market value of the utilities used by Reagan for President Committee volunteers.

2. If Chapman and Company owns its office space, rather than rents or leases such space, please state the fair market value in the commercial market in Lubbock, Texas, of such space for the time such space was used by Reagan for President Committee volunteers.

3. Please state the monthly telephone service charge of Chapman and Company, the number of telephones on the business' premises, and whether there were any additional phone charges

to Chapman and Company for the cost of the phone calls made by Reagan for President Committee volunteers.

4a. Please list all office furniture (e.g. desks, chairs) and machines, if any, used by Reagan for President Committee volunteers.

b. Please state the fair market value in the commercial market in Lubbock, Texas, of the furniture and machines for the time such furniture and machines were used by Reagan for President Committee volunteers.

8304080209

059

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 JUL 15 AM 8:30

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: JULY 14, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1349

The attached letter regarding MUR 1349 was received in Chairman McGarry's office and then forwarded to the Secretary of the Commission. It is provided for your action.

Attachment:
Letter dated July 10, 1981

3040802717

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005
(202) 789-7500

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TELECOPIER (202) 789-7594

EDWARD L. WEIDENFELD

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

RECEIVED
FEC
SECRETARY
81 JUL 14 P 1:51

July 10, 1981

HAND DELIVERED

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1349

Dear Chairman McGarry:

With respect to the above-referenced MUR, the Federal Election Commission ("Commission") notified the Reagan for President Committee ("Committee") by letter dated April 29, 1981 that there was reason to believe the Committee violated certain provisions of the Federal Election Campaign Act of 1971. In a response dated June 8, 1981, the Committee notified the FEC that due to insufficient information it was unable to respond fully to the violations alleged in Section "C" of the General Counsel's Factual and Legal Analysis concerning a fund raising event in Oregon. Since that initial response, the Committee has been able to obtain additional data relevant to that fund raiser. The facts surrounding the receipts and expenditures associated with the event are described below.

In May 1980, the Committee received a check for $10,000 from the Committee to Elect Reagan. This money was raised at a fund raising event in Linn County, Oregon. No contributor data accompanied the check. In response to a request for more complete information, the Committee received a set of contributor cards which reflected a total of $14,417 in contributions. Thereafter, the Committee contacted the Oregon staff to determine how the $4,417 should be accounted for. Although repeated requests for financial records were made, the Committee was unable to obtain the information sought. Mr. Mackenzie, the present Treasurer of the Reagan/Bush Committee, informed an FEC auditor of the problems the Committee had encountered with respect to this matter. Subsequent statements by the auditor left Mr. Mackenzie with the impression that the Commission was satisfied that sufficient steps had been taken by the Committee to obtain

the information. Consequently, the Committee believed the matter was resolved.

Upon receipt of MUR 1349, the Committee discovered that contary to its earlier belief, the accounting discrepancy concerning the Linn County fund raising event was still very much at issue. Thereafter, Committee officials made another concerted effort to obtain the financial records associated with this event. Only recently has the Committee succeeded in obtaining this information. Through an examination of the invoices, bank records and check statements associated with the fund raiser, the Committee has now determined that approximately $15,200 was raised at the event. $10,000 of this amount was contributed to the Reagan for President Committee. On the basis of the information just received, it appears that the remaining amount constituted expenditures associated with the fund raising event. A more detailed account of these receipts and expenditures will be included in the Committee's second-quarter report which will be filed with the Commission on July 15, 1981.

Based on the facts outlined above, it is clear that the Committee has violated neither 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made nor 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event. The Committee used its best efforts to obtain information concerning the Oregon fund raiser and reported all the information it received to the Commission. It is clearly erroneous to cite the Committee for violating the Federal Election Campaign Act for failure to report $4,417 as expenditures since only recently has it been possible to determine how to properly account for that amount. Considering both the difficulty in obtaining the necessary financial records and the representation of an FEC auditor that the Committee no longer needed to pursue this matter, the allegations in Section "C" of the General Counsel's Factual and Legal Analysis are unwarranted and unjustified. In light of the circumstances described above, we firmly believe that no further action should be taken against the Committee with respect to the Oregon fund raising event.

Sincerely,

Edward L. Weidenfeld (mk)

Edward L. Weidenfeld

cc: Charles N. Steele, Esq.
Maura White, Esq.
Mr. Scott Mackenzie

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

RETURNED FOR POSTAGE

WASHINGTON D.C.

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

HAND DELIVERED

81 JUL 14 P12:02

101082
Gcc # 5059
81 JUL 14 P12:35

LAW OFFICES
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(415) 433-0640

EDWARD L. WEIDENFELD

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

July 10, 1981

HAND DELIVERED

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1349

Dear Chairman McGarry:

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In May 1980, the Committee received a check for $10,000 from the Committee to Elect Reagan. This money was raised at a fund raising event in Linn County, Oregon. No contributor data accompanied the check. In response to a request for more complete information, the Committee received a set of contributor cards which reflected a total of $14,417 in contributions. Thereafter, the Committee contacted the Oregon staff to determine how the $4,417 should be accounted for. Although repeated requests for financial records were made, the Committee was unable to obtain the information sought. Mr. Mackenzie, the present Treasurer of the Reagan/Bush Committee, informed an FEC auditor of the problems the Committee had encountered with respect to this matter. Subsequent statements by the auditor left Mr. Mackenzie with the impression that the Commission was satisfied that sufficient steps had been taken by the Committee to obtain

81 JUL 14 P1:43

the information. Consequently, the Committee believed the matter was resolved.

Upon receipt of MUR 1349, the Committee discovered that contary to its earlier belief, the accounting discrepancy concerning the Linn County fund raising event was still very much at issue. Thereafter, Committee officials made another concerted effort to obtain the financial records associated with this event. Only recently has the Committee succeeded in obtaining this information. Through an examination of the invoices, bank records and check statements associated with the fund raiser, the Committee has now determined that approximately $15,200 was raised at the event. $10,000 of this amount was contributed to the Reagan for President Committee. On the basis of the information just received, it appears that the remaining amount constituted expenditures associated with the fund raising event. A more detailed account of these receipts and expenditures will be included in the Committee's second-quarter report which will be filed with the Commission on July 15, 1981.

Based on the facts outlined above, it is clear that the Committee has violated neither 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made nor 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event. The Committee used its best efforts to obtain information concerning the Oregon fund raiser and reported all the information it received to the Commission. It is clearly erroneous to cite the Committee for violating the Federal Election Campaign Act for failure to report $4,417 as expenditures since only recently has it been possible to determine how to properly account for that amount. Considering both the difficulty in obtaining the necessary financial records and the representation of an FEC auditor that the Committee no longer needed to pursue this matter, the allegations in Section "C" of the General Counsel's Factual and Legal Analysis are unwarranted and unjustified. In light of the circumstances described above, we firmly believe that no further action should be taken against the Committee with respect to the Oregon fund raising event.

Sincerely,

Edward L. Weidenfeld (mk)

Edward L. Weidenfeld

cc: Charles N. Steele, Esq.
Maura White, Esq.
Mr. Scott Mackenzie

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

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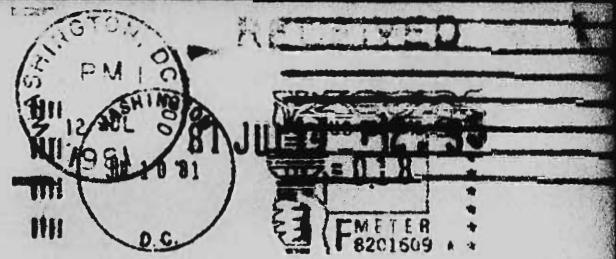

Charles N. Steele, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

101071

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81 JUL 14 A8:59

LAW OFFICES
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EDWARD L. WEIDENFELD

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

July 10, 1981

HAND DELIVERED

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1349

Dear Chairman McGarry:

With respect to the above-referenced MUR, the Federal Election Commission ("Commission") notified the Reagan for President Committee ("Committee") by letter dated April 29, 1981 that there was reason to believe the Committee violated certain provisions of the Federal Election Campaign Act of 1971. In a response dated June 8, 1981, the Committee notified the FEC that due to insufficient information it was unable to respond fully to the violations alleged in Section "C" of the General Counsel's Factual and Legal Analysis concerning a fund raising event in Oregon. Since that initial response, the Committee has been able to obtain additional data relevant to that fund raiser. The facts surrounding the receipts and expenditures associated with the event are described below.

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Based on the facts outlined above, it is clear that the Committee has violated neither 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made nor 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event. The Committee used its best efforts to obtain information concerning the Oregon fund raiser and reported all the information it received to the Commission. It is clearly erroneous to cite the Committee for violating the Federal Election Campaign Act for failure to report $4,417 as expenditures since only recently has it been possible to determine how to properly account for that amount. Considering both the difficulty in obtaining the necessary financial records and the representation of an FEC auditor that the Committee no longer needed to pursue this matter, the allegations in Section "C" of the General Counsel's Factual and Legal Analysis are unwarranted and unjustified. In light of the circumstances described above, we firmly believe that no further action should be taken against the Committee with respect to the Oregon fund raising event.

Sincerely,

Edward L. Weidenfeld (mk)

Edward L. Weidenfeld

cc: Charles N. Steele, Esq.
Maura White, Esq.
Mr. Scott Mackenzie

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

Maura White, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

8304038006

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 7, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

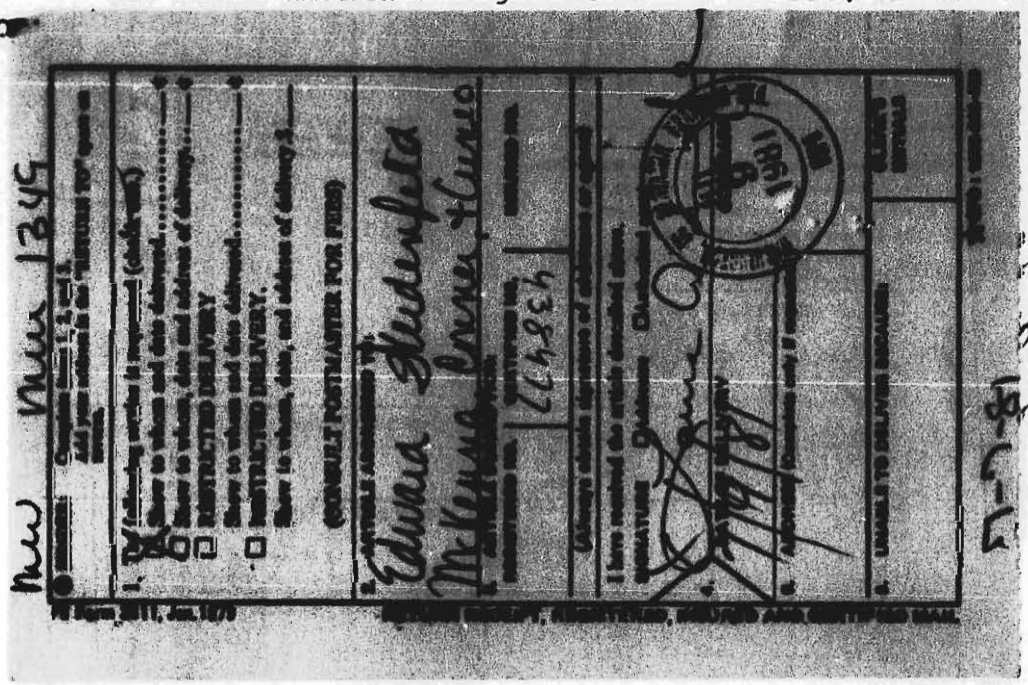
Re: MUR 1349

Dear Mr. Weidenfeld:

This is in reference to your letter dated June 24, 1981, in which you request an additional 15 day extension of time to respond to the Commission's findings concerning an Oregon fundraising event.

The Commission has considered your request and has agreed to grant an additional 15 day extension. The response of the Reagan for President Committee is due, therefore, on July 10, 1981. Please be advised, however, that in view of the Commission's responsibilities to act expeditiously in the conduct of investigations, this is the final extension that will be granted in this matter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1349

Dear Mr. Weidenfeld:

This is in reference to your letter dated June 24, 1981, in which you request an additional 15 day extension of time to respond to the Commission's findings concerning an Oregon fundraising event.

The Commission has considered your request and has agreed to grant an additional 15 day extension. The response of the Reagan for President Committee is due, therefore, on July 10, 1981. Please be advised, however, that in view of the Commission's responsibilities to act expeditiously in the conduct of investigations, this is the final extension that will be granted in this matter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

MW 7/6/81

Charles N. Steele
General Counsel

3 3 0 4 0 0 8 0 0 6

BEFORE THE FEDERAL ELECTION COMMISSSION

In the Matter of)
) MUR 1349
Reagan for President Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 2, 1981, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1349:

1. Grant an additional 15 day extension of time to respond.

2. Approve the letter as submitted with the General Counsel's June 30, 1981 memorandum.

Commissioners Aikens, Harris, McGarry, Reiche, Thomson, and Tiernan voted affirmatively.

Attest:

7-6-81
Date

Marjorie W. Emmons
Secretary of the Commission

Received in Office of the Commission Secretary: 6-30-81, 5:31
Circulated on 48 hour vote basis: 7- 1-81, 11:00

8304030306

June 30, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1349

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

Attachment

cc: White

8304036

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 30, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1349--Request for an additional extension of time

On June 24, 1981, the Office of General Counsel received a request from counsel for the Reagan for President Committee for an additional 15 day extension of time to respond to the Commission's reason to believe findings concerning an Oregon fundraising event (Attachment 1). Counsel explained in a telephone conversation with staff of this office on June 23, 1981, that the committee treasurer is ill, but that as soon as he recovers counsel expects to be able to respond within one day.

Two fifteen day extensions were previously granted in this matter. As the committee has responded to all but one of the issues involved, it is recommended that another 15 day extension be granted, and that counsel be advised that this is the final extension that will be granted.

Recommendations

1. Grant an additional 15 day extension of time to respond.

2. Approve the attached letter.

Attachments:
1. letter from counsel
2. proposed letter

81 JUN 30 P 5:31

C C C 1 4 9 4 9
Wire

LAW OFFICES
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SAN FRANCISCO, CALIFORNIA 94104
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ASHLEY SELLERS (1908-1977)
GILBERT A. CUNEO (1913-1978)

WILBIE M. ADAMS, JR.
JEFFREY P. ALTMAN
ROBERT A. ANTHONY
DANIEL H. BELIN
MICHAEL B. BERG*
STEVEN L. BRIGGERMAN
WILLIAM H. BUTTERFIELD
JOHN D. CONNER
JOHN D. CONNER, JR.
EDMOND M. CONNOR*
BONDAN DANTLIW
C. STANLEY DEES
RONALD J. DeFELICE*
LAWRENCE S. EGNER
AUDRE L. ENGLEMAN*
HERBERT L. FENSTER
RICHARD A. FINK*
PAUL FITTING
D. MICHAEL FITZHUGH
RICHARD A. FLYE
TERRY A. FRALICK*
G. HOWDEN FRASER*
JAMES J. GALLAGHER
ALLEN B. GREEN
MICHAEL B. GRZANKA*
E. SANDERSON HOE
JOE G. HOLLINGSWORTH
TERRY O. KELLY
BERNARD KOLSON*
EDWIN M. LOWE*
ROBERT A. MANGRUM
ELLEN R. MARSHALL*
MICHAEL A. McANDREWS*
ORVILLE W. McCARROLL*
WILLIAM F. McKENNA
LANE L. McVEY
CHARLES G. MILLER*
CHARLES A. O'CONNOR, III
JOHN S. PACHTER
THOMAS L. PATTEN
AARON M. PECK*
RAYMOND S. E. PUSHKAR
NORMAN M. RAUDEN*
MICHAEL ROSTER*
MARTIN S. SCHWARTZ*
HARVEY G. SHERZER
L. BRUCE SPEISER*
WILLIAM J. SPRIGGS
JAMES R. WALTHER*
EDWARD L. WEIDENFELD
KENNETH W. WEINSTEIN
LES J. WEINZIMER
BUEL WHITE
DANIEL H. WILLICK*
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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789- 7640

June 24, 1981

81 JUN 24 P4:18
RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL

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

Re: MUR 1349

Dear Mr. Steele:

I'm writing to request an additional 15 day extension of time to respond to that portion of the above captioned MUR relating to an Oregon fund raising event. The additional time is needed because I have been unable to locate personnel in Oregon or obtain documentation relating to this event.

It is my hope that the additional 15 day extension will permit me to make adequate response.

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: M. White, Esq.

8 3 0 4 0 3 0 3 1 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Re: MUR 1349

Dear Mr. Weidenfeld:

This is in reference to your letter dated June 24, 1981, in which you request an additional 15 day extension of time to respond to the Commission's findings concerning an Oregon fundraising event.

The Commission has considered your request and has agreed to grant an additional 15 day extension. The response of the Reagan for President Committee is due, therefore, on July 10, 1981. Please be advised, however, that in view of the Commission's responsibilities to act expeditiously in the conduct of investigations, this is the final extension that will be granted in this matter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

GCC# 4949

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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER

(202) 789-7640

JUN 24 P4:18

June 24, 1981

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

Re: MUR 1349

Dear Mr. Steele:

I'm writing to request an additional 15 day extension of time to respond to that portion of the above captioned MUR relating to an Oregon fund raising event. The additional time is needed because I have been unable to locate personnel in Oregon or obtain documentation relating to this event.

It is my hope that the additional 15 day extension will permit me to make adequate response.

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: M. White, Esq.

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

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

8304031

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 18, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

RE: MUR 1349

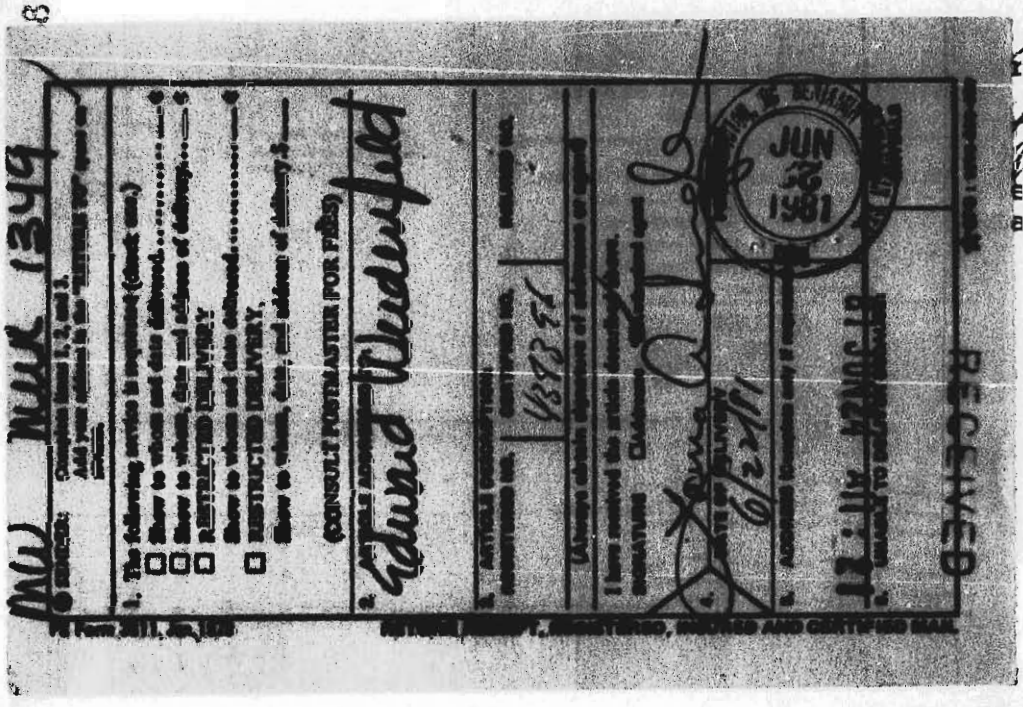
Dear Mr. Weidenfeld:

This is in reference to your letter dated June 8, 1981, in which you submitted a partial response of the Reagan for President Committee, and requested an additional 15 day extension of time to respond to the Commission's findings concerning an Oregon fundraising event.

Considering that you have responded to all but one of the issues involved in this matter, a 15 day extension of time is granted to respond to the remaining issue. The response of the Reagan for President Committee is due, therefore, on June 23, 1981. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

[illegible]
Charles N. Steele
General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

RE: MUR 1349

Dear Mr. Weidenfeld:

This is in reference to your letter dated June 8, 1981, in which you submitted a partial response of the Reagan for President Committee, and requested an additional 15 day extension of time to respond to the Commission's findings concerning an Oregon fundraising event.

Considering that you have responded to all but one of the issues involved in this matter, a 15 day extension of time is granted to respond to the remaining issue. The response of the Reagan for President Committee is due, therefore, on June 23, 1981. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1349
Reagan for President Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 16, 1981, the Commission decided by a vote of 5-0 to take the following actions regarding MUR 1349:

1. Grant an additional 15 day extension of time to respond.

2. Approve the letter as submitted with the General Counsel's Memorandum to the Commission, dated June 12, 1981, regarding the above-named matter.

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

Attest:

6-14-81
Date

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

Received In Office of Commission Secretary: 6-12-81, 10:40
Circulated on 48 hour vote basis: 6-12-81, 2:00

June 12, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1349

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

Attachment

cc: White

8 3 0 4 0 3 0 5 1 5

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 JUN 12 A10: 40

June 12, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1349---Request for an additional extension of time

On June 10, 1981, the Office of General Counsel received a request from counsel for the Reagan for President Committee for an additional 15 day extension of time to respond to the Commission's reason to believe findings in MUR 1349. (Attachment 1). Counsel states that an extension is necessary because the Committee is experiencing difficulties in locating the individuals responsible for an Oregon fundraising event. The Committee had previously requested a 30 day extension of time and a 15 day extension was granted until June 8, 1981. As the Committee's reply dated June 8, 1981, responded to all but one of the issues involved in this matter, it is recommended that the Commission grant an additional 15 day extension to respond to the remaining issue.

Recommendations

1. Grant an additional 15 day extension of time to respond.

2. Approve the attached letter.

Attachments:
1. Letter from counsel
2. Proposed letter

GCC#4860

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NOT PRACTICED IN D.C.

WRITER'S DIRECT DIAL NUMBER:
(202) 789-7640

June 8, 1981

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

RE: MUR 1349

Dear Mr. Steele:

On behalf of our client, the Reagan for President Committee, please find enclosed their preliminary response to MUR 1349. We have endeavored, within the limited time available to us, to gather sufficient factual material to make an adequate response to the issues raised in your correspondence. With the exception of the issues raised relating to the Committee to Elect Reagan, we believe we have been successful. We have been unable to identify the persons responsible for the Committee to Elect Reagan in Oregon and, therefore, request an additional 15 day extension of time to make a more detailed response on this issue.

I look forward to talking with you or a member of your staff about our response to MUR 1349.

Sincerely,

Edward L. Weidenfeld

ELW/prp
Enc.

ATTACHMENT 1

8304032211

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner, and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

RE: MUR 1349

Dear Mr. Weidenfeld:

This is in reference to your letter dated June 8, 1981, in which you submitted a partial response of the Reagan for President Committee, and requested an additional 15 day extension of time to respond to the Commission's findings concerning an Oregon fundraising event.

Considering that you have responded to all but one of the issues involved in this matter, a 15 day extension of time is granted to respond to the remaining issue. The response of the Reagan for President Committee is due, therefore, on June 23, 1981. If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

ATTACHMENT 2

100826
GCC#4876

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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

June 8, 1981

81 JUN 15 A11:13

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

RE: MUR 1349

Dear Mr. Steele:

On behalf of our client, the Reagan for President Committee, please find enclosed their preliminary response to MUR 1349. We have endeavored, within the limited time available to us, to gather sufficient factual material to make an adequate response to the issues raised in your correspondence. With the exception of the issues raised relating to the Committee to Elect Reagan, we believe we have been successful. We have been unable to identify the persons responsible for the Committee to Elect Reagan in Oregon and, therefore, request an additional 15 day extension of time to make a more detailed response on this issue.

I look forward to talking with you or a member of your staff about our response to MUR 1349.

Sincerely,

Edward L. Weidenfeld

Edward L. Weidenfeld

ELW/prp
Enc.

GCC#4876

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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

June 8, 1981

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 1349

Dear Mr. Chairman:

The undersigned is general counsel to the Reagan for President Committee ("Committee") and we are responding on their behalf to the above captioned MUR.

We have reviewed your correspondence dated April 29, 1981 and conclude that the Committee has not violated the Federal Election Campaign Act of 1971 with regard to the items specified therein.*/ For the reasons set forth below, we believe that no action should be taken against the Committee and that MUR 1349 should be dismissed.

*/ Our refutations to the possible violations noted in the General Counsel's Factual and Legal Analysis are presented in the same order as discussed in the FEC analysis of MUR 1349.

RECEIVED
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81 JUN 15 AM 11:20

A. Reimbursement of Expense Reports of Charles Wick and Mary Jane Wick

The Committee did not accept any contributions from the Wicks in violation of 2 U.S.C. § 441a(f). The Wicks requested reimbursement from the Committee by letter dated January 18, 1980. Less than three months later, by letter dated April 9, 1980, the Committee paid the expenses incurred by the Wicks. The Committee paid the Wicks' expense report within a reasonable time following their request for reimbursement in accordance with the Committee's practice and the circumstances prevailing at the time. The following factors should be noted:

1. Verification: It was the practice of the Committee to verify every individual's expense report prior to recommending any action for payment. With respect to the Wicks' expense report, this process was particularly detailed due to the large dollar amounts involved. Every aspect of the Wicks' expense report had to be reviewed by the accounting staff of the Committee, a procedure that proved time-consuming. Only when the staff was satisfied that the report was in order could a recommendation for reimbursement be made.

2. Accounting Staff: In terms of the reasonableness of time taken to reimburse the Wicks, it is important to note the political events developing at the time. At the time the Wicks' expense report was in process, the Presidential primaries were beginning. During this period, the number of expense reports submitted to the Committee increased dramatically while the accounting staff remained static. The sheer numbers involved made it impossible for the staff to process a quick turnaround on all reports. In fact, the normal lag time for the reimbursement of expense reports was approximately 8 weeks from the time of receipt, only 3 weeks less than the time it took to reimburse the Wicks. Further, the amount of time taken by the Committee to make reimbursements represents the normal and usual practice of comparable political committees to reimburse expense reports submitted to them.

3. Staff Turnover: Finally, it is important for the Commission to realize that a major staff turnover in the Reagan

for President Committee took place at the time the Wicks' expense report was under review. This turnover required accounting officers in the Committee to brief new staff members on required accounting procedures, a process which took them away from their regular accounting duties. This fact added further delay to the process of verifying expense reports and authorizing payment.

In light of the factors discussed above, it is clear that the Committee did not "ride" on the credit of the Wicks as alleged in the General Counsel's Factual and Legal Analysis. Rather, when considering the Committee's staff organization and the considerable efforts required to verify the Wicks' expense reports, less than 3 months certainly is not an unreasonable time in which to make reimbursement. Indeed, to have hastened the verification process merely to guarantee a quick turnaround on paying expense reports would have been an imprudent and unadvisable accounting practice.

B. Reporting the Expenses Incurred by Charles Wick and Mary Jane Wick

The Committee is particularly disturbed by the FEC allegation that it violated 2 U.S.C. § 434(b)(5)(A). It is unfair to assert a failure to itemize its expenditures in excess of $200 is a knowing violation when such information has been freely made available to the Commission staff.

Furthermore, it has been the Committee's experience that in those circumstances where the Commission seeks additional information, a Request for Additional Information ("RFAI") is sent to the Committee. This was not the case with the Wick expenditure report. Instead of simply requesting the information from the Committee, the Commission has now charged the Committee with a probable finding of violating the Federal Election Campaign Act, a clearly unnecessary and serious charge. The Committee believes that the allegation in Section B of the General Counsel's Factual and Legal Analysis is unwarranted since the information referred to has been made available to the staff.

C. Committee to Elect Reagan

In Section C of the General Counsel's Factual and Legal Analysis, it is alleged that the Committee violated 2 U.S.C. § 433(c) by failing to amend its Statement of Organization in a timely manner. Furthermore, the Commission alleges that the Committee violated 2 U.S.C. § 432(c) for failure to keep an account of all disbursements made by the Committee and 2 U.S.C. § 434(b) for neglecting to report certain contributions and expenditures incurred in connection with a fund raising event in Linn County, Oregon.

The Committee takes strong objection to the first charge that it failed to amend its Statement of Organization in a timely fashion. The Committee reported all the information it had available to the FEC as promptly as possible. The circumstances involved in the contribution from the Linn County Reagan for President Committee have been difficult to ascertain, and the Committee's requests for additional information have not been forthcoming. It took the Committee quite some time to track down the people involved in this event in order to determine the status of the Committee. As soon as that information was obtained, the Committee filed an amendment to its Statement of Organization. Certainly, the time within which it took the Committee to obtain the necessary information and file its amended statement was reasonable under the circumstances. In short, the Committee used its best efforts to obtain the necessary information to be reported to the Commission.

As to the remaining allegations concerning the expenditures and disbursements incurred with respect to the subject fund raiser, the Committee has been unsuccessful up to this time to determine what, if any, expenditures were made in connection with the Linn County event. Due to the fact that the fund raiser in question took place more than one year ago, it has been difficult for the Committee to locate the personnel in Oregon who are knowledgeable about the surrounding circumstances. As a result, the Committee is unable at this time to prepare a response to these allegations. However, the Committee is still endeavoring to obtain this information and will provide a response to the Commission as promptly as possible. Consequently, the Committee requests that the Commission delay action on the charges set forth in Section C pending the receipt of more complete data.

D. Corporate and Business Contributions

Contrary to the allegations contained in Section D of the General Counsel's Factual and Legal Analysis, the Reagan for President Committee did not receive an in-kind contribution from Warren Properties Realtors, Inc., Mercury Exploration Corporation or Chapman and Company.

Following receipt of MUR 1349, the Committee undertook an investigation to determine the circumstances surrounding the use of the telephone banks of the above-identified companies. Due to the fact that the phone banks were used more than one year ago, it has not been possible to ascertain precisely the extent and circumstances under which they were used. However, the Committee has been able to determine a general pattern of use which appears to be applicable to all three concerns.

First, it appears that the phones were used for only a short period of time by local Reagan for President Committee personnel. The phones were used at Warren Properties for only one night and at Mercury Exploration for only three nights. We have been unable to ascertain the time period in which the phones at Chapman and Company were used, but have reason to believe it was no more than a few days.

Second, the phones were used after office hours, usually for just a two-hour period.

Third, very few phones were used by the Committee volunteers. Warren Properties reports that there were only three volunteers at its offices. Mercury Exploration believes that there were no more than four volunteers using its phones at any one time. Finally, Chapman and Company reports that at most there were six Committee volunteers using its phones.

Fourth, it appears that the phone banks were used for a get-out-the-vote campaign not directed to any one particular candidate. As you are aware, there were several elections at stake in the Texas primary, not merely the Presidential election. Thus, the use of the phones cannot be attributed to any one candidate.

Finally, through inquiries to all three companies, it is clear that none of these concerns intended to make any in-kind contribution to the Committee. Rather, all three relied on the estimates provided by the local Reagan for President Committees as to the fair market value for the use of their respective facilities. All three companies accepted the estimates provided by the Committee, promptly invoiced the Committee for such amounts and thereafter received reimbursement.

As can be seen from the above, the Committee did not violate 2 U.S.C. § 441(b)(A) by accepting an in-kind contribution from Warren Properties Realtors, Inc. and Mercury Exploration Corporation. Rather, these companies invoiced and received payment for the use of their telephones in accordance with their fair market value. As to Chapman and Company, the Committee did not violate 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution since the invoice from Chapman to the Committee represented the reasonable value of its phones for the time they were used.

In your letter dated April 29, 1981, you requested information regarding locally prevailing commercial rates for facilities similar to those made available by Warren Properties, Mercury Exploration and Chapman & Company. After making inquiry, we have been unable to determine an appropriate commercial rate for the use of such facilities. This is because the facilities were used only after normal business hours, for no more than a few days duration. There does not appear to be any commercial market for such usage.

In any event, since the facilities were reportedly used for a "get-out-the-vote" drive, not the promotion of a specific candidate, the question is no longer relevant. See 11 C.F.R. § 106.1(c)(2) and (3).

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: Charles N. Steele, Esq.
Maura White, Esq.
Mr. Scott Mackenzie

FIRST CLASS MAIL

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81 JUN 15 A10:02

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Maura White, Esq.
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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789- 7640

June 8, 1981

8 JUN 10 P2:23

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

RE: MUR 1349

Dear Mr. Steele:

On behalf of our client, the Reagan for President Committee, please find enclosed their preliminary response to MUR 1349. We have endeavored, within the limited time available to us, to gather sufficient factual material to make an adequate response to the issues raised in your correspondence. With the exception of the issues raised relating to the Committee to Elect Reagan, we believe we have been successful. We have been unable to identify the persons responsible for the Committee to Elect Reagan in Oregon and, therefore, request an additional 15 day extension of time to make a more detailed response on this issue.

I look forward to talking with you or a member of your staff about our response to MUR 1349.

Sincerely,

Edward L. Weidenfeld

ELW/prp
Enc.

GC# 4860

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WRITER'S DIRECT DIAL NUMBER
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June 8, 1981

1981 JUN 10 P2:30

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

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C. Committee to Elect Reagan

In Section C of the General Counsel's Factual and Legal Analysis, it is alleged that the Committee violated 2 U.S.C. § 433(c) by failing to amend its Statement of Organization in a timely manner. Furthermore, the Commission alleges that the Committee violated 2 U.S.C. § 432(c) for failure to keep an account of all disbursements made by the Committee and 2 U.S.C. § 434(b) for neglecting to report certain contributions and expenditures incurred in connection with a fund raising event in Linn County, Oregon.

The Committee takes strong objection to the first charge that it failed to amend its Statement of Organization in a timely fashion. The Committee reported all the information it had available to the FEC as promptly as possible. The circumstances involved in the contribution from the Linn County Reagan for President Committee have been difficult to ascertain, and the Committee's requests for additional information have not been forthcoming. It took the Committee quite some time to track down the people involved in this event in order to determine the status of the Committee. As soon as that information was obtained, the Committee filed an amendment to its Statement of Organization. Certainly, the time within which it took the Committee to obtain the necessary information and file its amended statement was reasonable under the circumstances. In short, the Committee used its best efforts to obtain the necessary information to be reported to the Commission.

As to the remaining allegations concerning the expenditures and disbursements incurred with respect to the subject fund raiser, the Committee has been unsuccessful up to this time to determine what, if any, expenditures were made in connection with the Linn County event. Due to the fact that the fund raiser in question took place more than one year ago, it has been difficult for the Committee to locate the personnel in Oregon who are knowledgeable about the surrounding circumstances. As a result, the Committee is unable at this time to prepare a response to these allegations. However, the Committee is still endeavoring to obtain this information and will provide a response to the Commission as promptly as possible. Consequently, the Committee requests that the Commission delay action on the charges set forth in Section C pending the receipt of more complete data.

D. Corporate and Business Contributions

Contrary to the allegations contained in Section D of the General Counsel's Factual and Legal Analysis, the Reagan for President Committee did not receive an in-kind contribution from Warren Properties Realtors, Inc., Mercury Exploration Corporation or Chapman and Company.

Following receipt of MUR 1349, the Committee undertook an investigation to determine the circumstances surrounding the use of the telephone banks of the above-identified companies. Due to the fact that the phone banks were used more than one year ago, it has not been possible to ascertain precisely the extent and circumstances under which they were used. However, the Committee has been able to determine a general pattern of use which appears to be applicable to all three concerns.

First, it appears that the phones were used for only a short period of time by local Reagan for President Committee personnel. The phones were used at Warren Properties for only one night and at Mercury Exploration for only three nights. We have been unable to ascertain the time period in which the phones at Chapman and Company were used, but have reason to believe it was no more than a few days.

Second, the phones were used after office hours, usually for just a two-hour period.

Third, very few phones were used by the Committee volunteers. Warren Properties reports that there were only three volunteers at its offices. Mercury Exploration believes that there were no more than four volunteers using its phones at any one time. Finally, Chapman and Company reports that at most there were six Committee volunteers using its phones.

Fourth, it appears that the phone banks were used for a get-out-the-vote campaign not directed to any one particular candidate. As you are aware, there were several elections at stake in the Texas primary, not merely the Presidential election. Thus, the use of the phones cannot be attributed to any one candidate.

Finally, through inquiries to all three companies, it is clear that none of these concerns intended to make any in-kind contribution to the Committee. Rather, all three relied on the estimates provided by the local Reagan for President Committees as to the fair market value for the use of their respective facilities. All three companies accepted the estimates provided by the Committee, promptly invoiced the Committee for such amounts and thereafter received reimbursement.

As can be seen from the above, the Committee did not violate 2 U.S.C. § 441(b)(A) by accepting an in-kind contribution from Warren Properties Realtors, Inc. and Mercury Exploration Corporation. Rather, these companies invoiced and received payment for the use of their telephones in accordance with their fair market value. As to Chapman and Company, the Committee did not violate 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution since the invoice from Chapman to the Committee represented the reasonable value of its phones for the time they were used.

In your letter dated April 29, 1981, you requested information regarding locally prevailing commercial rates for facilities similar to those made available by Warren Properties, Mercury Exploration and Chapman & Company. After making inquiry, we have been unable to determine an appropriate commercial rate for the use of such facilities. This is because the facilities were used only after normal business hours, for no more than a few days duration. There does not appear to be any commercial market for such usage.

In any event, since the facilities were reportedly used for a "get-out-the-vote" drive, not the promotion of a specific candidate, the question is no longer relevant. See 11 C.F.R. § 106.1(c)(2) and (3).

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: Charles N. Steele, Esq.
Maura White, Esq.
Mr. Scott Mackenzie

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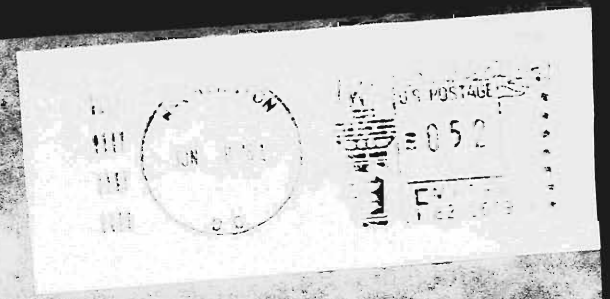

FROM
MCKENNA, CONNER & CUNEO
1575 EYE STREET, NORTHWEST
WASHINGTON, D. C. 20005

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

GCC#4843

MERCURY EXPLORATION COMPANY

Suite 1212 Ridglea Bank Building, Fort Worth, Texas 76116 — 817/731-8606

June 5, 1981

81 JUN 8 AM: 31

Mr. McGarry, Chairman
Federal Election Commission
Washington D. C. 20463

Attention: Ms. Maura White

Re: MUR 1349
Mercury Exploration Company

Gentlemen:

By copy of this letter, as President of Mercury Exploration Company, I authorize Mr. Edward L. Weidenfeld of McKenna, Conner and Cuneo, 1575 Eye Street N.W., Washington, D. C. 20005, to represent us as counsel regarding MUR 1349. All future communications and notifications relative to MUR 1349 should be confidentially directed to Mr. Weidenfeld.

We trust that the documentation presented will satisfy this matter thru informal conciliation and will clearly demonstrate that no further action by the Commission will be required.

Very truly yours,

MERCURY EXPLORATION COMPANY

Frank Darden

FD:hc
cc: Mr. Edward L. Weidenfeld

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MERCURY Exploration Company
Suite 1212 Ridglea Bank Building
Fort Worth, Texas 76116

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Mr. McGarry, Chairman
Federal Election Commission
Washington, D. C. 20463

Attention: Ms. Maura White

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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

June 5, 1981

RECEIVED
FEDERAL ELECTION COMMISSION
JUN 8 AM 11:31
OFFICE OF GENERAL COUNSEL

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Dear Mr. Chairman:

The undersigned is general counsel to the Reagan for President Committee ("Committee"). In connection with the representation of the Committee, I have been asked to make this response to MUR 1349 on behalf of Mercury Exploration Corporation ("Mercury"). The authorization to act on behalf of Mercury has been sent under separate cover by Mr. Frank Darden, President of the corporation.

We have reviewed your correspondence dated April 29, 1981 and conducted an inquiry into the relevant facts. It is our conclusion that Mercury Exploration Corporation did not make any in-kind contribution or expenditure in connection with any election to federal office in violation of the Federal Election Campaign Act of 1971.

To the best of his recollection, Mr. Darden believes that personnel from the Reagan for President Committee used his corporation's telephones for no more than three nights. These phones were used after office hours, approximately 6:00 p.m. to 8:00 p.m. There were no more than four people at any one time using these phones. It appears that the purpose of the telephone campaign was to get-out-the-vote for the upcoming primary. It is Mr. Darden's recollection that the volunteers

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LAW OFFICES
McKENNA, CONNER & CUNEO

were instructed not to solicit votes for any particular candidate, but to encourage Republicans to vote in the primary.

After allowing the Committee personnel to use its telephones, the local Reagan for President Committee advised Mercury that it should bill them for the use of Mercury's facilities. The Committee recommended a payment of $3.15. Relying on their estimate, Mercury invoiced the Committee for this amount which was promptly paid.

It should be emphasized that Mercury Exploration Corporation never intended to make any in-kind contribution. It merely accepted the local Reagan for President Committee's estimate of the value of using its telephone banks. Under these circumstances, Mercury acted reasonably in billing the Committee for the use of its facilities and the MUR against it should be dismissed.

If you have any further questions concerning this matter, we will be pleased to respond.

Sincerely,

Edward L. Weidenfeld

cc: Mr. Frank Darden, President
Mercury Corporation

Maura White, Esq.

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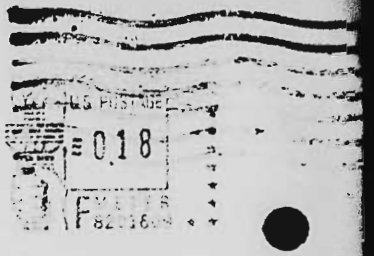

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

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*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

June 5, 1981

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Dear Mr. Chairman:

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8 JUN 8 AM 11:39

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If you have any further questions concerning this matter, we will be pleased to respond.

Sincerely,

Edward L. Weidenfeld

cc: Mr. Frank Darden, President
Mercury Corporation

Maura White, Esq.

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Maura White, Esq.
The Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 22, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward L. Weidenfeld
McKenna, Conner and Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

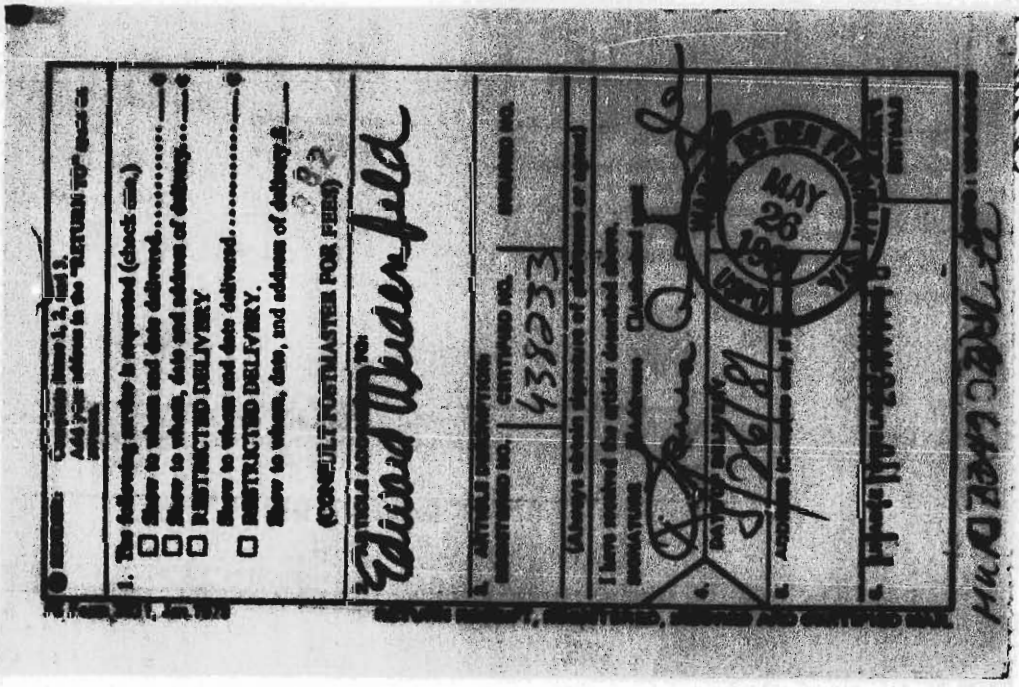
Re: MUR 1349

Dear Mr. Weidenfeld:

This is in reference to your letter dated May 20, 1981, in which you request a 30 day extension of time in which to respond to the Commission's notice that it has reason to believe the Reagan for President Committee violated the Federal Election Campaign Act of 1971, as amended ("the Act").

Considering the Commission's responsibilities to act expeditiously in the conduct of investigations, we cannot agree to a 30 day extension of time. A 15 day extension is, however, granted. The response of the Reagan for President Committee is due, therefore, on June 8, 1981.

If you have any questions, please contact Maura White at 202-523-4060.



N. Steele
Counsel

GCC #4731

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CHARLES E. WASHBURN, JR.*
ROBERT M. WAXMAN*
BARBARA G. WERTHER
LOUISE P. WISE
RENIE E. YOSHIDA*
DEAN J. ZIPSER*

*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789- 7640

May 20, 1981

HAND DELIVERED

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

Re: MUR 1349

Dear Mr. Steele:

I am writing in response to Chairman McGarry's letter dated April 29, 1981 with regard to the above captioned MUR.

I respectfully request an extension of 30 days to respond to the MUR for the following reasons:

1. The correspondence apparently arrived at the office of the Reagan for President Committee as the Committee was moving to other quarters. It was discovered only late last week on the floor of the office space the Committee presently occupies. I then had to travel out of town and, consequently, did not see it until this afternoon.

2. In order to adequately respond to the MUR, a considerable amount of factual material must be gathered. This will entail interviewing former employees of the Committee and searching the Committee's files. There are no employees of

RECEIVED
FEDERAL ELECTION COMMISSION
'81 MAY 20 P2:38

the Committee to assist in the file search and the former employees of the Committee may not be readily accessible for interviews.

3. Once the facts are gathered, it may be necessary to do legal research on the issues raised.

I regret the necessity for a 30 day extension. At the same time, I do not believe an adequate response can be prepared, under these circumstances, in less time.

I apologize for submitting this request on the day the response is due but, as stated previously, the matter did not come to my attention until this afternoon.

Sincerely,

Edward L. Weidenfeld

ELW/prp

cc: Maura White, Esq.

8304040036 15

8304038030

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

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

LAW OFFICES
McKENNA, CONNER & CUNEO
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005

8940380331

Maura White, Esq.
The Federal Election Commission
1325 K St., N.W.
Washington, D. C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Darden, President
Mercury Exploration Company
Suite 1212
Ridglea Bank Building
Fort Worth, Texas 76116

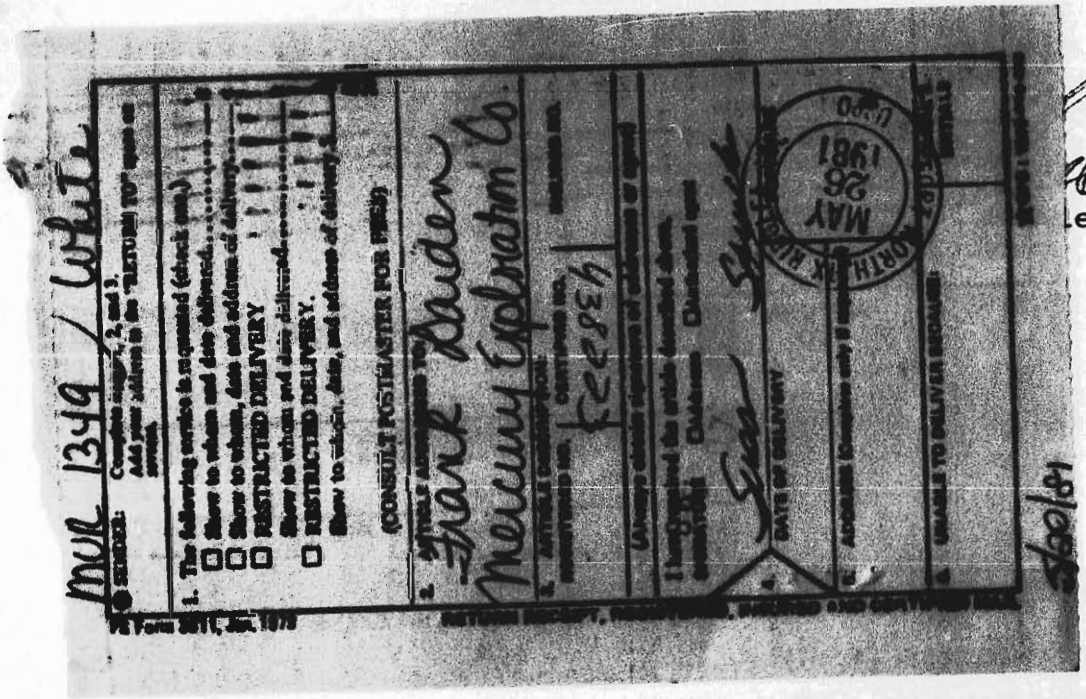
Re: MUR 1349

Dear Mr. Darden:

This is in reference to your letter dated May 11, 1981, in which you request a 30 day extension of time in which to respond to the Commission's notice that it has reason to believe the Mercury Exploration Company violated the Federal Election Campaign Act of 1971, as amended ("the Act").

Considering the Commission's responsibilities to act expeditiously in the conduct of investigations, we cannot agree to a 30 day extension of time. A 15 day extension is, however, granted. The response of the Mercury Exploration Company is due, therefore, on June 5, 1981.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.



Comm as MCC # 718

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1920 MILLS TOWER
220 BUSH STREET
SAN FRANCISCO, CALIFORNIA 94104
(415) 433-0640

81 MAY 19 P 4: 45

WILSIE H. ADAMS, JR.
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MICHAEL ROSTER*
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I. BRUCE SPEISER*
WILLIAM J. SPRIGGS
JAMES R. WALTHER*
EDWARD L. WEIDENFELD
KENNETH W. WEINSTEIN
LES J. WEINSTEIN
BUEL WHITE
DANIEL H. WILLICK*
CHARLES E. YONKERS

COUNSEL
EDWARD LASKER*
ALBERT L. REEVES
ALVIN G. RALMANSON*
ALBERT M. COLE
MAX GOLDEN*
JOEL P. SHEDD

ASHLEY SELLERS (1902-1977)
GILBERT A. CUNEO (1913-1978)

THOMAS J. ALLEN*
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ROBERT G. BADAL
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DEAN J. ZIPSER*

*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

May 19, 1981

MAY 19 P 5: 15

Chairman John W. McGarry
The Federal Election Commission
1325 K Street, N.W.
Washington, D. C.

Dear Mr. Chairman:

The undersigned is general counsel to the Reagan for President Committee (the "Committee"). In connection with the representation of the Committee, I have been asked to make this response to MUR 1349 on behalf of Mr. & Mrs. Charles Wick. Mr. and Mrs. Wick's authorization to act on their behalf is enclosed.

We have reviewed your correspondence dated April 29, 1981. It is our conclusion that the Wicks acted reasonably in light of the circumstances then prevailing in their dealings with the Committee and that no excessive contribution was made to the Committee.

Your correspondence emphasizes "...that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed..." (page 3). In fact, the only relevant time period insofar as the Wicks are concerned is the period from September 12, 1979 to January 18, 1980. The expenses were incurred during the period of September 12, 1979 through November 15, 1979. Reimbursement was sought from the Committee on January 18, 1980. As you are aware, many of these charges were billed to Mr. Wick's American Express account. The American Express

LAW OFFICES
McKENNA, CONNER & CUNEO

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Once the request for reimbursement was filed with the Committee, the Wicks had no power to force the Committee, short of litigation, into payment. Even had the Wicks chosen to litigate, given the procedural requirements and court delays, payment would not have been made prior to the date when the Wicks were reimbursed.

Since the Wicks acted reasonably in seeking reimbursement, they should be dismissed from this MUR. If you have any further questions, we will be pleased to respond. We also request that the Commission provide us with the standard used in determining when a reimbursement period becomes "too long" and thus an illegal advance.

Sincerely,

Edward L. Weidenfeld

ELW/prp
Attachment

cc: Mr. & Mrs. Charles Wick
Maura White, Esq.

8 3 0 4 0 3 6 3 4

CHARLES Z. WICK
WATERGATE SOUTH
700 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20037

May 14, 1981

Mr. John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Attn: Ms. Maura White

RE: MUR 1349
Charles Z. Wick
Mary Jane Wick

Dear Ms. White:

By copy of this letter my wife, Mary Jane Wick, and I authorize Mr. Edward L. Weidenfeld of McKenna, Conner & Cuneo, 1575 I Street, N.W., Washington, DC 20005 (202/789-7640) to represent us as counsel regarding MUR 1349. All future communications and notifications relative to MUR 1349 should be confidentially directed to Mr. Weidenfeld.

We trust the documentation presented will satisfy this matter through informal conciliation and will clearly demonstrate that no further action by the Commission will be required.

Very truly yours,

Charles Z. Wick

Mary Jane Wick

81 MAY 15 P4:11

FROM
McKENNA, CONNER & CUNEO
1575 EYE STREET, NORTHWEST
WASHINGTON, D. C. 20005

Chairman John W. McGarry
The Federal Election Commission
1325 K Street, N.W.
Washington, D. C.

82040038035 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: MAY 19, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1349

The attached letter regarding MUR 1349 was received in Chairman McGarry's office and then forwarded to the Secretary of the Commission. It is provided for your action.

Attachment:
Letter from Edward L. Weidenfeld
Dated May 19, 1981

MAY 19 P5:14

8304080357

GCC # 4718

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DEAN J. ZIPSER*

*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER
(202) 789-7640

May 19, 1981

MAY 19 P4:37

Chairman John W. McGarry
The Federal Election Commission
1325 K Street, N.W.
Washington, D. C.

Dear Mr. Chairman:

The undersigned is general counsel to the Reagan for President Committee (the "Committee"). In connection with the representation of the Committee, I have been asked to make this response to MUR 1349 on behalf of Mr. & Mrs. Charles Wick. Mr. and Mrs. Wick's authorization to act on their behalf is enclosed.

We have reviewed your correspondence dated April 29, 1981. It is our conclusion that the Wicks acted reasonably in light of the circumstances then prevailing in their dealings with the Committee and that no excessive contribution was made to the Committee.

Your correspondence emphasizes "...that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed..." (page 3). In fact, the only relevant time period insofar as the Wicks are concerned is the period from September 12, 1979 to January 18, 1980. The expenses were incurred during the period of September 12, 1979 through November 15, 1979. Reimbursement was sought from the Committee on January 18, 1980. As you are aware, many of these charges were billed to Mr. Wick's American Express account. The American Express

LAW OFFICES
McKENNA, CONNER & CUNEO

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Since the Wicks acted reasonably in seeking reimbursement, they should be dismissed from this MUR. If you have any further questions, we will be pleased to respond. We also request that the Commission provide us with the standard used in determining when a reimbursement period becomes "too long" and thus an illegal advance.

Sincerely,

Edward L. Weidenfeld

ELW/prp
Attachment

cc: Mr. & Mrs. Charles Wick
Maura White, Esq.

CHARLES Z. WICK
WATERGATE SOUTH
700 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20037

RECEIVED
GENERAL COUNSEL
81 MAY 19 P4:37

May 14, 1981

Mr. John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Attn: Ms. Maura White

RE: MUR 1349
Charles Z. Wick
Mary Jane Wick

Dear Ms. White:

By copy of this letter my wife, Mary Jane Wick, and I authorize Mr. Edward L. Weidenfeld of McKenna, Conner & Cuneo, 1575 I Street, N.W., Washington, DC 20005 (202/789-7640) to represent us as counsel regarding MUR 1349. All future communications and notifications relative to MUR 1349 should be confidentially directed to Mr. Weidenfeld.

We trust the documentation presented will satisfy this matter through informal conciliation and will clearly demonstrate that no further action by the Commission will be required.

Very truly yours,

Charles Z. Wick

Mary Jane Wick

81 MAY 19 P4:37

8040030

8304038036 1

FROM
McKENNA, CONNER & CUNEO
1575 EYE STREET, NORTHWEST
WASHINGTON, D. C. 20005

Maura White, Esq.
The Federal Election Commission

Gen #4682

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
GENERAL COUNSEL
1981 MAY 15 P4:32

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: MAY 15, 1981

SUBJECT: REFERRAL OF LETTER REGARDING MUR 1349

The attached letter regarding an extension of time was received in Chairman McGarry's office and then forwarded to the Secretary of the Commission. It is provided for your action.

Attachment:
Letter from Frank Darden,
Mercury Exploration Company
Dated May 11, 1981

3304036

GCC #4682

MERCURY EXPLORATION COMPANY

Suite 1212 Ridglea Bank Building, Fort Worth, Texas 76116 — 817/731-8606

81 MAY 15 P12: 06

May 11, 1981

81 MAY 15 P4: 30

Mr. John Warren McGarry, Chairman
Federal Election Commission
Washington D. C. 20463

Re: MUR 1349

Dear Mr. McGarry:

In reference to your letter of April 29, 1981, we respectfully request that we be granted an extension of time of 30 days so that we may secure information necessary to properly answer your query.

The telephone committee which worked for the Reagan for President Committee has been disbanded and we are having some difficuly in locating the people who are responsible for recommending the charges which Mercury Exploration Company made in conjunction with the use of our equipment.

We wish to assure you that Mercury Exploration Company had no intention of violating any federal election law and will do whatever is indicated toward satisfying your committee's requirements. We feel certain that we will be able to furnish the necessary material to you concerning this problem within the additional 30 days which we have requested and would appreciate your cooperation in this matter.

Very truly yours,

MERCURY EXPLORATION COMPANY

Frank Darden
President

FD:hc

8304058036

[redacted] Exploration Company

[redacted]

FORT WORTH, TX
PM
12 MAY
1981
76102

U.S. POSTAGE
MAY 12 '81
TEX.

Mr. John Warren, McGarry, Chairman
Federal Election Commission
Washington, D. C. 20463

RECEIVED
81 MAY 14 AM 11:33

030058

MUR 1349

RECEIVED
GCC# 4699

81 Warren Properties
Realtors, Inc.

May 14, 1981

MAY 18 PM 4:01

Ms. Maura White
Office of General Counsel
Federal Election Committee
1325 K. St. N.W.
Washington, D.C. 20463

Dear Ms. White:

In response to your letter of April 29, 1981 regarding Federal Election Campaign Act of 1971, these are the facts in the case in which you question an in-kind contribution to the Reagan for President Committee.

The committee was given permission to use five phones in our real estate office from 5:00 to 7:00 p.m. for six days. The committee actually used these phones for one day to make calls. These phones were used by volunteers of the committee and no more than three volunteers actually showed up to use them and they were used only on one occasion. The committee determined that the $10.50 was a fair charge for the time that was actually spent. We simply accepted their assessment that this was a fair and legitimate payment.

There was no intent on my part to make a contribution either actual or "in-kind". Please advise if this information is sufficient to answer your questions.

Sincerely,

Bill D. Warren

Bill D. Warren

BDW/mj

5511 parkcrest suite 107 • austin, texas 78731 • 512-454-2713

Warren Properties
Realtors

AUSTIN, TX
PM
15 MAY
1981

MAY 18 P 1:

Ms. Maura White
Office of General Counsel
Federal Election Committee
1325 K. St. N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott MacKenzie, Treasurer
Reagan for President Committee
901 South Highland Avenue
Arlington, Virginia 22204

Re: MUR 1349

Dear Mr. MacKenzie:

On April 7, 1981, the Federal Election Commission determined that there is reason to believe your committee violated 2 U.S.C. §§ 441b(a), 441a(f), 432(c), 433(c), 434 (b), and 434(b)(5)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission further determined that there is no reason to believe your committee violated 11 C.F.R. § 9034.4(a). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that the Commission also considered the issue of whether your committee violated 2 U.S.C. § 441b(a) by accepting media services from Ruth Jones, Ltd. at less than the usual and normal charge for such services. However, the Commission did not find that there is reason to believe your committee violated the Act. Accordingly, the Commission will take no action against your committee in this matter.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit, under oath, answers to the enclosed questions within 15 days of your receipt of this letter.

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. 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 request by letter.

8304030057

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

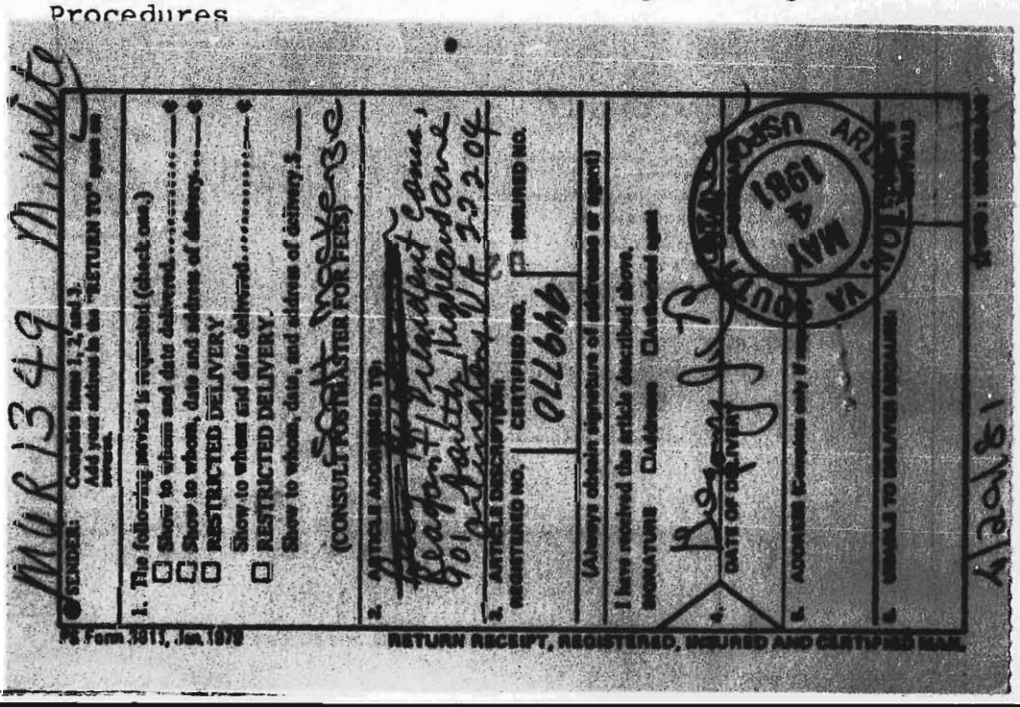
For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

JOHN WARREN McGARRY
Chairman

3 3 0 4 0 0 3 0 3 6 6

Enclosures
General Counsel's Factual and Legal Analysis
Procedures



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott MacKenzie, Treasurer
Reagan for President Committee
901 South Highland Avenue
Arlington, Virginia 22204

Re: MUR 1349

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On April 7, 1981, the Federal Election Commission determined that there is reason to believe your committee violated 2 U.S.C. §§ 441b(a), 441a(f), 432(c), 433(c), 434 (b), and 434(b)(5)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission further determined that there is no reason to believe your committee violated 11 C.F.R. § 9034.4(a). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that the Commission also considered the issue of whether your committee violated 2 U.S.C. § 441b(a) by accepting media services from Ruth Jones, Ltd. at less than the usual and normal charge for such services. However, the Commission did not find that there is reason to believe your committee violated the Act. Accordingly, the Commission will take no action against your committee in this matter.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit, under oath, answers to the enclosed questions within 15 days of your receipt of this letter.

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. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

mw 4/20/81

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

8304080370

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE April 29, 1981

MUR NO. 1349

RESPONDENT Reagan for President Committee

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. The Committee appears to have received excessive contributions from individuals in violation of 2 U.S.C. § 44la(f), and two in-kind corporate contributions of a yet undetermined amount in violation of 2 U.S.C. § 44lb(a). Also involved in this matter is the Committee's failure to amend its statement of organization within ten days, failure to keep an account of all expenditures made, failure to report certain contributions and expenditures incurred in connection with a fundraising event, failure to report the receipt of an in-kind contribution, and failure to report the ultimate recipient of certain committee expenditures in violation of 2 U.S.C. §§ 433(c), 432(c), 434(b), and 434(b)(5)(A). Finally, this matter includes the Committee's payment of a settlement agreement from its primary election account rather than its general election account in possible violation of 11 C.F.R. § 9034.4(a).

FACTUAL BASIS AND LEGAL ANALYSIS

A. Charles Wick and Mary Jane Wick

Section 44la(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 44la(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C.

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§ 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7 (b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7 (b)(6). Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter form Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 29, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mary Jane Wick. In the course of the audit, it was learned that the Committee had adopted a policy of paying only coach fare for persons traveling at committee expense.

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee to Charles Wick on April 9, 1980, of $19,478.59. The expenditure was reported on the expenditure schedule as being reimbursement "for hotel accomodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses".

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee.

In the instant matter, Mr. and Mrs. Wick appear not to have been reimbursed for their expenses within a reasonable time. In the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations.

B. Improper reporting of the expenses incurred by Charles Wick and Mary Jane Wick

Pursuant to 2 U.S.C. § 434(b)(5)(A) a political committee is required to report the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure. The Commission has required a committee to report the ultimate recipient of an expenditure unless the expenditure was incurred in connection with the travel and subsistence costs of a committee agent to whom an advance or reimbursement was made. Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 129-130, 138-139.

In regard to the Committee's reporting of the repayment to Charles Wick, the Committee did not report, as required by 2 U.S.C. § 434(b)(5)(A), the ultimate recipients of the expenditures incurred by Mr. Wick on behalf of the Committee. Rather, the Committee simply reported an expenditure to Charles Wick on April 9, 1980, as reimbursement for hotel

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4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143 for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

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accomodations, air travel and limousine services. Based upon documentation obtained during the audit, some of the expenditures involved in this matter were in excess of $200, the amount required to be itemized. The Committee, therefore, should have reported the ultimate recipient of all such expenditures except for those incurred by Mr. Wick for his own travel and subsistence. The ultimate recipients of the expenditures should have been reported as a memo entry. Id. 5/ In view of the Committee's failure to disclose the ultimate recipients of expenditures incurred by Charles Wick and Mary Jane Wick on behalf of the Committee, the General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(5)(A).

C. Committee to Elect Reagan

Section 433(b)(6) of Title 2, United States Code, requires a political committee to include on its statement of organization a listing of all banks or other depositories used by the committee. A political committee is further required by 2 U.S.C. § 433(c) to report any change in information previously submitted in a statement of organization no later than ten days after the date of the change. Pursuant to 2 U.S.C. § 432(c), the treasurer of a political committee is required to keep an account of all contributions received and all disbursements made by the committee. Section 434(b) of Title 2, United States Code, requires a political committee to report all disbursements made by the committee.

A review of Committee records by the Audit staff revealed that the Committee received a $10,000 check dated May 19, 1980, from the Committee to Elect Reagan. As the Committee to Elect Reagan is not registered with the Commission, it is the opinion of Audit that the Committee to Elect Reagan may be a political committee under the Act and, therefore, subject to the contribution limitations.

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5/ Specifically, it appears that the Committee should have reported as a memo entry a $14,926.61 expenditure to the Mayfair Regent, a $299.35 expenditure to National Car Rental, and the names of the various airlines and costs of airplane tickets for flights taken by Mary Jane Wick. In regard to the advance from Mary Jane Wick for limousine costs, it appears that since the expenditure was not incurred in relation to Mrs. Wick's own travel, the ultimate recipient, Madden's Limousine Service, should have been reported as well.

According to the audit report, the transfer was recorded by the Committee as an internal transfer and reported in unitemized receipts. The audit report also stated that the transfer was in conjunction with a fundraising event held in Oregon which raised $14,417 in contributions (donations from 525 contributors) less $4,417 in expenditures. Documentation obtained by the Audit staff indicates that contributions to the fundraising event were in the approximate amount of $25 or less and that the money was raised through the "'Reagan for President' headquarters" in Linn County, Oregon. Additionally, Audit has noted that $4,417 in receipts and expenditures have not been reported by the Committee and that the expenditure information has not been obtained by the Committee. 6/

A review of the amended statements of organization filed by the Committee has revealed that the Committee amended its statement of organization on June 25, 1980 (received by the Commission on June 30, 1980) to include as a committee depository the Oregon bank upon which the $10,000 check from the Committee to Elect Reagan had been drawn. In view of this circumstance, it appears that the Committee to Elect Reagan is not a separate political committee subject to a $1,000 contribution limit, but rather a Committee depository set up to facilitate fund-raising in Oregon. However, it is the view of the General Counsel that since the Committee did not amend its statement of organization until a month after the check was drawn on the Oregon bank, the Committee violated 2 U.S.C. § 433(c). Additionally, since the Committee, through the period audited, had not maintained records relating to the $4,417 in expenditures for the fundraising event, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made by the Committee, and 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event.

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D. Corporate and Business Contributions

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance,

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6/ Audit has noted, however, that the Committee did keep an account of all contributions ($14,417) received.

or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

During a review of Committee records the Audit staff noted three invoices, two from corporations and one from an apparently unincorporated business, for the use of telephone banks at the rate of thirty-five cents ($.35) per telephone per day. Specifically, documentation obtained during the audit of the Committee revealed that the Committee received an invoice from Chapman and Company (unincorporated) on June 3, 1980, for $8.40, from Warren Properties Realtors, Inc. (incorporated) on April 30, 1980, for $10.50, and from Mercury Exploration Company (incorporated) on May 28, 1980, for $3.15. 7/ As it is the opinion of the Audit Division that the rate of thirty-five cents ($.35) per telephone per day may not be a commercially reasonable rate for the rental of the telephones here in question, this matter was referred to the Office of General Counsel.

In addition to Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal

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7/ The audit report noted that all three invoices were promptly paid by the Committee.

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and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that the Committee did not reimburse Mercury Exploration Company, Warren Properties Realtors, Inc., and Chapman and Company in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that the Committee received in-kind contributions from Chapman and Company, Warren Properties Realtors, Inc., and the Mercury Exploration Company. As Warren Properties Realtors, Inc. and the Mercury Exploration Company are incorporated businesses, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 441b(a). Moreover, it is also the view of the General Counsel that the Committee violated 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution from Chapman and Company.

E. Ruth Jones, Ltd.

Section 9032.9 of Commission Regulations dealing with primary financing defines the term "qualified campaign expense" to mean a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred in connection with a candidate's campaign for nomination. Section 9034.4(a) of Commission Regulations further provides that all contributions received by an individual from the date he or she becomes a candidate, and all matching payments received by the candidate, shall be used to defray qualified campaign expenses or to repay loans or otherwise restore funds which were used to defray qualified campaign expenses.

The interim audit report for the Committee noted that the Committee entered into a written agreement with Ruth Jones, Ltd., effective October 1, 1979, for the provision of assistance in the planning of all media advertising for the Reagan 1980 campaign. The letter of agreement states that the Committee will pay Ruth Jones, Ltd. a $3,500 per week fee (payable on the last day of each month), commencing with the effective date of the agreement (October 1, 1979) through March 31, 1980, and that if it was generally considered that Ronald Reagan had secured the nomination by March 31, both parties would agree to renegotiate the agreement "during the interim months until planning [began] for the general election." The agreement continues that:

> [s]hould the status of the nomination not be clear by March 31, the original terms will remain in force until July 31, when this agreement will be renegotiated regarding fees to be paid for general election service. In either case it is agreed that, in the event Mr. Reagan

> is nominated, Ruth Jones, Ltd. will continue to handle the media services outlined through the general election. [emphasis added]

Additionally, the agreement provides that the Committee will pay all out-of pocket expenses incurred on its behalf, including salaries of additional media buyers, telephones, travel, and accounting costs in connection with FEC reports, and will be billed at net cost (gross less 15% agency commission). The audit report noted that as of April 22, 1980, the Committee paid Ruth Jones, Ltd. media advertising commissions of $91,433.50.

As a result of a disagreement over whether a contractual obligation existed between the Committee and Ruth Jones, Ltd. through the general election period, both parties entered into a settlement agreement on September 2, 1980. The agreement states that both parties:

> agree that a fair and just legal settlement of this matter, arising out of the primary, would save both parties time and legal expenses, do mutually consider any contractual rights created by the October 5, 1979 agreement terminated. [emphasis added].

Moreover, pursuant to the agreement, the Committee paid Ruth Jones, Ltd. $30,000 in settlement of this matter.

An issue raised by Audit concerning the Committee's business relationship with Ruth Jones, Ltd. is whether it was permissible for the Committee to pay the entire $30,000 settlement from its primary election account, rather than its general election account, since the letter of agreement between the Committee and Ruth Jones, Ltd. stated that Ruth Jones, Ltd. would be retained for the 1980 general election, as well.

It is the view of the General Counsel that the September 2, 1980, settlement agreement rescinded the original contract of October 5, 1979, and constituted a new contract. The language used in the subsequent contract, "arising out of the primary" (see above), clearly indicates that the settlement was in connection with primary election activities. In support of this view is the fact that the fees paid to Ruth Jones, Ltd., when reported as outstanding debts and obligations, were listed as primary election debts and not as obligations incurred in relation to the general election. In view of the foregoing, it is the position of the General Counsel

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that it was permissible under the Act for the Committee to pay the settlement agreement from its primary election account and that the Committee did not violate 11 C.F.R. § 9034.4(a).

Recommendations

1. Find reason to believe the Reagan for President Committee violated 2 U.S.C. §§ 441a(f), 432(c), 433(c), 434(b), 434(b)(5)(A), and 441b(a).

2. Find no reason to believe the Reagan for President Committee violated 11 C.F.R. § 9034.4(a).

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Questions To: Reagan for President Committee

1. In regard to the telephone banks provided to the Reagan for President Committee by the Mercury Exploration Company, please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) for three days in Fort Worth, Texas, during April and May 1980. Please provide any evidence you have to demonstrate how the amount paid to Mercury Exploration Company represents the commercially reasonable rate prevailing at the time the services were rendered.

2. In regard to the telephone banks provided to the Reagan for President Committee by Warren Properties Realtors Inc., please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) for six days in Austin, Texas, during April 1980. Please provide any evidence you have to demonstrate how the amount paid to Warren Properties Realtors, Inc. represents the commercially reasonable rate prevailing at the time the services were rendered.

3. In regard to the telephone banks provided to the Reagan for President Committee by Chapman and Company, please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) in Lubbock, Texas, during May or June 1980. Please provide any evidence that you have to demonstrate how the amount paid to Chapman and Company represents the commercially reasonable rate prevailing at the time the services were rendered.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Warren Properties Realtors, Inc.
5511 Parkcrest, Suite 107
Austin, Texas 78731

Re: MUR 1349

Dear Sir or Madam:

On April 7 , 1981, the Federal Election Commission determined that there is reason to believe Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this notification.

In the absence of any additional information which demonstrates that no further action should be taken against Warren Properties Realtors, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

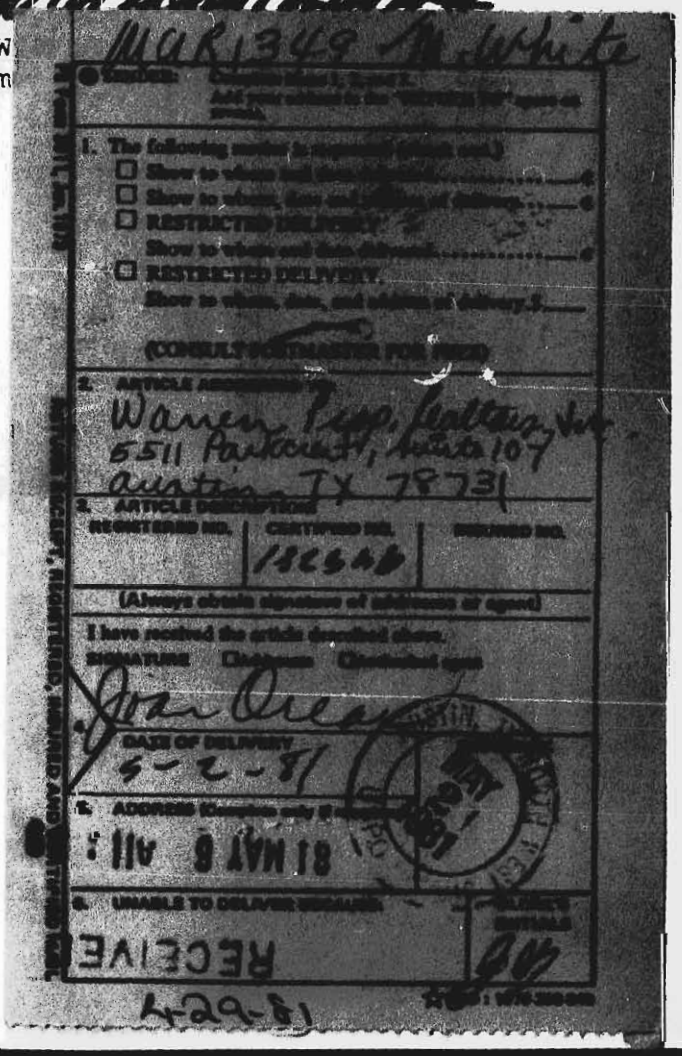
The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

JOHN W
Chairm

Enclosures
General Counsel's Factual and
Procedures



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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Warren Properties Realtors, Inc.
5511 Parkcrest, Suite 107
Austin, Texas 78731

Re: MUR 1349

Dear Sir or Madam:

On , 1981, the Federal Election Commission determined that there is reason to believe Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this notification.

In the absence of any additional information which demonstrates that no further action should be taken against Warren Properties Realtors, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

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Enclosures
General Counsel's Factual and Legal Analysis
Procedures

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE April 29, 1981

MUR NO. 1349

RESPONDENT Warren Properties Realtors, Inc.

STAFF MEMBER & TEL. NO. Maura White 202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent corporate contribution from Warren Properties Realtors, Inc. to the Committee in violation of 2 U.S.C. § 441b(a).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

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Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

During a review of Committee records the Audit staff noted an invoice from Warren Properties Realtors, Inc., dated April 30, 1980, in the amount of $10.50. The invoice was for the use of a telephone bank on six days (five phones per day) at the rate of thirty-five cents ($.35) per telephone per day. The invoice was paid by the Committee on June 10, 1980.

In addition to Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that Warren Properties Realtors, Inc., was not reimbursed by the Committee in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that Warren Properties Realtors, Inc. made an in-kind contribution to the Committee. As Warren Properties Realtors, Inc. is an incorporated business, it is the view of the General Counsel that Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution to the Reagan for President Committee.

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Recommendation

1. Find reason to believe Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Darden, President
Mercury Exploration Company
1212 Ridgelea Bank Building
Fort Worth, Texas

Re: MUR 1349

Dear Mr. Darden:

On April 7 , 1981, the Federal Election Commission determined that there is reason to believe the Mercury Exploration Company violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this notification.

In the absence of any additional information which demonstrates that no further action should be taken against the Mercury Exploration Company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advice the Commission by sending a letter of representation which states the name, address and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

8304030395

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Darden, President
Mercury Exploration Company
1212 Ridgelea Bank Building
Fort Worth, Texas

Re: MUR 1349

Dear Mr. Darden:

On , 1981, the Federal Election Commission determined that there is reason to believe the Mercury Exploration Company violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this notification.

In the absence of any additional information which demonstrates that no further action should be taken against the Mercury Exploration Company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

8040803

If you intend to be represented by counsel in this matter, please advice the Commission by sending a letter of representation which states the name, address and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

MW 4/21/81

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE April 29, 1981

MUR NO. 1349

RESPONDENT Mercury Exploration Company

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent corporate contribution from the Mercury Exploration Company to the Committee in violation of 2 U.S.C. § 441b(a).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution.

8304058039

The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

During a review of Committee records the Audit staff noted an invoice from the Mercury Exploration Company, dated May 28, 1980, in the amount of $3.15. The invoice was for the use of a telephone bank on April 15, 1980, (two phones), April 16, 1980, (two phones), and May 3, 1980, (five phones) at the rate of thirty-five cents ($.35) per telephone per day. The invoice was paid by the Committee on June 10, 1980.

In addition to the Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that the Mercury Exploration Company was not reimbursed by the Committee in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that the Mercury Exploration Company made an in-kind contribution to the Committee. As the Mercury Exploration Company is an incorporated business, it is the view of the General Counsel that the Mercury Exploration Company violated 2 U.S.C. § 441b(a) by making an in-kind contribution to the Reagan for President Committee.

3304080039

Recommendation

1. Find reason to believe the Mercury Exploration Company violated 2 U.S.C. § 441b(a).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles Wick
120 South Mapleton Drive
Los Angeles, CA 90024

Re: MUR 1349

Dear Mr. Wick:

On April 7, 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of at least $18,712.54 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers, under oath, to the enclosed questions within fifteen days of your receipt of this letter.

In absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

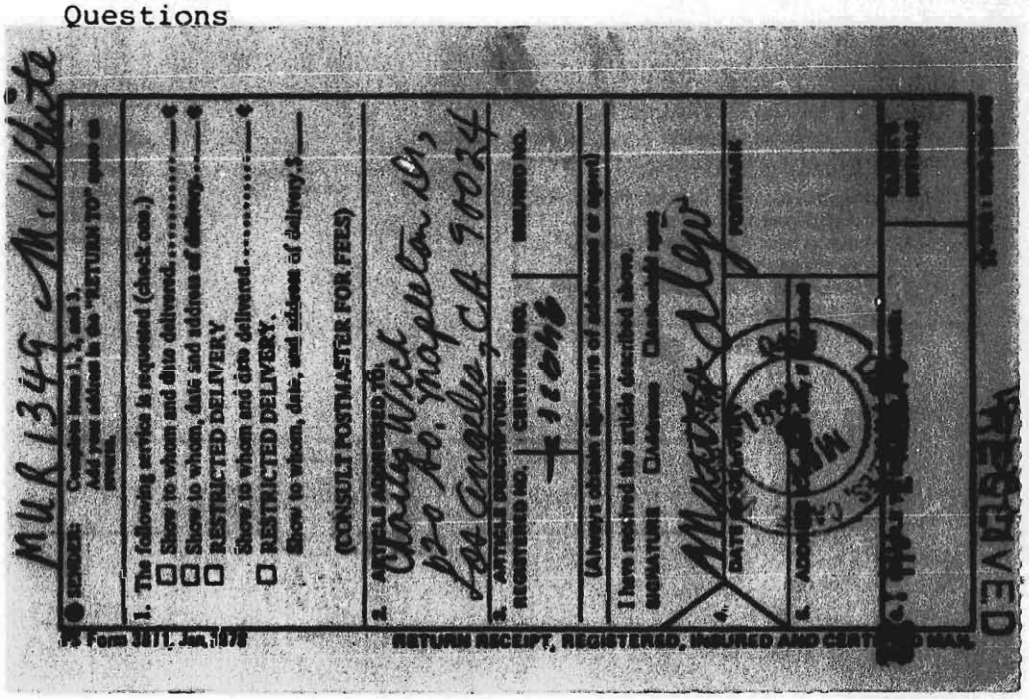
The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions



6304080030

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles Wick
120 South Mapleton Drive
Los Angeles, CA 90024

Re: MUR 1349

Dear Mr. Wick:

On , 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of at least $18,712.54 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers, under oath, to the enclosed questions within fifteen days of your receipt of this letter.

In absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

MW 4/24/81

2304030927

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

MW;rd 4/24/81
ST
KG

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE April 29, 1981

MUR NO. 1349

RESPONDENT Charles Wick

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent excessive contribution of more than $18,712.54 to the Committee from Charles Wick in violation of 2 U.S.C. § 441a(a)(1)(A).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

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Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee of $19,478.59 to Charles Wick on April 9, 1980. The expenditure was reported on the expenditure schedule as being reimbursement for "hotel accommodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses."

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it as learned that the Committee had adopted a policy of paying only coach fare for persons traveling at Committee expense.

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee.

In this instant matter, Mr. and Mrs. Wick appear not to have been reimbursed for their expenses within a reasonable time. In

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

8304080

the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations.

Recommendation

1. Find reason to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A).

83040380401

Questions: Charles Wick

1. In regard to the $19,478.59 reimbursement you requested from the Reagan for President Committee on January 18, 1980, please state, for any amount you were reimbursed but for which you did not originally make payment, the name of the person(s) who made payment, and, if known, the amount, date, and, method of payment. For each payment please also state the name of the person or entity who provided the goods or services.

2. Please state the monetary difference between the cost of first class airfare and coach airfare on all airplane flights taken by Mary Jane Wick which were submitted to the Reagan for President Committee for reimbursement on January 18, 1980.

8304080402

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Jane Wick
120 South Mapleton Drive
Los Angeles, California 90024

Re: MUR 1349

Dear Mrs. Wick:

On , 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of $766.05 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

8304039403

If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

MW
4/24/81

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

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ST
KG

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 29, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Jane Wick
120 South Mapleton Drive
Los Angeles, California 90024

Re: MUR 1349

Dear Mrs. Wick:

On April 7, 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of $766.05 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this letter.

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If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

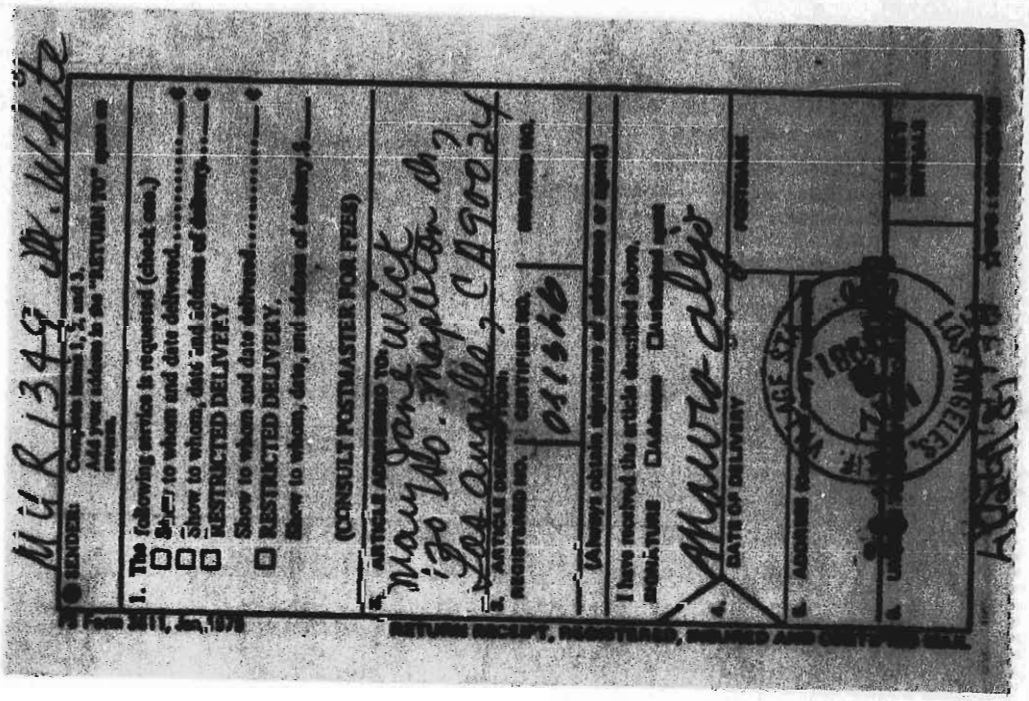
The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

JOHN WARREN McGARRY
Chairman

Enclosures
General Counsel's Factual and Legal Analysis
Procedures



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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE April 29, 1981

MUR NO. 1349

RESPONDENT Mary Jane Wick

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent excessive $766.05 contribution to the Committee by Mary Jane Wick in violation of 2 U.S.C. § 441a(a)(1)(A).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

8304038007

Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee of $19,478.59 to Charles Wick on April 9, 1980. The expenditure was reported on the expenditure schedule as being reimbursement for "hotel accommodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses."

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it as learned that the Committee had adopted a policy of paying only coach fare for persons traveling at Committee expense.

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It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee.

In this instant matter, Mr. and Mrs. Wick appear not to have been reimbursed for their expenses within a reasonable time. In

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations.

Recommendation

1. Find reason to believe Mary Jane Wick violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ruth Jones
Ruth Jones, Ltd.
123 East 75th Street
New York, New York 10021

Re: MUR 1349

Dear Ms. Jones:

This is to inform you that the Commission considered the issue of whether Ruth Jones, Ltd. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by providing media services to the Reagan for President Committee at less than the usual and normal charge for such services. However, the Commission did not find that there is reason to believe Ruth Jones, Ltd. violated the Act. Accordingly, the Commission will take no action against Ruth Jones, Ltd. in this matter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

mw 4/24/81

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 27, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

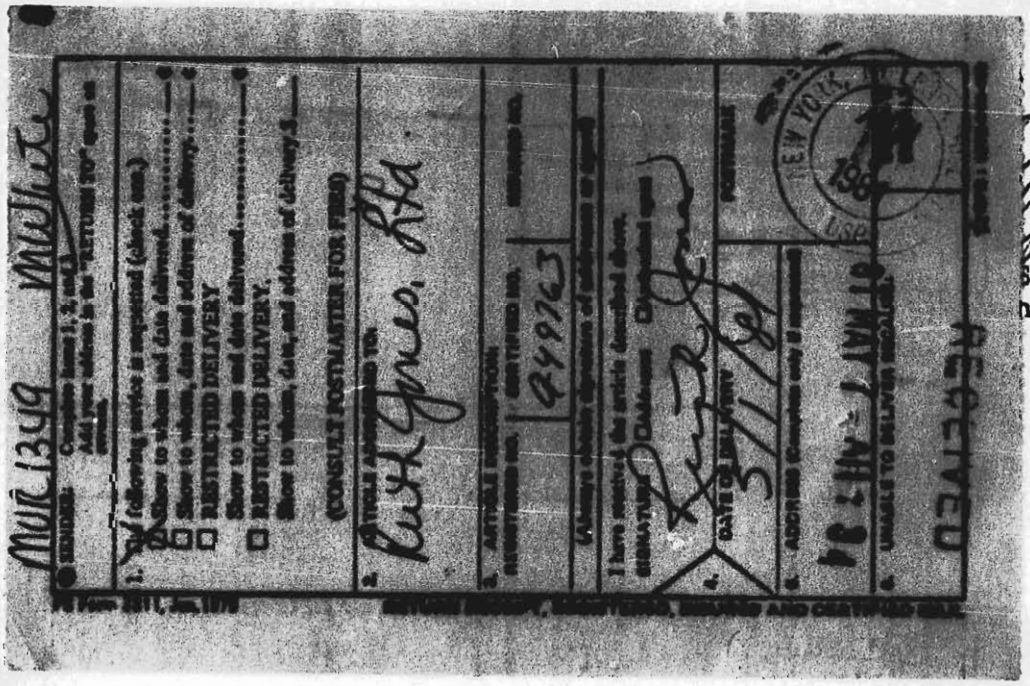
Ruth Jones
Ruth Jones, Ltd.
123 East 75th Street
New York, New York 10021

Re: MUR 1349

Dear Ms. Jones:

This is to inform you that the Commission considered the issue of whether Ruth Jones, Ltd. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by providing media services to the Reagan for President Committee at less than the usual and normal charge for such services. However, the Commission did not find that there is reason to believe Ruth Jones, Ltd. violated the Act. Accordingly, the Commission will take no action against Ruth Jones, Ltd. in this matter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.



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nsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: APRIL 24, 1981

SUBJECT: MUR 1349 Memorandum to the Commission, dated 4-22-81; Received in OCS, 4-22-81, 4:58

The above-named document was circulated to the Commission on a 24 hour no-objection basis at11:00, April 23, 1981.

There were no objections to the memorandum at the time of the deadline.

April 22, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1349

Please have the attached Memo distributed to the Commission on a 24 hour no-objection basis. Thank you.

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SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 APR 22 P4: 58

April 22, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1349

On April 7, 1981, during Executive Session, the Office of General Counsel agreed to revise certain portions of the General Counsel's Factual and Legal Analyses to be sent to the Reagan for President Committee, Charles Wick, and Mary Jane Wick. Additionally, the Commission did not determine that there is reason to believe Ruth Jones, Ltd. and the Reagan for President Committee violated 2 U.S.C. § 441b(a) in regard to media services provided to the committee by Ruth Jones, Ltd.

Attached for the Commission's approval are revised letters, analyses, and questions to Charles Wick, Mary Jane Wick, Reagan for President Committee, and Ruth Jones, Ltd., in accordance with the Commission's determinations.

Attachments:
Letters (4)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott MacKenzie, Treasurer
Reagan for President Committee
901 South Highland Avenue
Arlington, Virginia 22204

Re: MUR 1349

Dear Mr. MacKenzie:

On April 7, 1981, the Federal Election Commission determined that there is reason to believe your committee violated 2 U.S.C. §§ 441b(a), 441a(f), 432(c), 433(c), 434 (b), and 434(b)(5)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission further determined that there is no reason to believe your committee violated 11 C.F.R. § 9034.4(a). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that the Commission also considered the issue of whether your committee violated 2 U.S.C. § 441b(a) by accepting media services from Ruth Jones, Ltd. at less than the usual and normal charge for such services. However, the Commission did not find that there is reason to believe your committee violated the Act. Accordingly, the Commission will take no action against your committee in this matter.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit, under oath, answers to the enclosed questions within 15 days of your receipt of this letter.

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. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

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FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____ MUR NO. 1349

RESPONDENT Reagan for President Committee

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. The Committee appears to have received excessive contributions from individuals in violation of 2 U.S.C. § 441a(f), and two in-kind corporate contributions of a yet undetermined amount in violation of 2 U.S.C. § 441b(a). Also involved in this matter is the Committee's failure to amend its statement of organization within ten days, failure to keep an account of all expenditures made, failure to report certain contributions and expenditures incurred in connection with a fundraising event, failure to report the receipt of an in-kind contribution, and failure to report the ultimate recipient of certain committee expenditures in violation of 2 U.S.C. §§ 433(c), 432(c), 434(b), and 434(b)(5)(A). Finally, this matter includes the Committee's payment of a settlement agreement from its primary election account rather than its general election account in possible violation of 11 C.F.R. § 9034.4(a).

FACTUAL BASIS AND LEGAL ANALYSIS

A. Charles Wick and Mary Jane Wick

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C.

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§ 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7 (b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7 (b)(6). Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter form Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 29, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mary Jane Wick. In the course of the audit, it was learned that the Committee had adopted a policy of paying only coach fare for persons traveling at committee expense.

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee to Charles Wick on April 9, 1980, of $19,478.59. The expenditure was reported on the expenditure schedule as being reimbursement "for hotel accomodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses".

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee.

In the instant matter, Mr. and Mrs. Wick appear not to have been reimbursed for their expenses within a reasonable time. In the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations.

B. Improper reporting of the expenses incurred by Charles Wick and Mary Jane Wick

Pursuant to 2 U.S.C. § 434(b)(5)(A) a political committee is required to report the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure. The Commission has required a committee to report the ultimate recipient of an expenditure unless the expenditure was incurred in connection with the travel and subsistence costs of a committee agent to whom an advance or reimbursement was made. Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 129-130, 138-139.

In regard to the Committee's reporting of the repayment to Charles Wick, the Committee did not report, as required by 2 U.S.C. § 434(b)(5)(A), the ultimate recipients of the expenditures incurred by Mr. Wick on behalf of the Committee. Rather, the Committee simply reported an expenditure to Charles Wick on April 9, 1980, as reimbursement for hotel

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4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143 for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

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accomodations, air travel and limousine services. Based upon documentation obtained during the audit, some of the expenditures involved in this matter were in excess of $200, the amount required to be itemized. The Committee, therefore, should have reported the ultimate recipient of all such expenditures except for those incurred by Mr. Wick for his own travel and subsistence. The ultimate recipients of the expenditures should have been reported as a memo entry. Id. 5/ In view of the Committee's failure to disclose the ultimate recipients of expenditures incurred by Charles Wick and Mary Jane Wick on behalf of the Committee, the General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(5)(A).

C. Committee to Elect Reagan

Section 433(b)(6) of Title 2, United States Code, requires a political committee to include on its statement of organization a listing of all banks or other depositories used by the committee. A political committee is further required by 2 U.S.C. § 433(c) to report any change in information previously submitted in a statement of organization no later than ten days after the date of the change. Pursuant to 2 U.S.C. § 432(c), the treasurer of a political committee is required to keep an account of all contributions received and all disbursements made by the committee. Section 434(b) of Title 2, United States Code, requires a political committee to report all disbursements made by the committee.

A review of Committee records by the Audit staff revealed that the Committee received a $10,000 check dated May 19, 1980, from the Committee to Elect Reagan. As the Committee to Elect Reagan is not registered with the Commission, it is the opinion of Audit that the Committee to Elect Reagan may be a political committee under the Act and, therefore, subject to the contribution limitations.

5/ Specifically, it appears that the Committee should have reported as a memo entry a $14,926.61 expenditure to the Mayfair Regent, a $299.35 expenditure to National Car Rental, and the names of the various airlines and costs of airplane tickets for flights taken by Mary Jane Wick. In regard to the advance from Mary Jane Wick for limousine costs, it appears that since the expenditure was not incurred in relation to Mrs. Wick's own travel, the ultimate recipient, Madden's Limousine Service, should have been reported as well.

According to the audit report, the transfer was recorded by the Committee as an internal transfer and reported in unitemized receipts. The audit report also stated that the transfer was in conjunction with a fundraising event held in Oregon which raised $14,417 in contributions (donations from 525 contributors) less $4,417 in expenditures. Documentation obtained by the Audit staff indicates that contributions to the fundraising event were in the approximate amount of $25 or less and that the money was raised through the "'Reagan for President' headquarters" in Linn County, Oregon. Additionally, Audit has noted that $4,417 in receipts and expenditures have not been reported by the Committee and that the expenditure information has not been obtained by the Committee. 6/

A review of the amended statements of organization filed by the Committee has revealed that the Committee amended its statement of organization on June 25, 1980 (received by the Commission on June 30, 1980) to include as a committee depository the Oregon bank upon which the $10,000 check from the Committee to Elect Reagan had been drawn. In view of this circumstance, it appears that the Committee to Elect Reagan is not a separate political committee subject to a $1,000 contribution limit, but rather a Committee depository set up to facilitate fund-raising in Oregon. However, it is the view of the General Counsel that since the Committee did not amend its statement of organization until a month after the check was drawn on the Oregon bank, the Committee violated 2 U.S.C. § 433(c). Additionally, since the Committee, through the period audited, had not maintained records relating to the $4,417 in expenditures for the fundraising event, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made by the Committee, and 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event.

D. Corporate and Business Contributions

Section 44lb(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance,

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6/ Audit has noted, however, that the Committee did keep an account of all contributions ($14,417) received.

or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

During a review of Committee records the Audit staff noted three invoices, two from corporations and one from an apparently unincorporated business, for the use of telephone banks at the rate of thirty-five cents ($.35) per telephone per day. Specifically, documentation obtained during the audit of the Committee revealed that the Committee received an invoice from Chapman and Company (unincorporated) on June 3, 1980, for $8.40, from Warren Properties Realtors, Inc. (incorporated) on April 30, 1980, for $10.50, and from Mercury Exploration Company (incorporated) on May 28, 1980, for $3.15. 7/ As it is the opinion of the Audit Division that the rate of thirty-five cents ($.35) per telephone per day may not be a commercially reasonable rate for the rental of the telephones here in question, this matter was referred to the Office of General Counsel.

In addition to Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal

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7/ The audit report noted that all three invoices were promptly paid by the Committee.

and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that the Committee did not reimburse Mercury Exploration Company, Warren Properties Realtors, Inc., and Chapman and Company in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that the Committee received in-kind contributions from Chapman and Company, Warren Properties Realtors, Inc., and the Mercury Exploration Company. As Warren Properties Realtors, Inc. and the Mercury Exploration Company are incorporated businesses, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 441b(a). Moreover, it is also the view of the General Counsel that the Committee violated 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution from Chapman and Company.

E. Ruth Jones, Ltd.

Section 9032.9 of Commission Regulations dealing with primary financing defines the term "qualified campaign expense" to mean a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred in connection with a candidate's campaign for nomination. Section 9034.4(a) of Commission Regulations further provides that all contributions received by an individual from the date he or she becomes a candidate, and all matching payments received by the candidate, shall be used to defray qualified campaign expenses or to repay loans or otherwise restore funds which were used to defray qualified campaign expenses.

The interim audit report for the Committee noted that the Committee entered into a written agreement with Ruth Jones, Ltd., effective October 1, 1979, for the provision of assistance in the planning of all media advertising for the Reagan 1980 campaign. The letter of agreement states that the Committee will pay Ruth Jones, Ltd. a $3,500 per week fee (payable on the last day of each month), commencing with the effective date of the agreement (October 1, 1979) through March 31, 1980, and that if it was generally considered that Ronald Reagan had secured the nomination by March 31, both parties would agree to renegotiate the agreement "during the interim months until planning [began] for the general election." The agreement continues that:

> [s]hould the status of the nomination not be clear by March 31, the original terms will remain in force until July 31, when this agreement will be renegotiated regarding fees to be paid for general election service. In either case it is agreed that, in the event Mr. Reagan

> is nominated, Ruth Jones, Ltd. will continue to handle the media services outlined through the general election. [emphasis added]

Additionally, the agreement provides that the Committee will pay all out-of pocket expenses incurred on its behalf, including salaries of additional media buyers, telephones, travel, and accounting costs in connection with FEC reports, and will be billed at net cost (gross less 15% agency commission). The audit report noted that as of April 22, 1980, the Committee paid Ruth Jones, Ltd. media advertising commissions of $91,433.50.

As a result of a disagreement over whether a contractual obligation existed between the Committee and Ruth Jones, Ltd. through the general election period, both parties entered into a settlement agreement on September 2, 1980. The agreement states that both parties:

> agree that a fair and just legal settlement of this matter, arising out of the primary, would save both parties time and legal expenses, do mutually consider any contractual rights created by the October 5, 1979 agreement terminated. [emphasis added]

Moreover, pursuant to the agreement, the Committee paid Ruth Jones, Ltd. $30,000 in settlement of this matter.

An issue raised by Audit concerning the Committee's business relationship with Ruth Jones, Ltd. is whether it was permissible for the Committee to pay the entire $30,000 settlement from its primary election account, rather than its general election account, since the letter of agreement between the Committee and Ruth Jones, Ltd. stated that Ruth Jones, Ltd. would be retained for the 1980 general election, as well.

It is the view of the General Counsel that the September 2, 1980, settlement agreement rescinded the original contract of October 5, 1979, and constituted a new contract. The language used in the subsequent contract, "arising out of the primary" (see above), clearly indicates that the settlement was in connection with primary election activities. In support of this view is the fact that the fees paid to Ruth Jones, Ltd., when reported as outstanding debts and obligations, were listed as primary election debts and not as obligations incurred in relation to the general election. In view of the foregoing, it is the position of the General Counsel

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that it was permissible under the Act for the Committee to pay the settlement agreement from its primary election account and that the Committee did not violate 11 C.F.R. § 9034.4(a).

Recommendations

1. Find reason to believe the Reagan for President Committee violated 2 U.S.C. §§ 441a(f), 432(c), 433(c), 434(b), 434(b)(5)(A), and 441b(a).

2. Find no reason to believe the Reagan for President Committee violated 11 C.F.R. § 9034.4(a).

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Questions To: Reagan for President Committee

1. In regard to the telephone banks provided to the Reagan for President Committee by the Mercury Exploration Company, please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) for three days in Fort Worth, Texas, during April and May 1980. Please provide any evidence you have to demonstrate how the amount paid to Mercury Exploration Company represents the commercially reasonable rate prevailing at the time the services were rendered.

2. In regard to the telephone banks provided to the Reagan for President Committee by Warren Properties Realtors Inc., please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) for six days in Austin, Texas, during April 1980. Please provide any evidence you have to demonstrate how the amount paid to Warren Properties Realtors, Inc. represents the commercially reasonable rate prevailing at the time the services were rendered.

3. In regard to the telephone banks provided to the Reagan for President Committee by Chapman and Company, please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) in Lubbock, Texas, during May or June 1980. Please provide any evidence that you have to demonstrate how the amount paid to Chapman and Company represents the commercially reasonable rate prevailing at the time the services were rendered.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles Wick
120 South Mapleton Drive
Los Angeles, CA 90024

Re: MUR 1349

Dear Mr. Wick:

On April 7, 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of at least $18,712.54 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers, under oath, to the enclosed questions within fifteen days of your receipt of this letter.

In absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____ MUR NO. 1349

RESPONDENT Charles Wick

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent excessive contribution of more than $18,712.54 to the Committee from Charles Wick in violation of 2 U.S.C. § 441a(a)(1)(A).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

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Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee of $19,478.59 to Charles Wick on April 9, 1980. The expenditure was reported on the expenditure schedule as being reimbursement for "hotel accommodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses."

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it as learned that the Committee had adopted a policy of paying only coach fare for persons traveling at Committee expense.

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee.

In this instant matter, Mr. and Mrs. Wick appear not to have been reimbursed for their expenses within a reasonable time. In

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations.

Recommendation

1. Find reason to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A).

8304030434

Questions: Charles Wick

1. In regard to the $19,478.59 reimbursement you requested from the Reagan for President Committee on January 18, 1980, please state, for any amount you were reimbursed but for which you did not originally make payment, the name of the person(s) who made payment, and, if known, the amount, date, and, method of payment. For each payment please also state the name of the person or entity who provided the goods or services.

2. Please state the monetary difference between the cost of first class airfare and coach airfare on all airplane flights taken by Mary Jane Wick which were submitted to the Reagan for President Committee for reimbursement on January 18, 1980.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Jane Wick
120 South Mapleton Drive
Los Angeles, California 90024

Re. MUR 1349

Dear Mrs. Wick:

On April 7, 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of $766.05 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

8304033047

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____ MUR NO. 1349

RESPONDENT Mary Jane Wick

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent excessive $766.05 contribution to the Committee by Mary Jane Wick in violation of 2 U.S.C. § 44la(a)(1)(A).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 44la(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 44la(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

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Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee of $19,478.59 to Charles Wick on April 9, 1980. The expenditure was reported on the expenditure schedule as being reimbursement for "hotel accommodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses."

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it as learned that the Committee had adopted a policy of paying only coach fare for persons traveling at Committee expense.

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It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations if the advances are not reimbursed within a reasonable time. This is no less so if the individual is expressly designated as an agent of the candidate or committee.

In this instant matter, Mr. and Mrs. Wick appear not to have been reimbursed for their expenses within a reasonable time. In

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations.

Recommendation

1. Find reason to believe Mary Jane Wick violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ruth Jones
Ruth Jones, Ltd.
123 East 75th Street
New York, New York 10021

Re: MUR 1349

Dear Ms. Jones:

This is to inform you that the Commission considered the issue of whether Ruth Jones, Ltd. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by providing media services to the Reagan for President Committee at less than the usual and normal charge for such services. However, the Commission did not find that there is reason to believe Ruth Jones, Ltd. violated the Act. Accordingly, the Commission will take no action against Ruth Jones, Ltd. in this matter.

If you have any questions please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan for President Committee	)	
Charles Wick	)	MUR 1349
Mary Jane Wick	)	
Ruth Jones, Ltd.	)	
Warren Properties Realtors, Inc.	)	
Mercury Exploration Co.	)	

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal Election Commission's Executive Session on April 7, 1981, do hereby certify that the Commission took the following actions in MUR 1349:

1. Decided on a vote of 4-2 to FIND REASON TO BELIEVE Charles Wick violated 2 U.S.C. §441a(a)(1)(A) by advancing funds to the Reagan for President Committee.

   Commissioners Harris, Reiche, Thomson, and Tiernan voted affirmatively. Commissioners Aikens and McGarry dissented.

2. Decided on a vote of 4-2 to FIND REASON TO BELIEVE Mary Jane Wick violated 2 U.S.C. §441a(a)(1)(A) by advancing funds to the Reagan for President Committee.

   Commissioners Harris, Reiche, Thomson, and Tiernan voted affirmatively. Commissioners Aikens and McGarry dissented.

3. Decided on a vote of 4-2 to FIND REASON TO BELIEVE the Reagan for President Committee violated 2 U.S.C. §441a(f) in regard to the advances from Charles Wick and Mary Jane Wick.

   Commissioners Harris, Reiche, Thomson, and Tiernan voted affirmatively. Commissioners Aikens and McGarry dissented.

(continued)

4. Decided on a vote of 5-0 to FIND REASON TO BELIEVE the Reagan for President Committee violated 2 U.S.C. §434(b)(5)(A) in regard to reporting expenditures advanced by Charles and Mary Jane Wick.

   Commissioners Harris, McGarry, Reiche, Thomson, and Tiernan voted affirmatively. Commissioner Aikens abstained.

5. Decided on a unanimous vote of 6-0 to FIND REASON TO BELIEVE the Reagan for President Committee violated 2 U.S.C. §§432(c), 433(c) and 434(b) in regard to the activities of the Oregon depository.

6. Failed on a vote of 3-3 to FIND REASON TO BELIEVE the Reagan for President Committee violated 2 U.S.C. §441b(a) in regard to Ruth Jones, Ltd.

   Commissioners Harris, Reiche, and Tiernan voted affirmatively. Commissioners Aikens, McGarry, and Thomson dissented.

7. Failed on a vote of 3-3 to FIND REASON TO BELIEVE Ruth Jones, Ltd. violated 2 U.S.C. §441b(a).

   Commissioners Harris, Reiche, and Tiernan voted affirmatively. Commissioners Aikens, McGarry, and Thomson dissented.

8. Decided on a unanimous vote of 6-0 to FIND NO REASON TO BELIEVE the Reagan for President Committee violated 11 C.F.R. §9034.4(a) in regard to payment of the settlement to Ruth Jones, Ltd.

9. Decided on a vote of 5-1 to FIND REASON TO BELIEVE the Reagan for President Committee, Mercury Exploration Company, and Warren Properties Realtors, Inc. violated 2 U.S.C. §441b(a) in regard to telephone services provided by the latter two organizations.

   Commissioners Harris, McGarry, Reiche, Thomson, and Tiernan voted affirmatively. Commissioner Aikens dissented.

10. Decided on a vote of 5-1 to FIND REASON TO BELIEVE the Reagan for President Committee violated 2 U.S.C. §434(b) in regard to an in-kind contribution from Chapman and Company.

    Commissioners Harris, McGarry, Reiche, Thomson, and Tiernan voted affirmatively. Commissioner Aikens dissented.

11. Approved BY UNANIMOUS CONSENT the questions and the letters, as amended to be circulated for Commission approval, attached to the First General Counsel's Report dated March 12, 1981, with the exception of the letters in regard to Ruth Jones, Ltd.

Attest:

4-9-81
Date

Lena L. Stafford
Recording Secretary

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: MARCH 17, 1981

SUBJECT: OBJECTION - MUR 1349, First General Counsel's Report; Received in OCS, 3-12-81, 11:03

The above-named document was circulated on a 48 hour vote basis at 4:00, March 12, 1981.

Commissioners McGarry and Aikens submitted objections on March 16, 1981 at 1:29 and 3:53 p.m., respectively.

This matter will be placed on the Executive Session Agenda for Tuesday, March 24, 1981.

March 12, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1349

Please have the attached First GC Report distributed to theCCommission on a 48 hour tally basis. Thank you.

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FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

81 MAR 12 AM 11:49

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 3-12-81

MUR # 1349
STAFF M. White

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENT'S NAME: Reagan for President Committee; Charles Wick; Mary Jane Wick; Ruth Jones, Ltd.; Warren Properties Realtors, Inc.; Mercury Exploration Co.

RELEVANT STATUTE: 2 U.S.C. §§ 432(c), 433(c), 434(b), 434(b)(5)(A), 441a(a)(1)(A), 441a(f), 441b(a), 11 C.F.R. § 9034.4(a)

INTERNAL REPORTS CHECKED: Public records

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), this matter was referred to the Office of General Counsel (Attachment 1). 1/ This matter involves the Committee's apparent receipt of an excessive contribution from an individual, as well as the Committee's failure to amend its statement of organization within ten days, failure to report certain receipts and expenditures, and failure to maintain certain expenditure records. Also involved is the Committee's apparent receipt of corporate and unreported contributions due to its payment of less than the normal and usual charge to a corporate advertising firm for services rendered, and less than the normal and usual charge to two corporations and one unincorporated business for the use of telephones. In regard to the advertising firm, this matter also involves the question of whether the payment from the Committee to the firm, pursuant to a contract settlement, should have been made from the general election account instead of the primary election account.

1/ The interim post-primary audit of the Committee covered the period January 1, 1980, through July 31, 1980.

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FACTUAL BASIS & LEGAL ANALYSIS

A. Charles Wick

Section 44la(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 44la(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6). Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidential to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign (Attachment 2). 2/ According to the letter, the

2/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979. A review of Commission records has not revealed any other contributions to federal candidates or political committees by Mr. Wick during 1979-1980.

expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them 3/, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 4/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses (Attachment 3). The report for April 1980 reported payment by the Committee to Charles Wick on April 9, 1980, of $19,478.59. The expenditure was reported on the expenditure schedule as being reimbursement "for hotel accommodations, air travel and limousine service" (Attachment 4); the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses" (Attachment 5).

3/ Mr. Wick stated that he determined "substantial sums of money involving entertainment and/or business meetings with the people involved as volunteers in the New York Announcement Dinner effort" to be personal expenses, but that liquor purchased at the hotel suite for meetings was not considered a personal expense. Mr. Wick further stated that "all personal meals and items of a personal nature," as well as a personal limousine ride, were not included in the items to be reimbursed.

4/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it was learned that the Committee had adopted a policy of paying only coach fare for persons traveling at committee expense.

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 5/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, 6/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations. Indeed, it would undermine the purposes of the contribution limitations if an individual could incur massive expenditures for a candidate or committee with his or her own funds without affecting his or her contribution limitations. This is no less so if the individual is expressly designated as an agent of the candidate or committee. The candidate or committee

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5/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

6/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

plainly enjoys the benefit of the goods or services from the moment they are purchased by the individual. The transaction represents a contribution as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction (which is clearly subject to the contribution limitations).

In the General Counsel's view the contribution arises from the moment the individual makes payment for the goods or services, i.e., at the time cash, a check, or a credit card is tendered. At that point the vendor receives either money, a negotiable instrument, or a firm contractual right to payment, and the candidate or committee receives goods or services through the efforts of the individual. At that point also, there will be a written receipt or other documentation available to evidence the date, amount, purpose, and payee of the transaction. See 2 U.S.C. § 432(c)(5).

It is true that Commission regulations, at 11 C.F.R. § 100.7(a)(4), provide that the term "contribution" does not include the extension of credit by any person for a lenth of time within normal business or trade practice. However, this limited exemption is geared toward businesses and commercial vendors which have established, standardized billing cycles whereby goods or services are routinely provided first and paid for later. Individuals carrying out volunteer political activities, rather than business or commercial activities, cannot claim the benefit of this exemption, in the General Counsel's view.

In the instant matter, because Mr. and Mrs. Wick had already each contributed $1,000 to the Committee, they were not entitled to advance additional sums to the Committee. The Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur the expenses. In the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations. 7/

7/ It would not be impermissible for individuals who had not reached their contribution limit to advance funds to a candidate or committee as long as the advance did not cause an excessive contribution. Thus, for example, individuals authorized by a candidate's committee to carry out committee activities will ordinarily be able to make expenditures from their personal funds for items which are needed on short notice. Such expenditures, however, will not be able to exceed $1,000 when aggregated with any other outstanding contributions by that individual.

B. Improper reporting of the expenses incurred by Charles Wick and Mary Jane Wick

Pursuant to 2 U.S.C. § 434(b)(5)(A) a political committee is required to report the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure. The Commission has required a committee to report the ultimate recipient of an expenditure unless the expenditure was incurred in connection with the travel and subsistence costs of a committee agent to whom an advance or reimbursement was made. Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 129-130, 138-139.

In regard to the Committee's reporting of the repayment to Charles Wick, the Committee did not report, as required by 2 U.S.C. § 434(b)(5)(A), the ultimate recipients of the expenditures incurred by Mr. Wick on behalf of the Committee. Rather, the Committee simply reported an expenditure to Charles Wick on April 9, 1980, as reimbursement for hotel accomodations, air travel and limousine services. Based upon documentation obtained during the audit, some of the expenditures involved in this matter were in excess of $200, the amount required to be itemized. The Committee, therefore, should have reported the ultimate recipient of all such expenditures except for those incurred by Mr. Wick for his own travel and subsistence. The ultimate recipients of the expenditures should have been reported as a memo entry. Id. 8/ In view of the Committee's failure to disclose the ultimate recipients of expenditures incurred by Charles Wick and Mary Jane Wick on behalf of the Committee, the General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(5)(A).

8/ Specifically, it appears that the Committee should have reported as a memo entry a $14,926.61 expenditure to the Mayfair Regent, a $299.35 expenditure to National Car Rental, and the names of the various airlines and costs of airplane tickets for flights taken by Mary Jane Wick. In regard to the advance from Mary Jane Wick for limousine costs, it appears that since the expenditure was not incurred in relation to Mrs. Wick's own travel, the ultimate recipient, Madden's Limousine Service, should have been reported as well.

C. Committee to Elect Reagan

Section 433(b)(6) of Title 2, United States Code, requires a political committee to include on its statement of organization a listing of all banks or other depositories used by the committee. A political committee is further required by 2 U.S.C. § 433(c) to report any change in information previously submitted in a statement of organization no later than ten days after the date of the change. Pursuant to 2 U.S.C. § 432(c), the treasurer of a political committee is required to keep an account of all contributions received and all disbursements made by the committee. Section 434(b) of Title 2, United States Code, requires a political committee to report all disbursements made by the committee.

A review of Committee records by the Audit staff revealed that the Committee received a $10,000 check dated May 19, 1980, from the Committee to Elect Reagan (Attachment 6). As the Committee to Elect Reagan is not registered with the Commission, it is the opinion of Audit that the Committee to Elect Reagan may be a political committee under the Act and, therefore, subject to the contribution limitations.

According to the audit report, the transfer was recorded by the Committee as an internal transfer and reported in unitemized receipts. The audit report also stated that the transfer was in conjunction with a fundraising event held in Oregon which raised $14,417 in contributions (donations from 525 contributors) less $4,417 in expenditures. Documentation obtained by the Audit staff indicates that contributions to the fundraising event were in the approximate amount of $25 or less and that the money was raised through the "'Reagan for President' headquarters" in Linn County, Oregon. Additionally, Audit has noted that $4,417 in receipts and expenditures have not been reported by the Committee and that the expenditure information has not been obtained by the Committee. 9/

A review of the amended statements of organization filed by the Committee has revealed that the Committee amended its statement of organization on June 25, 1980, (received by the Commission on June 30, 1980) to include as a committee depository the Oregon bank upon which the $10,000 check from the Committee to Elect Reagan had been drawn (Attachment 7). In view of this circumstance, it appears that the Committee to Elect Reagan is not a separate political committee subject to a $1,000 contribution limit, but rather a committee depository set up to facilitate fundraising in Oregon. However, it is the view

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9/ Audit has noted, however, that the Committee did keep an account of all contributions ($14,417) received.

of the General Counsel that since the Committee did not amend its statement of organization until a month after the check was drawn on the Oregon bank, the Committee violated 2 U.S.C. § 433(c). Additionally, since the Committee, through the period audited, had not maintained records relating to the $4,417 in expenditures for the fundraising event, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made by the Committee, and 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event.

D. Corporate and Business Contributions

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

1. Ruth Jones, Ltd.

The interim audit report for the Committee noted that the Committee entered into a written agreement with Ruth Jones, Ltd., effective October 1, 1979, for the provision of assistance in the planning of all media advertising for the Reagan 1980 campaign

(Attachment 8). The letter of agreement states that the Committee will pay Ruth Jones, Ltd. a $3,500 per week fee (payable on the last day of each month), commencing with the effective date of the agreement (October 1, 1979) through March 31, 1980, and that if it was generally considered that Ronald Reagan had secured the nomination by March 31, both parties would agree to renegotiate the agreement "during the interim months until planning [began] for the general election." The agreement continues that:

> [s]hould the status of the nomination not be clear by March 31, the original terms will remain in force until July 31, when this agreement will be renegotiated regarding fees to be paid for general election service. In either case it is agreed that, in the event Mr. Reagan is nominated, Ruth Jones, Ltd. will continue to handle the media services outlined through the general election. [emphasis added]

Additionally, the agreement provides that the Committee will pay all out-of pocket expenses incurred on its behalf, including salaries of additional media buyers, telephones, travel, and accounting costs in connection with FEC reports, and will be billed at net cost (gross less 15% agency commission). The audit report noted that as of April 22, 1980, the Committee paid Ruth Jones, Ltd. media advertising commissions of $91,433.50. 10/

As a result of a disagreement over whether a contractual obligation existed between the Committee and Ruth Jones, Ltd. through the general election period, both parties entered into a settlement agreement on September 2, 1980. The agreement states that both parties:

> agree that a fair and just legal settlement of this matter, arising out of the primary, would save both parties time and legal expenses; do mutually consider any contractual rights created by the October 5, 1979 agreement terminated. [emphasis added]

Moreover, pursuant to the agreement, the Committee paid Ruth

10/ After a review of Committee reports, the Audit Division stated that while the Committee's filings had reported some debts owed to Ruth Jones, Ltd., all the debts were related to the primary election and had been paid.

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Jones, Ltd. $30,000 in settlement of this matter. 11/

As stated above, the Committee paid commission fees to Ruth Jones, Ltd. of $3,500 per week for a total of $91,433.50 (approximately 5.87% of the total $1,558,952.48 paid to Ruth Jones). It appears, however, based upon the October 5, 1979, letter of agreement, that the usual agency commission is 15% of each media buy and that the Committee should have paid Ruth Jones, Ltd. $275,155 in commission fees (approximately 15% of $1,558,952.48) instead of $91,433.50. Thus, although further investigation will be required, the charge to the Committee appears to be less that "the normal and usual charge" and not the "commercially reasonable rate" prevailing at the time the services were rendered. It is, therefore, the view of the General Counsel that the Committee accepted an in-kind contribution from Ruth Jones, Ltd. in the amount of $183,721.50 ($275,155 less $91,433.50) in violation of 2 U.S.C. § 441b(a).

A second issue raised by Audit concerning the Committee's business relationship with Ruth Jones, Ltd., is whether it was permissible for the Committee to pay the entire $30,000 settlement from its primary election account, rather than its general election account, since the letter of agreement between the Committee and Ruth Jones, Ltd. stated that Ruth Jones, Ltd. would be retained for the 1980 general election, as well.

Section 9032.9 of Commission Regulations dealing with primary financing defines the term "qualified campaign expense" to mean a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred in connection with a candidate's campaign for nomination. Section 9034.4(a) of Commission Regulations further provides that all contributions received by an individual from the date he or she becomes a candidate, and all matching payments received by the candidate, shall be used to defray qualified campaign expenses or to repay loans or otherwise restore funds which were used to defray qualified campaign expenses.

11/ The Office of General Counsel previously noted in the legal analysis attached to the Interim Audit Report of the Reagan for President Committee (Executive Session, November 13, 1980) that since the agreement between the two parties is not a debt settlement but rather an agreement to cancel a contract for consideration, this situation does not come within the coverage of 11 C.F.R. § 114.10 and no debt settlement need be submitted to the Commission.

It is the view of the General Counsel that the September 2, 1980, settlement agreement rescinded the original contract of October 5, 1979, and constituted a new contract. The language used in the subsequent contract, "arising out of the primary" (see page 9), clearly indicates that the settlement was in connection with primary election activities. In support of this view is the fact that the fees paid to Ruth Jones, Ltd., when reported as outstanding debts and obligations, were listed as primary election debts and not as obligations incurred in relation to the general election. In view of the foregoing, it is the position of the General Counsel that it was permissible under the Act for the Committee to pay the settlement agreement from its primary election account and that the Committee did not violate 11 C.F.R. § 9034.4(a).

2. Telephone Banks

During a review of Committee records the Audit staff noted three invoices, two from corporations and one from an apparently unincorporated business, for the use of telephone banks at the rate of thirty-five cents ($.35) per telephone per day (Attachment 9). 12/ Specifically, documentation obtained during the audit of the Committee revealed that the Committee received an invoice from Chapman and Company (unincorporated) on June 3, 1980, for $8.40, from Warren Properties Realtors, Inc. (incorporated) on April 30, 1980, for $10.50, and from Mercury Exploration Company (incorporated) on May 28, 1980, for $3.15. 13/ As it is the opinion of the Audit Division that the rate of thirty-five cents ($.35) per telephone per day may not be a commercially reasonable

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12/ The audit report stated that a Committee official informed the Audit staff that it was possibly a regional political director or an individual in charge of a Reagan for President state office who set up the phone banks. The Committee official further indicated that he was unsure as to what basis was used to arrive at the thirty-five cents ($.35) daily charge for each telephone.

13/ The audit report noted that all three invoices were promptly paid by the Committee.

rate for the rental of the telephones here in question, this matter was referred to the Office of General Counsel.

In addition to Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that the Committee did not reimburse the Mercury Exploration Company, Warren Properties Realtors, Inc., and Chapman and Company in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that the Committee received in-kind contributions from Chapman and Company, Warren Properties Realtors, Inc. and the Mercury Exploration Company. As Warren Properties Realtors, Inc. and the Mercury Exploration Company are incorporated businesses, it is the view of the General Counsel that both the Committee and the two corporations have violated 2 U.S.C. § 441b(a) by the Committee's acceptance, and the corporations' making, of in-kind contributions. Moreover, it is also the view of the General Counsel that the Committee violated 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution from Chapman and Company. 14/

RECOMMENDATIONS

1. Find reason to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A) by advancing funds to the Reagan for President Committee.

2. Find reason to believe Mary Jane Wick violated 2 U.S.C. § 441a(a)(1)(A) by advancing funds to the Reagan for President Committee.

3. Find reason to believe the Reagan for President Committee violated 2 U.S.C. § 441a(f) in regard to the advances from Charles Wick and Mary Jane Wick.

14/ There is no evidence that the services provided by Chapman and Company exceeded $1,000 with respect to the primary election. See 2 U.S.C. § 441a(a)(1)(A). The amount reported to have been paid to Chapman and Company is only $8.40 and, therefore, this office makes no recommendation concerning Chapman and Company at this time.

4. Find reason to believe the Reagan for President Committee violated 2 U.S.C. § 434(b)(5)(A) in regard to reporting expenditures advanced by Charles and Mary Jane Wick.

5. Find reason to believe the Reagan for President Committee violated 2 U.S.C. §§ 432(c), 433(c), and 434(b) in regard to the activities of the Oregon depository.

6. Find reason to believe the Reagan for President Committee violated 2 U.S.C. § 441b(a) in regard to Ruth Jones, Ltd.

7. Find reason to believe Ruth Jones, Ltd. violated 2 U.S.C. § 441b(a).

8. Find no reason to believe the Reagan for President Committee violated 11 C.F.R. § 9034.4(a) in regard to payment of the settlement to Ruth Jones, Ltd.

9. Find reason to believe the Reagan for President Committee, Mercury Exploration Company, and Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a) in regard to telephone services provided by the latter two organizations.

10. Find reason to believe the Reagan for President Committee violated 2 U.S.C. § 434(b) in regard to an in-kind contribution from Chapman and Company.

11. Approve the attached questions and letters.

Attachments:
1 - referral
2 - Wick documentation
3 - debt schedule of Reagan for President Committee
4 - expenditure schedule of Reagan for President
5 - debt schedule of Reagan for President Committee
6 - Committee to Elect Reagan documentation
7 - Reagan for President FEC Form 1
8 - Ruth Jones, Ltd. documentation
9 - Telephone bank documentation
10 - Proposed letters and questions

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ATTACHMENT 1

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Received
11/10/80
RJC

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 10, 1980

MEMORANDUM

TO: Robert J. Costa

THROUGH: B. Allen Clutter, III
Staff Director

FROM: Charles N. Steele
General Counsel
CNS
by Kent Ponder

SUBJECT: Analysis of Interim Post-Primary Audit Report on Reagan for President - A-852

The Office of Ceneral Counsel has reviewed the interim post-primary audit report on Reagan for President ("the Committee"). With the understanding that prior to submission of the report to the Commission certain figures may be changed and certain facts added to the report, but that the recommendations will not change, this Office has comments as follows:

II. Interim Audit Findings and Recommendations Relating to Title 2 of the United States Code

A. Limitation on Expenditures

Pursuant to discussions among staff members of this Office and the Audit Division, it is understood that this subsection is being revised to point out the Audit Division's disagreement with the Committee's use of a standard 20% factor when determining the portion of particular types of expenditures to be allocated to exempt fundraising expenses, but also to indicate that, because the Committee has already allocated $2,725,954.15 in direct changes toward its overall $2,944,000 fundraising exemption limitation, only $218,045.85 in national headquarters expenses may still be so allocated. This $218,045.85 would represent approximately 9% of overall national headquarters expenses, a percentage which the Audit Division deems reasonable. The Office of General Counsel concurs with these findings.

1. Allocation of Fundraising Expenses

This Office concurs with the determination that the Committee should reclassify $376,252.71 as operating expenses, this figure being the amount by which the Committee has exceeded its fundraising exemption limitation in its reports.

2. Limitation on Expenditures

The Office of General Counsel recommends that the language of the recommendation in this section be modified to read as follows:

> The Audit Staff recommends that the Committee be requested to show within 30 days of receipt of the audit report that the overall expenditure limitation has not been exceeded as set forth in the interim post-primary audit report. Absent such a showing, a determination will be made regarding an amount required to be repaid to the U.S. Treasury.

B. Allocation of Expenditures to States

It is the understanding of this Office that only with regard to Iowa, New Hampshire and South Carolina were the Committee's allocated expenditures within 10% or approximately $30,000 of the state expenditure limits. Hence the Audit Division has concentrated upon these three states with regard to apparent allocation errors.

1. Media Expense and Commissions (Consultant Fees)

It is the understanding of this Office that all references to "commissions" in the final paragraph of this section will be changed to "fees".

This Office concurs with the finding that the $3,500 per week paid a media consultant in lieu of the standard 15% agency commission on all media time and space purchased must be allocated to Iowa, New Hampshire and South Carolina as appropriate.

The audit report also discusses differences between the Committee and the Audit Division concerning the proper method of allocating Boston television costs to New Hampshire. The Committee has reportedly based its percentage for New Hampshire upon a ratio of the population of all of the states

or portion of states coming within the areas of a grade B contour for one representative Boston station to the population of the portion of New Hampshire which comes within the same contour. The figures cover the entire population of the contour area, not just the voting age population. Included within the total contour are approximately two-thirds of Massachusetts (as far west as Worcester County), all or parts of five counties in southern New Hampshire, all but the extreme southwestern corner of Rhode Island and the northeastern corner of Connecticut. It does not cover any portion of Vermont.

The alternative allocation method cited by the Audit Division, and actually used by the Committee for stations other than those in Boston, is the use of the Arbitron Television Market Report for 1979-80 ("ADI") which is a private company's statistical marketing study defining the "area of dominant influence" for television market in specific geographic areas. The ADI method provides totals of television households by county and state which are reached by stations located in particular cities. These totals are used to produce a ratio of overall reach to the population covered in one state. Population figures are broken down by age and result in a finding of 2.1 voting age persons per household. The ADI figures for Boston stations cover approximately two-thirds of the area of Massachusetts (as far west as Worcester County), approximately half of New Hampshire (the six southern most counties), and one county in southern Vermont. It does not include any portions of Rhode Island or Connecticut.

The principal objection of the Audit Division to the Committee's use of the grade B contour for the Boston stations is apparently that the Committee did not consistently use this approach for all stations affecting the same New England market.

11 C.F.R. § 106.2(c)(1) states that "(e)xpenditures for publication and distribution of . . . radio, television, and other types of advertisements in more than one State shall be attributed to each State in proportion to the estimated viewing audience . . . of voting age which can reasonably be expected to be influenced by these advertisements."

The regulations do not mandate the use of any particular method for attributing radio and television expenditures to states. Therefore any reasonably accurate method of estimating viewing audiences would apparently be acceptable. However, once a committee has selected a method, that committee should be required to support any deviation from that selection.

A reasonably accurate method would be one which includes a breakdown of all areas of dominant influence, reflecting the voting age population in those areas and taking into account the timing of the primary vis-a-vis the broadcast date.

It appears that the ADI figures for Boston stations more nearly meet these criteria than does the grade B contour. The latter uses total 1970 population figures, not those for current voting age populations, while the ADI approach results in more current figures for voting age persons per television household. The grade B contour for the Boston stations includes Rhode Island where a primary was not held until June and does not include Vermont where a primary was held in early March. On the other hand, the ADI study excludes Rhode Island, although, unlike the grade B contour, it also excludes Connecticut where a primary was held at the end of March. With the exception of Rhode Island, the geographic areas described by ADI and Grade B appear relatively the same in the terms of influence. However, the inclusion/exclusion of Rhode Island is a significant factor since inclusion would reduce the amount to be allocated to New Hampshire. Given the fact that the Rhode Island primary was not until June 9, the inclusion of Rhode Island in the Grade B plan makes that approach suspect.

Given the above relative advantages of the ADI figures and the fact that the Committee utilized the ADI approach for stations other than those in Boston, this Office recommends that the Committee be given 30 days to show why a grade B contour would result in a more accurate figure than would the ADI approach. Absent such a showing the Committee should be required to add to the expenditures allocated to New Hampshire the amount by which the use of the ADI approach exceeds a finding based upon use of a grade B coutour.

It is suggested that the grade B contour maps and portion of the ADI report pertaining to Boston be attached to the Audit Report.

2. Adjustments to the Committee Allocated Totals for Iowa, New Hampshire and South Carolina

This Office concurs with the recommendation that the cited media, salary and consulting fees, outstanding debts, intrastate travel, tour-related disbursements, other vendor payments and other miscellaneous expense allocation adjustments should be made by the Committee.

It is also agreed that the Committee should provide documents and working papers in support of its allocation of tour

disbursements. We understand that the subsection (e)(i) is going to be elaborated upon to provide additional information concerning the location of the hotel used on these tours, the manner in which the Committee has allocated expenses, and additional evidence supporting a requirement of allocation to New Hampshire.

This Office suggests that additional information also be provided in subsection (e)(ii) spelling out the specific ways in which the Committee has allocated the categories of expenditures listed, e.g., that rental cars have been allocated to Massachusetts.

C. Contribution Limitations

1. Responses to Threshold Audit Findings

The Office of General Counsel has noted in referral updates received from the Reports Analysis Division that the Committee has submitted several responses to requests for additional information concerning apparently excessive contributions. The responses appear to serve as amendments to the Committee's reports pertaining to the thirty contributors listed in the threshold audit report as duplicate entries, and as to 26 of the 49 contributions cited in that same report as having been reapportioned but not so reported. The responses also serve as report amendments regarding 24 of the 128 excessive contributors cited in the threshold audit report. Either refunds or reapportionments are now cited for these 24 persons, leaving 104 apparently still not addressed in the reports even though some of these persons have received refunds according to the Committee's records. We understand that the audit report is being amended to include this information.

2. Post Primary Audit

The above-cited RFAI responses filed by the Committee serve to amend the Committee's reports to show 85 of the 93 refunds which had been made by the Committee as of August 31, 1980. In addition, the responses indicate alleged reattributions by fifty contributors, which, if documented, would reduce the amount of excessive contributions received by the Committee to $158,630.45.

This Office recommends that the present recommendations be amended to include the following:

b) provide documentation in support of $31,374.00 in reattributed contributions and of $42,962.44 in refunded contributions;

c) refund the $158,630.45 in contributions which still appear to be in excess of the limitation and present evidence (as outlined in item (a) above, or . . .

d) file an amended report correcting the public record for contributions reapportioned to the individuals but not yet so reported.

D. Possible Excessive Contributions

The Office of General Counsel concurs with the recommendation that matters involving a $19,478.19 reimbursement of an individual and a $10,000 transfer from a non-registered, unauthorized committee be referred to this Office for review. The attachments regarding this matter contain sufficient documentation of apparent violations so as not to warrant the routine 30-day audit verification which this Office and the Audit Division frequently recommend.

E. Settlement of Corporate Debts

1. Ruth Jones, Ltd.

In the interim audit report it is noted that the Committee and Ruth Jones, Ltd. entered into an agreement on September 2, 1980, whereby a contract dispute was settled for the sum of $30,000. This dispute apparently involved whether or not the parties had agreed in October of 1979 that Ruth Jones, Ltd. would be engaged to assist in the planning of media services and the ordering of schedules for media advertising through the general election campaign period. The Committee apparently paid, and Ruth Jones, Ltd., accepted $30,000 in settlement of the contract dispute.

Evidence in hand indicates that the $30,000 involved in the agreement does not represent payment of a debt for services actually rendered which could have been considered contributions by Ruth Jones, Ltd. to the Committee if no compensation had been received. Rather, the $30,000 apparently represents consideration for the release of the Committee from a contract obligation to utilize the services of the company in the general election campaign. It is therefore the opinion of the Office of General Counsel that the September 2, 1980, agreement between the parties is not a debt settlement but rather an agreement to cancel a contract for consideration. This situation does not come within the coverage of 11 C.F.R. § 114.10 and no debt settlement statement need be submitted to the Commission.

The Audit Division poses two additional questions concerning (1) the reasonableness of the $3,500 per week fee paid by the Committee to Ruth Jones, Ltd., in lieu of the 15% agency commission usually charged by media purchasers for each media buy, and (2) the appropriate Reagan committee which should have made the $30,000 settlement payment to the company. The Office of General Counsel concurs with the recommendation that these matters be referred to this Office for further consideration.

2. C. T. Clyne Company, Inc.

The interim audit report also discusses a dispute between C. T. Clyne Company, Inc., and the Committee concerning amounts which Clyne deemed owed by the Committee for advertising services. Attached to the audit report are copies of the contract, correspondence related to the disputed claim, a release signed by both parties, and an unsigned copy of a letter from the Committee to the company in which was allegedly enclosed a check for $40,000 representing settlement of the account.

It is the recommendation of the Office of General Counsel that the audit report be amended to require the Committee and/or C. T. Clyne Company to submit a debt settlement statement for approval. There appears to be no reason for this matter to be referred to this Office at this time.

F. Contributions Received After the Primary Election

The Office of General Counsel concurs with the recommendations contained in the interim audit report concerning the disposal of contributions received after the candidate's date of ineligibility and not needed to meet remaining obligations. It should be noted that the first portion of subsection (ii) should read "In the case of a contribution not designated in writing . . . ." and that the correct citation in recommendation (c) is 11 C.F.R. § 9003.3(a)(iii).

G. Disclosure of Debts and Obligations

1. Response to Threshold Audit Finding

For purposes of clarity the Office of General Counsel suggests that the Audit Division provide somewhat more detail in its discussion. In particular, the reference to the initial $30,000 increment in the letter of credit is unclear without referring back to the Threshold Audit.

2. Post-Primary Audit

a. Line of Credit

This Office suggests that the following sentences be added at the end of the second paragraph:

> Moreover, an analysis of this matter performed subsequent to the Threshold Audit indicates that the candidate provided his conditional guaranty.

b. Accounts Payable

The Office of General Counsel concurs in Audit's finding.

Audit's Recommendation

While the Office of General Counsel concurs in the Audit Division's recommendation, it is suggested that Items 1 and 2a be separated so as to avoid unnecessary confusion.

H. Earmarked Contributions

1. Response to Threshold Audit Findings

The Office of General Counsel recommends that the Audit Division specify the date that the amendment disclosing conduits was due pursuant to the recommendation in the Threshold Audit Report.

This office suggests that the following, or similar, language be substituted under "Recommendation":

> "The Audit staff reminds the Committee that it has yet to file the amendments as recommended in the Threshold Audit Report, and that further delay may result in the referral of the matter to the Office of General Counsel. With respect to the Committee's failure to disclose conduits noted during the Post-Primary audit period, the Audit Division recommends that within 30 days of receipt of this report the Committee file an amended report with the Commission disclosing the earmarked contributions pursuant to the provisions outlined above.

I. Contributions Received From Non-Affiliated Committees

1. Response to Threshold Audit Findings

The Office of General Counsel recommends that Audit indicate the date on which the amendment was due.

2. Post-Primary Audit

Regarding the $2,675 contribution reported as earmarked, this Office understands that the multi-candidate committee in question did not report the contribution as having been earmarked, and the Committee based its characterization on the letter which accompanied the contribution which indicated the wishes of a number of contributors. To the extent that further documentation would not change the result, the Office of General Counsel concurs in the Audit Division's finding and recommendation.

J. Disclosure of Refunds

The Office of General Counsel concurs in the Audit Division's finding and recommendation with respect to the "Disclosure of Refunds."

K. Other Income

The Office of General Counsel concurs in the Audit Division's finding and recommendation with respect to required itemization of interest income, but suggests the addition of the phrase "together with the date and amount" in the first sentence.

L. Telephone Banks

The Office of General Counsel concurs in the Audit Division's recommendation that the question of the Committee's use of corporate and other business telephones be referred to this office. Given the nature of the possible violations, it is the view of this Office that it is more appropriate to make the referral at this time rather than to await the Committee response to the interim report.

M. Established Expenditure Policy

Office of General Counsel staff had discussed this finding with Audit, and feels that the Audit Division should perform additional review regarding the incurrence of expenses by Committee staff, consultants, volunteers and authorized vendors. While the policy itself (Attachment 14 of the report) does not appear to be unreasonable on its face, Audit's concern as to its implications for contribution and expenditure limits is well taken. If the Audit Division concludes that there is a likelihood of violations subsequent to this additional review, a referral to this Office can be made at that time. In view of the above, the reference in the finding to the Clyne Company should be deleted and the Recommendation should be changed to inform the Committee of what items you may need to review.

N. Financial Activity Not Accurately Stated

The Office of General Counsel concurs in the Audit Division's findings and recommendations with respect to the accuracy of Committee reports. We recommend, however, that the Audit Division indicate in paragraph 1 the date requested in the Threshold Report for making the subject bank records available for review.

O. Campaign Tours

The Office of General Counsel concurs in the Audit Division's recommendations that the Committee identify the ground costs associated with the campaign tours in question, and provide Audit staff with appropriate documentation.

Based on staff discussions, it is our understanding that the Committee did provide sufficient documentation for ground costs associated with tours 1-3. It is our understanding that further inquiry with respect to ground costs associated with tours 4-13, 15 and 21-25 may indicate that charges to the media were reasonable. Based on a pro rata charge, the Audit Division feels that it is doubtful that charges to the media for tours 14, 16-20 and 26 could be brought within reasonable limits by associated ground costs.

This Office recommends that either the language of the finding or information contained in Attachment 9A indicate the above-described distinctions.

III. Finding Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Excessive Payments From the Matching Payment Account

While the Office of General Counsel is in substantial agreement with Audit's findings and recommended repayments, several changes should be made.

This Office recommends that footnote 10 on page 29 be changed to read as follows:

> Commission regulations at 11 C.F.R. § 9032.6 provide that the date on which a party nominates its candidate for president is the end of the matching payment period for a candidate seeking the presidential nomination of that party. 11 C.F.R. § 9033.5(c) provides that the last day of the

matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. §§ 9033.5(a) or (b). Since Ronald Reagan was nominated as the Republican Party's presidential candidate at its national convention on July 16, 1980, that date is the date of Mr. Reagan's ineligibility.

1. Payment of Matching Funds After the Date of Ineligibility

As Audit correctly stated in the first paragraph of Finding A, the regulations provide that a candidate may not receive matching payments after he or she has become ineligible if he or she has no net outstanding campaign obligations. It is recommended, therefore, that the finding read as follows:

> As noted above, the candidate's date of ineligibility was July 16, 1980. On July 17, 1980, the Committee received a matching fund payment of $179,292.63. The Statement of Net Outstanding Campaign Obligations ("NOCO") which the Committee submitted on July 31, 1980 showed that there were no net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5 (Attachment 10). Since the candidate did not have net outstanding campaign obligations, and the Committee received payment after the candidate's ineligibility date, the matching funds received ($179,292.63) constituted an excessive payment which is repayable to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(1).

2. Excessive Payment/Credit Made Prior to Candidate's Date of Ineligibility

While this Office supports Audit's position with respect to the repayment of matching funds received in the form of a credit, the language may lead to some confusion. For this reason, it is recommended that the finding explicitly state that the Committee still would have been required to repay $20,900.83 in excessive payments from amounts received before the candidate's date of ineligibility had the Committee not sought additional matching payments. In addition, the use of the phrase "credit", while technically correct, may have a misleading connotation to the lay reader; therefore a term such as adjustment might be less confusing.

Finally, please delete the word "certified" on the fourth line from the bottom and substitute "received by the Committee."

B. Apparent Non-Qualified Campaign Expense

1. Expenditures in Excess of State Limitations

The Office of General Counsel recommends that the language of the recommendation in this section be modified to read as follows:

> The Audit Staff recommends that the Committee be requested to show within 30 days of receipt of the audit report that the state expenditure limitation has not been exceeded. Absent such a showing, a determination will be made regarding an amount required to be repaid to the U. S. Treasury.

2. Expenditure in Excess of the Overall Limitation

The Office of General Counsel recommends that the language of the recommendation in the audit report be modified to read as follows:

> The Audit Staff recommends that the Committee be requested to show within 30 days of receipt of the audit report that the overall expenditure limitations has not been exceeded. Absent such a showing, a determination will be made regarding an amount required to be repaid to the U. S. Treasury.

C. Determination of Net Outstanding Campaign Obligations - Surplus

It is the understanding of this Office that Audit expects that there will be several adjustments to the figures indicated in the Re-Cap on page 37 and to the revised NOCO Statement (Attachment 11)

Unity Dinners

Footnote g states that no value has been included for amounts due the Committee from the Republican Unity dinners. The Office of General Counsel recommends that such amounts due be treated in a manner consistent with the Commission determination of November 6, 1980.

Interest Payment

Audit recommends that the Committee be required to pay an interest charge for the number of days that payment of the amount due under 11 C.F.R. § 9038.3(c)(1) was delinquent. It is the view

of this Office that such a charge cannot be assessed absent a finding that the Committee violated the provision in question. This issue has been referred to our Office separately as A-841 and is being reviewed for appropriate action. Accordingly, the reference to the interest charge should be deleted from the report.

Audit's Recommendation

The Office of General Counsel recommends that the language of the recommendation be modified to read as follows:

> Absent a showing to the contrary within 30 days of receipt of this report, the Audit staff will recommend to the Commission that the value of the items detailed above ($), which are also subject to an upward adjustment, be repaid in full to the United States Treasury.

D. Valuation of Committee Assets

1. Assets Purchased by Reagan/Bush Committee

This Office understands that the recommendation related to this section is being reworded to require the Committee to establish a value equal to the "usual and normal charge" for the goods at issue and to bill the Reagan Bush Committee accordingly. We concur with this recommendation.

2. Committee Assets Utilized by the Reagan Bush Committee Without Compensation

The Office of General Counsel concurs with the recommendation that the Committee place a valuation upon any goods being used by the Reagan Bush Committee which were obtained from the Committee at no charge and bill the Reagan Bush Committee accordingly. Such valuation should be based upon the "normal and usual" charge for such goods.

3. In-Kind Contribution to the Reagan Bush Compliance Fund

The Office of General Counsel concurs with the recommendation that the Committee be required to place a valuation equaling "normal and usual charge" upon the office furniture and machines transferred by the Committee to the Reagan Bush Committee's Compliance Fund, and that the Reagan Bush Committee be requested to reimburse the Committee for the portion of the value of the equipment which represents use for non-compliance purposes.

8304030047

4. General Election Campaign Expenditures

The Office of General Counsel understands that language is being added to the audit report pointing out that the Committee has a residual in its accounts and thus could make loans to the Reagan Bush Committee, pursuant to 11 C.F.R. § 9003.4(b)(4)(i), which would have had to be reimbursed within 15 days of the Reagan Bush Committee's receipt of public funds under 26 U.S.C. § 9005. This Office concurs with the recommendation that, absent a showing that the expenditures at issue were in fact made in connection with the primary election, the Committee should obtain reimbursement from the Reagan Bush Committee in order to avoid violation of 26 U.S.C. § 9003(b) by the latter committee.

The reference to 11 C.F.R. § 9003.2(b) should be dropped because it refers to minor and new parties. It is suggested that citation of 26 U.S.C. § 9003(b) be added to the present citation of the relevant regulation.

8504047

8304040380474

ATTACHMENT 2

CHARLES Z. WICK
120 South Mapleton Drive
Los Angeles, California 90024

18 January 1980

Mr. Michael Wallace
Reagan for President
9841 Airport Boulevard
Los Angeles, California 90045

Dear Mike:

After three weeks of the flu, frantically trying to catch up on the accumulated array of personal matters that accumulated during the New York trip, I have finally prepared a schedule of reimbursable amounts due me by Reagan for President. This is as per our prior discussion.

Because of my extensive involvement over a period of time with many efforts on behalf of Reagan for President with substantial out-of-pockets as well as in-kind services rendered at our home, I have utilized the advice of the law firm of Covington and Burley in Washington, D.C. to insure that both Mary Jane, I, and the Reagan organization are protected as to Federal election laws reporting procedures.

I have been very careful in determining what properly might be reimbursable by the political organization and what I might personally absorb as personal "normal living expenses". However, I have resolved the areas indicated to me as "gray" by Covington and Burley, as personal expenses. For example, substantial sums of money involving entertainment and/or business meetings with the people involved as volunteers in the New York Announcement Dinner effort I have determined to be "personal expenses," on the basis that some day these people might buy me a dinner in turn. However, in a few instances, liquor actually purchased specifically at the suite for the meetings it was suggested by Covington and Burley that we both be protected and not pick this up as a personal expense.

RE: LIMOUSINE CHARGES

Taxis and extensive use of limousines have not been charged to the organization with the exception of payments to Madden's Limousine Service (see attached bill dated December 6, 1979). The limousine bill bears numbers I have put to the left of each line, the detail is as follows:

#1 This is for a pick-up at LaGuardia involving tablecloths for the dinner that were donated to us from California.

(Continued)

#2, #4, #5, #7 relate to the day preceding the day of the Announcement Dinner (November 12, and 13, when considerable activity between the Hilton Hotel, the Oram Group, the Mayfair Regent Headquarters, the Dinner Program purveyors and others, required the use of these limousines by various people involved.

#3 and #9 are for Stanley Kersten, the well-known florist and designer from Los Angeles who volunteered his efforts as well as the tablecloths which he brought from California.

#6 was for the pick up at the Newark airport of Patty Davis (Patty Reagan) in conjunction with her arrival in New York for her appearance at the Announcement Dinner.

#8 The day of the Wicks departure involved pick up and deliveries by various people with the dispersal of the Mayfair Regent Headquarters materials to the New York Reagan Office, the Oram Group, the Hilton Hotel. I am deducting from this bill $36.80 reflecting the portion involving the Wicks' drive to JFK.

RE: HOTEL CHARGES

The accommodations at the Mayfair Regent Hotel in New York were used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee. As Helene Von Damm and I had found it increasingly difficult to have sufficient facilitie to meet with the various people involved, I moved to a larger suite on October 23rd, 1979. This one had a large living-room and two bedrooms. One bedroom was used for files and a secretary. The other bedroom during the daytime was used by Mary Jane Wick and June Walker in making the endless phone calls. *

You will recall being in this two bedroom suite. The living-room was also set up for the review meetings which were held daily including many Saturdays and Sundays with as many as 30 people at a given meeting. We also used this living-room for volunteers logging responses, mailgram activity, meeting with the artist for the Dinner program, people involved in the

(Continued)

*(6 extra telephones were installed, 3 lines)

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mechanics of the ballroom presentation, computer people. Western Union, etc.

From the enclosed Mayfair Regent Hotel bills have been stricken all personal meals and items of a personal nature.

The "L'Cirque" notations on the hotel bills refer to the restaurant in the Mayfair Regent which also provides room service. All restaurant charges are excluded. The charges remaining on the hotel bill referring to L'Cirque, relate to room service for those attending the meetings, staff and volunteers.

For more convenient reference I have numbered the hotel bill pages in the upper right hand corner (most recent date on top).

On page 1, Item "A" the $200 is for gratuities for the entire stay distributed $50 to each of the following departments: bellboys, operators, front desk, maids.

On page 2, Item "A" refers to the Room 425 charge in the amount of $274.15 for the stay of Rosemary and Robert Stack who flew in to the Dinner as celebrity guests.

Page 3, Item "A" at the bottom of the page. $30.24 refers to room service beverages for a review meeting.

Page 4, Item "A" "C.O.D. paid out $46.57 refers to the delivery of a film used at the Announcement Dinner.

Page 4, Item "B" in the amount of $19.63 was a messenger delivery from the program printer.

Page 7. Item "A" in the amount of $55.59 was a delivery of liquor for a Review Committee meeting and reception.

Page 11, Item "A" was for a messenger delivery of artwork for the Dinner program.

The Hotel Mayfair Regent bills total $16,831.33 as follows:

9/17/79 - 9/21/79	$1535.72	Paid AE
9/27/79 - 10/5/79	2211.92	
10/15/79 - 10/22/79	1855.15	
10/22/79 - 10/31/79	4519.09	
10/31/79 - 11/5/79	6815.19	
11/5/79 - 11/15/79	4415.35	
	$16,831.33	

(Continued)

I have stricken as reimbursable items from the bills a total of $1,904.72 (see attached tape). This leaves a balance due me of $14,926.61 on the Mayfair Regent Hotel bills.

I am also enclosing a New York Hilton bill in the amount of $97.42 which was augmented by a late entry after my departure of $8.45 for a total of $105.87.(see attached AMEX "N.Y. Hilton" in red).

This New York Hilton bill was for the night of September 12, 1979. It was my initial trip to New York with Mike Deaver for a meeting with William Casey, Maxwell Rabb, and others including Helene Von Damm to ascertain the feasibility of and set the initial effort for the New York Announcement Dinner.

RE: NEW YORK TRIPS BY CZW AND MJW IN CONNECTION WITH REAGAN ANNOUNCEMENT DINNER

A September 12, 1979 Los Angeles to New York, CZW
B September 12, 1979 Los Angeles to Washington, D.C. to New York, MJW (charge to Reagan is Los Angeles to New York)

C September 18, 1979 New York to Los Angeles, CZW
D September 18, 1979 New York to Los Angeles, MJW
E September 27, 1979 Los Angeles to New York, CZW
F October 5, 1979 New York to Los Angeles, CZW
G October 15, 1979 Los Angeles to New York, CZW
H October 19, 1979 Los Angeles to Minneapolis to New York, MJW (charge to Reagan is for coach fare for Minneapolis to New York)
I November 15, 1979 New York to Los Angeles, CZW
J November 15, 1979 New York to Los Angeles, MJW

While the air fare represents first class travel, we are billing you for the coach fare.

The foregoing comprise nine one-way legs between Los Angeles and New York plus one portion from Minneapolis to New York (MJW).

The one-way coach fare for the New York/Los Angeles legs are at $276.85 plus $22.15 tax or $299 times nine for a total of $2691 plus the MJW Minneapolis/New York coach rate of $151 including tax, for a grand total of $2842.

The documentation for these various charges are attached.

(Continued)

I have hand written in red letters "A" through "I" inclusive, opposite the trips noted on the preceding page, and have keyed these letters also in red to the correlated on the attached bills.

RE: ADDITIONAL CHARGES

I am also enclosing documentation for the following:

1. An American Express charge by National Car Rental in the amount of $299.35 incurred by my son, CZ, in transporting technicians and others associated with filming the Reagans, the airport office personnel, and the airport scenes for the Reagan political film. This involved rental of a large truck for the technical equipment plus a station wagon for the personnel.

2. A Mastercharge slip for Fullers Stationers in New York in the amount of $74.62 representing office supplies used at the Ground Floor Headquarters in New York at the Mayfair Regent Hotel in conjunction with the Announcement Dinner.

3. A COPY QUICK bill in the amount of $131.07 paid in cash. This was for the preparation of press kits for distribution at the September 30, 1979 brunch at the Pierre Hotel in New York. This was the first gathering of prospective volunteers to assist us in the formation of the Ground Floor Committee in conjunction with the Announcement Dinner on November 13. The Reagans were in attendance as well. These press kits were used for a number of weeks after September 30, 1979 in the absence of any available from California.

4. A Mastercharge of $10.24 incurred by Mary Jane Wick on October 10, 1979 for items for the $10,000 Club reception held at our home on October 12, 1979.

5. A bill from the florist, Stanley R. Kersten, dated October 12, 1979 in the amount of $140.98 for the $10,000 Club party held at our home.

6. Madden Limousine bill dated October 8, 1979 for round-trip transportation from New York to Ray Donovan's New Jersey fundraiser with Mr. and Mrs. William Casey, co-chairman for the New York Dinner. The affair was at Bedminster, N.J. on September 30, 1979. The amount was $188.80.

In addition to the attached documentation, there follows this page a "Summary of Sums to be Reimbursed to Charles Z. Wick" totaling $19,478.59. Please make the check payable to me.

(Continued)

8040431

If you have any questions, please contact me.

Best wishes,

Charles Z. Wick

CZW:vr
Enclosures

SUMMARY OF SUMS TO BE REIMBURSED
TO CHARLES Z. WICK

$ 766.05	Madden Limousine Bill (Pg.2)
14,296.61	Hotel Charges, Mayfair Regent (Pg.4)
105.87	Hotel, New York Hilton (Pg. 4)
2,842.00	Los Angeles-New York Transportation (Pg. 4)
838.06	Miscellaneous Items from Page 5
$19,478.59	

8304030436

8 3 0 4 0 8 0 4 3 8

BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE		AMOUNT
2/[illegible]/80	Reimbursement	

REAGAN FOR PRESIDENT
9841 AIRPORT BLVD., STE. 1430
LOS ANGELES, CALIF. 90045

3791

90-1261/1222

April 9 1980

PAY TO THE ORDER OF Chas. "Z." Wirth $ 19,478.59

Nineteen Thousand Four Hundred Seventy Eight and 59 cts DOLLARS

Santa Monica Bank
FOURTH STREET AND ARIZONA AVENUE
Santa Monica, Calif. 90401

Bay Buchanan

"003791" "122212611" 02 091 542" "000194785 9"

Attachment 7

ATTACHMENT 3

8304030243

Photocopied sales of computerized records may not be copied for sale or use by any person for purposes of soliciting contributions or for any commercial purpose.

Name of Candidate and Committee in Full
REAGAN FOR PRESIDENT

A. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Quip Systems 265 Whooping Loop Alta Monte Springs, FL 32701	1/1/80	$ 82.00	$ -0-	$ 82.00

NATURE OF OBLIGATION (Details of Debt):
EQUIPMENT RENTAL

B. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Ed Nichols Assoc. 4905 Del Ray Ave., #301 Bethesda, MD 20014	3/15/80 3/15/80 ~~3/14/80~~ 3/14/80 3/14/80 3/15/80 3/14/80 3/14/80	7894.30 9462.38 6058.45 2551.10 520.92 3284.11 1329.79 39,713.73	$ -0-	$ 70.814.78

NATURE OF OBLIGATION (Details of Debt):
MAILING SERVICES

C. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Charles Wick 120 S. Mapleton Dr. Los Angeles, CA 90024		$ 19478.59	$ -0-	$ 19,478.59

NATURE OF OBLIGATION (Details of Debt):
PROFESSIONAL SERVICES

SUBTOTALS This Period This Page (optional)	$ 90,375.37	$ -0-	$90,375.37
TOTAL This Period (last page this line number only)	$	$	$

CARRY OUTSTANDING BALANCE ONLY TO APPROPRIATE LINE OF SUMMARY.

Approved by GAO, B-187620 (RC571), Expires 82-3-28

APRIL MONTHLY: March 1, 1980, to March 31, 1980

SCHEDULE B

September 1978
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

DEBTS AND OBLIGATIONS

Supporting Line Numbers 12 and 13 of FEC Form 3P

Line Number 13

(Use Separate Schedules for each numbered line)

Any information reported herein may not be copied for sale or use by any person for purposes of soliciting contributions or for any commercial purpose.

Name of Candidate and Committee in Full
Reagan for President

A. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Velma Whitson P.O. Box 233 Marion, IL. 62959	12-8-80	$ 79.36	$ 79.36	$ 0.00

NATURE OF OBLIGATION (Details of Debt):

Travel Expenses

B. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Chas. Z. Wick 120 S. Mapleton Dr. L.A., CA. 90024	1-18-80	$ 19478.59	$ 0.00	$ 19478.59

NATURE OF OBLIGATION (Details of Debt):

Fundraising Expenses

C. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Lanny Wiles P.O. Box 1132 N. Wilkesboro N.C. 28659	1-23-80 2-28-80 1-31-80	300.00 $ 2100.00 600.00	$ 2400.00 600.00	$ 0.00

NATURE OF OBLIGATION (Details of Debt):

Professional Services

SUBTOTALS This Period This Page (optional)	$ 22557.95	$ 3079.36	$ 19478.59
TOTAL This Period (last page this line number only)	$	$	$

CARRY OUTSTANDING BALANCE ONLY TO APPROPRIATE LINE OF SUMMARY.

Approved by GAO, B-187620 (RAD 78-11), Expires 12-2-78

APRIL MONTHLY: March 1, 1980, to March 31, 1980

ATTACHMENT 4

8504040037

MAY MONTHLY: April 1, 1980, to April 30, 1980

SCHEDULE B-P
September 1978
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

ITEMIZED EXPENDITURES

(Operating, Exempt Fundraising, Legal and Accounting, Transfers Out, Contributions In-Kind, Loans, Loan Repayments and Refunds Made)

Supporting Lines 24a, 25a, 26a, 26b, and 27a of FEC Form 3P

Page 3 of ____ for
LINE NUMBER 25a

(Use separate schedule(s) for each numbered line)

NOTE: *Any information reported herein may not be copied for sale or use by any person for purposes of soliciting contributions or for any commercial purpose.*

Name of Candidate or Committee in Full

REAGAN FOR PRESIDENT

Full Name, Mailing Address and ZIP Code	Particulars of Expenditure	Date (month, day, year)	Amount of each expenditure this period
A. Eagle Printing & Thermographing co. 2894 North Milwaukee Ave. Chicago, IL 60618	Printing	4/9/80	5628.37
B. Charles Z. Wick 120 South Mapleton Dr. Los Angeles, CA 90024	Reimbursed for hotel accomodations, air travel & limousine service	4/9/80	19,478.59
C. Elaine Lobitz 1747 Rivercrest Rd. Lakland, MN 55043	Reimbursed for travel food & lodging	4/9/80	451.07
D. Vought Corporation P.O. Box 223907 Dallas, TX 75265	Data Processing service	4/10/80	7750.00
E. Earl E. T. Smith 1021 North Ocean Blvd. Palm Beach, FL 33480	Airfare expense reimbursement	4/11/80	312.00
F. Social Pictorial Inc. Box 591 Palm Beach, FL 33480	Printing	4/11/80	775.00
G. The Breakers South County Rd. Palm Beach, FL 33480	Accomodations	4/11/80	7160.51
H. Palm Beach Display 523 Okeechobee Blvd. W. Palm Beach, FL 33401	Accomodations	4/11/80	1295.00

SUBTOTAL of Expenditures This Page (optional)	$ 42,852
TOTAL This Period (last page this line number only)	$

Approved by GAO, B-187820 (R0521) Expires 12-31-78

8 3 0 4 0 5 0 3 0 4 3 5

ATTACHMENT 5

MAY MONTHLY: April 1, 1980, to April 30, 1980

SCHEDULE C-P

September 1978
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

DEBTS AND OBLIGATIONS

Supporting Line Numbers 12 and 13 of FEC Form 3P

Page 12 of ____ for

Line Number 13

(Use Separate Schedules for each numbered line)

Any information reported herein may not be copied for sale or use by any person for purposes of soliciting contributions or for any commercial purpose.

Name of Candidate and Committee in Full

Reagen for President

A. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Integrated Communication Systems, Inc 9100 S. Sepulveda Blvd LA, Ca 90045	10-19-79 11-2	$ 1747.06 16581.61	$18,328.67	$ 0.00

NATURE OF OBLIGATION (Details of Debt):

Direct mail services

B. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Islander Helicopter Corp. 0 North Ave. Garden City, N.Y. 11530	10-10-79	220.00 $	$ 0.00	$ 220.00

NATURE OF OBLIGATION (Details of Debt):

Charter Service

B. Full Name, Mailing Address and ZIP Code of Debtor or Creditor	Date (month, day, year)	Amount of Original Debt, Contract, Agreement or Promise	Cumulative Payment To Date	Outstanding Balance at Close of This Period
Chas. Z. Wick 120 S. Napleton Dr. L.A., CA. 90024	1-18-80	19478.59 $	$19478.59	$0.00

NATURE OF OBLIGATION (Details of Debt):

Fundraising Expenses

SUBTOTAL This Page (optional)	$ 38027.25	$ 37807.25	$ 220.00
TOTAL This Schedule (last page this line number only)	$	$	$

CARRY OUTSTANDING BALANCE ONLY TO APPROPRIATE LINE OF SUMMARY.

8304040211

ATTACHMENT 6

Linn County
Reagan Country

920 Clay Street SE
Albany, Oregon 97321
(503) 967-1980

May 19th, 1980

Dear Gov. and Mrs. Reagan,

I began your campaign in Linn County because I felt I might be able to help you - the biggest supprise has been that I've helped myself more.

The Reagon Country Buttons have been very successful. On $125.00 investment for 500 buttons you have made quite a profit. We charge your supporters a dollar donation per button. The Reagan Angel buttons brought us $25.00 per button.

The Reagan Rally check for $10,000.00 has been written and will be presented today.

Enclosed are a couple of letters, which are really your words put in Linn County language. They must be considered effective as they have the eye of everyone running for office. My husbands company packages the coffee and its going to be a Reagon exclusive.

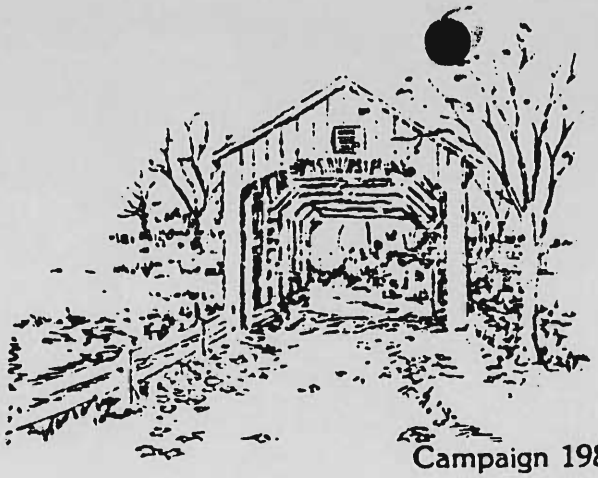
We have had the help of twelve women in our office-and believe me our office is the envy of all. We Are All Producers!

America needs your leadership! We are going to win Oregon for you May 20th. Good luck, and cheers for the team

Norma Byer
Linn County Chairman

Linn County
Reagan Country

920 Clay Street SE
Albany, Oregon 97321
(503) 967-1980



Campaign 1980

Dear Friend.

My support for President of the United States is going to Ronald Reagan.

I believe he is the only candidate of either party, who has the leadership. knowledge and capability to direct our nation during these high inflationary and troublesome times.

As a registered Republican you may enjoy stopping by our headquarters at 920 Clay Street SE (Wines Santiam Plaza). Our telephone number is 967-1980.

We are moving ahead with our local organizational work and would be delighted to have you join our team.

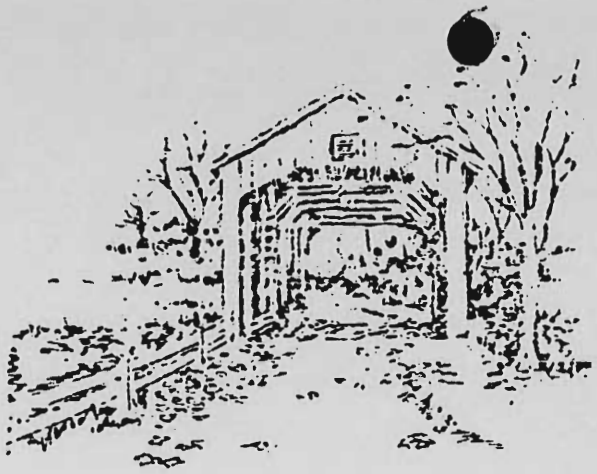
Cheers and warm regards.

Norma

Norma Byer
Linn County Chairman

Linn County
Reagan Country

920 Clay Street SE
Albany, Oregon 97321
(503) 967-1980



Campaign 1980

Dear Friend,

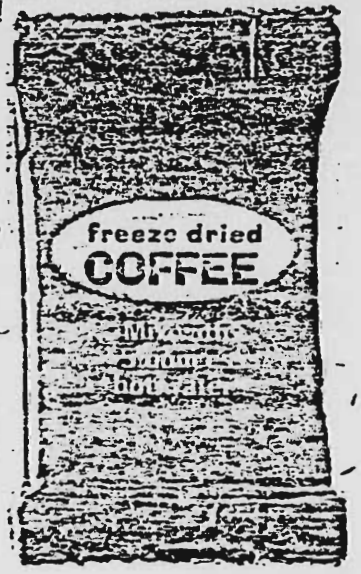
The election of a president in 1980 may be the most important decision American voters will make during the remainder of the 20th Century.

If you haven't the time to sit down and share a cup of coffee with us at our "Reagan for President" headquarters, 920 Clay Street SE, (Wines Santiam Plaza), please enjoy this sample of Mountain House coffee. Let us tell you about our candidate, Ronald Reagan. He is the man to make America great again! As Governor of California for eight years, he proved what better government could do. The state was facing bankruptcy when Governor Reagan took office. The legislature was dominated by the other party. Asserting his leadership, he turned the red ink to black.

By the way, did you know if California was a country by itself, it would rank as the eighth largest industrial nation in the world?

To solve our aimless drifting from crisis to crisis at home and throughout the world, we need and must have a wise and experienced leader.

Let's make AMERICAN great again and elect Ronald Reagan for President!



Bag of Coffee attached to each letter unknown how many letters were sent

Encl. (2)
EMB/nb

Cheers,

Norma

Norma Byer
Linn County Chairman

Oregon Freeze Dried Foods, Inc.
Albany, Oregon 97321, USA

Instructions on bag

COMMITTEE TO ELECT REAGAN
PHONE 967-1980
920 S. E. CLAY
ALBANY, OREGON 97321

126

5/19 1980 96-395/1232

PAY TO THE ORDER OF Ronald Reagan For President $10,000.00

Ten Thousand and 00/100 DOLLARS

ALBANY BRANCH
CITIZENS VALLEY BANK
ALBANY, OREGON 97321

Boris A. Strand

⑈000126⑈ ⑆123203959⑆ 33 13747 5⑈ Norma Beyer
Linn Co. Chairman

Citizens Valley Bank
P.O. Box 399

⑆323040⑆ 8 0 4 7 3 ⑆

Off Rec
Registration Statement for FEC: no OK yet

8304040426

ATTACHMENT 7

[redacted]

June 25, 1979

Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

Gentlemen:

Reagan for President wishes to amend its statement of organization to include the following repository:

CITIZENS VALLEY BANK
P. O. Box 309
Albany, Oregon 97321

Please feel free to call if there are any questions.

Sincerely,

Bay Buchanan

Bay Buchanan
Treasurer

BB/bb

Reagan for President – United States Senator Paul Laxalt, Chairman, Bay Buchanan, Treasurer.
A copy of our report is filed with and available for purchase from the Federal Election Commission, Washington, D.C. 20463

C 00130047 8304038047 97

8504080406

ATTACHMENT 8

REAGAN for PRESIDENT

9841 Airport Boulevard
Suite 1430
Los Angeles, California 90045
(213) 670-9161

October 5, 1979

Ms. Ruth Jones
Ruth Jones, Ltd.
123 East 75th Street
New York, New York

Dear Ms. Jones:

This will confirm the agreement between this committee and your firm regarding media services for the Ronald Reagan Presidential campaign.

This committee agrees to engage your firm, effective October 1, 1979, to assist in the planning of all media advertising for the Reagan 1980 campaign, and to order the schedules for media advertising.

For these services, the Committee will pay Ruth Jones, Ltd. a fee of $3,500.00 per week, commencing the effective date of this letter and payable on the last business day of each month, through March 31, 1980. If it is generally considered at that time that Ronald Reagan has effectively secured the nomination, both parties agree to renegotiate this agreement for a mutually acceptable fee arrangement during the interim months until planning begins for the general election. Should the status of the nomination not be clear by March 31, the original terms will remain in force until July 31, when this agreement will be renegotiated regarding fees to be paid for general election service. In either case it is agreed that, in the event Mr. Reagan is nominated, Ruth Jones, Ltd. will continue to handle the media services outlined through the general election.

The fee will provide the services of Ruth Jones and one senior associate. The Committee will pay all out-of-pocket expenses incurred on its behalf, including such things as salaries and relevant payroll taxes of additional media buyers, telephone, travel and accounting costs with connection with monthly F.E.C. reports. The employment of additional media buyers or other personnel will be approved in advance by the Reagan for President committee.

Reagan for President - United States Senator Paul Laxalt, Chairman Bay Buchanan, Treasurer
A copy of our report is filed with and available for purchase from the Federal Election Commission, Washington, D

Media advertising will be billed to the Committee at net (gross less 15% agency commission).

If the foregoing meets with your approval, please sign and return one copy of this agreement to us for our files. Thank you.

Very truly yours,

REAGAN FOR PRESIDENT COMMITTEE

Bay Buchanan

Bay Buchanan
Treasurer

ACCEPTED AND APPROVED
BY RUTH JONES, LTC.

BY: Ruth Jones

Date: Oct 19, 1979.

8304080506

This agreement made this 2nd day of September, 1980 by and between the Reagan for President (Committee) and Ruth Jones, Ltd. (Jones).

WHEREAS, the Committee and Jones entered into an agreement dated October 5, 1979, whereby Jones agreed to assist in the planning of all media advertising for the Reagan 1980 campaign, and

WHEREAS, the Committee does not believe a contractual obligation exists between the Committee and Jones; and

WHEREAS, Jones does believe that a valid and binding contractual obligation does exist between the Committee and Jones and that a court of law would award Jones at least one hundred thousand dollars in damages for the breach of such contractual rights; and

WHEREAS, both parties, being cognizant of the uncertainties length and financial cost of contract litigation do agree that a fair and just legal settlement of this matter, arising out of the primary, would save both parties time and legal expenses; do mutually consider any contractual rights created by the October 5, 1979 agreement terminated;

NOW, THEREFORE, in consideration of Jones' agreement to cancel the contract of October 5, 1979, it is agreed as follows

1. That Jones will have no further responsibility to the Committee for media services.

2. The Committee will pay Jones $30,000 in full satisfaction of all rights and claims that Jones may have under the contract of October 5, 1979.

3. The parties mutually release each other as of August 30, 1980 of any contractual obligations.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

Ray Buchanan
Reorganized President

Lewis N. Ward
Rick Jones Est

8304080502

8304080505

ATTACHMENT 9

STATEMENT

CHAPMAN & COMPANY, REALTORS® Better Homes and Gardens®

Chapman & Company, REALTORS® 3212 34th Street Lubbock, Texas 79410 Telephone (806) 799-4321

RECEIVED JUN 20 1980

Reagan For President

June 23,80
pd. #5826-542
$8.40

June 3 19 80

	DEBIT	CREDIT	BALANCE
Telephone bank use-Pre election campaign 24 phones-35¢ each	8.40		$8.40

(V) 6-18-80

RECEIVED JUN - 4 1980

Yours truly,

JACK MARKHAM

JM:ab

Enclosures - 2

Thank you,

JACK MARKHAM
OIL PROPERTIES
SUITE 1212
1500 BROADWAY
LUBBOCK, TEXAS 79401

Office Phone
A.C. 806 763-5526

Res. Phone
A.C. 806 799-6709

June 5, 1980

Jan Rowley
REAGAN FOR PRESIDENT
2825 Hanock, Suite 101
Austin, Texas 78731

Dear Jan:

I herewith enclose Check 624, 6-3-80 in the amount of $25.00 - contributed by M/M Ray Chapman; also, bill from Chapman Better Homes in the amount of $8.40 dated 6-3-80. Please mail check back to writer so I can handle. Thank you.

Yours truly,

Jack Markham

JACK MARKHAM

JM:ab

Enclosures - 2

Ellen,
I sent check on to Bay
Thanks,
Jan

Warren
Properties
Realtors, Inc.

8304030506

M E M O

TO: Reagan Headquarters

FROM: Warren Properties

Charges for phone usage:

5 phones @ 35¢ x 6 days = $10.50

Pd. 6/16
#5435/542
$10.50

DATED:
April 30, 1980

6-3-80
Too small to
Dick Leo

RECEIVED JUN 03 1980

5511 parkcrest suite 107 • austin, texas 78731 • 512-454-2713

MERCURY EXPLORATION COMPANY

May 28, 1980

INVOICE

TELEPHONE RENTAL

April 15 - 2 phones	$.35@ =	$ .70
April 16 - 2 phones	$.35@ =	$ .70
May 3 - 5 phones	$.35@ =	$1.75
TOTAL		$3.15

Pd. 6/10
5431 | 542
312

Show stylist
(2)
6-6 80

8304080027

8304080508

ATTACHMENT 10: PROPOSED LETTERS AND QUESTIONS

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles Wick
120 South Mapleton Drive
Los Angeles, CA 90024

Re: MUR 1349

Dear Mr. Wick:

On , 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of at least $18,712.54 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers, under oath, to the enclosed questions within fifteen days of your receipt of this letter.

In absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

8304030509

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

8304030310

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1349

RESPONDENT Charles Wick

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent excessive contribution of more than $18,712.54 to the Committee from Charles Wick in violation of 2 U.S.C. § 441a(a)(1)(A).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidential to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee of $19,478.59 to Charles Wick on April 9, 1980. The expenditure was reported on the expenditure schedule as being reimbursement for "hotel accommodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses."

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it as learned that the Committee had adopted a policy of paying only coach fare for persons traveling at Committee expense.

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations. Indeed, it would undermine the purposes of the contribution limitations if an individual could incur massive expenditures for a candidate or committee with his or her own funds without affecting his or her contribution limitations. This is no less so if the individual is expressly designated as an agent of the candidate or committee. The candidate or committee

8304051

3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143, for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

plainly enjoys the benefit of the goods or services from the moment they are purchased by the individual. The transaction represents a contribution as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction (which is clearly subject to the contribution limitations).

In the General Counsel's view the contribution arises from the moment the individual makes payment for the goods or services, i.e., at the time cash, a check, or a credit card is tendered. At that point the vendor receives either money, a negotiable instrument, or a firm contractual right to payment, and the candidate or committee receives goods or services through the efforts of the individual. At that point also, there will be a written receipt or other documentation available to evidence the date, amount, purpose, and payee of the transaction. See 2 U.S.C. § 432(c)(5).

It is true that Commission regulations, at 11 C.F.R. § 100.7(a)(4), provide that the term "contribution" does not include the extension of credit by any person for a lenth of time within normal business or trade practice. However, this limited exemption is geared toward businesses and commercial vendors which have established, standardized billing cycles whereby goods or services are routinely provided first and paid for later. Individuals carrying out volunteer political activities, rather than business or commercial activities, cannot claim the benefit of this exemption, in the General Counsel's view.

In the instant matter, because Mr. and Mrs. Wick had already each contributed $1,000 to the Committee, they were not entitled to advance additional sums to the Committee. The Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur the expenses. In the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations. 5/

5/ It would not be impermissible for individuals who had not reached their contribution limit to advance funds to a candidate or committee as long as the advance did not cause an excessive contribution. Thus, for example, individuals authorized by a candidate's committee to carry out committee activities will ordinarily be able to make expenditures from their personal funds for items which are needed on short notice. Such expenditures, however, will not be able to exceed $1,000 when aggregated with any other outstanding contributions by that individual.

Recommendation

1. Find reason to believe Charles Wick violated 2 U.S.C. § 441a(a)(1)(A).

8304058051

Questions: Charles Wick

1. In regard to the $19,478.59 reimbursement you requested from the Reagan for President Committee on January 18, 1980, please state, for any amount you were reimbursed but for which you did not originally make payment, the name of the person(s) who made payment, and, if known, the amount, date, and, method of payment. For each payment please also state the name of the person or entity who provided the goods or services.

2. Please state the monetary difference between the cost of first class airfare and coach airfare on all airplane flights taken by Mary Jane Wick which were submitted to the Reagan for President Committee for reimbursement on January 18, 1980.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Jane Wick
120 South Mapleton Drive
Los Angeles, California 90024

Re: MUR 1349

Dear Mrs. Wick:

On , 1981, the Federal Election Commission determined that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution of $766.05 to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission in writing by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

8304080515

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1349

RESPONDENT Mary Jane Wick

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent excessive $766.05 contribution to the Committee by Mary Jane Wick in violation of 2 U.S.C. § 441a(a)(1)(A).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C. § 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7(b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7(b)(6).

8304080515

Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidential to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter from Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them, and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

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2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mrs. Wick. In the course of the audit, it as learned that the Committee had adopted a policy of paying only coach fare for persons traveling at Committee expense.

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

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plainly enjoys the benefit of the goods or services from the moment they are purchased by the individual. The transaction represents a contribution as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction (which is clearly subject to the contribution limitations).

In the General Counsel's view the contribution arises from the moment the individual makes payment for the goods or services, i.e., at the time cash, a check, or a credit card is tendered. At that point the vendor receives either money, a negotiable instrument, or a firm contractual right to payment, and the candidate or committee receives goods or services through the efforts of the individual. At that point also, there will be a written receipt or other documentation available to evidence the date, amount, purpose, and payee of the transaction. See 2 U.S.C. § 432(c)(5).

It is true that Commission regulations, at 11 C.F.R. § 100.7(a)(4), provide that the term "contribution" does not include the extension of credit by any person for a lenth of time within normal business or trade practice. However, this limited exemption is geared toward businesses and commercial vendors which have established, standardized billing cycles whereby goods or services are routinely provided first and paid for later. Individuals carrying out volunteer political activities, rather than business or commercial activities, cannot claim the benefit of this exemption, in the General Counsel's view.

In the instant matter, because Mr. and Mrs. Wick had already each contributed $1,000 to the Committee, they were not entitled to advance additional sums to the Committee. The Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur the expenses. In the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations. 5/

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Recommendation

1. Find reason to believe Mary Jane Wick violated 2 U.S.C. § 441a(a)(1)(A).

3 3 0 4 0 6 8 0 5 1 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bay Buchanan, Treasurer
Reagan for President Committee
901 South Highland Avenue
Arlington, Virginia 22204

Re: MUR 1349

Dear Ms. Buchanan:

On , 1981, the Federal Election Commission determined that there is reason to believe your committee violated 2 U.S.C. §§ 441b(a), 441a(f), 432(c), 433(c), 434 (b), and 434(b)(5)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission further determined that there is no reason to believe your committee violated 11 C.F.R. § 9034.4(a). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit, under oath, answers to the enclosed questions within 15 days of your receipt of this letter.

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. 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 request by letter.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202-523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____ MUR NO. 1349

RESPONDENT Reagan for President Committee

STAFF MEMBER & TEL. NO Maura White 202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. The Committee appears to have received the following: excessive contributions from individuals in violation of 2 U.S.C. § 441a(f), a $183,721.50 in-kind contribution from a corporation, and two in-kind corporate contributions of a yet undetermined amount, in violation of 2 U.S.C. § 441b(a). Also involved in this matter is the Committee's failure to amend its statement of organization within ten days, failure to keep an account of all expenditures made, failure to report certain contributions and expenditures incurred in connection with a fundraising event, failure to report the receipt of an in-kind contribution, and failure to report the ultimate recipient of certain committee expenditures in violation of 2 U.S.C. §§ 433(c), 432(c), 434(b), and 434(b)(5)(A). Finally, this matter includes the Committee's payment of a settlement agreement from its primary election account rather than its general election account in possible violation of 11 C.F.R. § 9034.4(a).

FACTUAL BASIS AND LEGAL ANALYSIS

A. Charles Wick and Mary Jane Wick

Section 441a(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committees with respect to any election to federal office which in the aggregate exceed $1,000. Section 441a(f) further prohibits any political committee from knowingly accepting any contribution in violation of the contribution limitations. The term "person" is defined at 2 U.S.C.

§ 431(11) to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Pursuant to 2 U.S.C. § 431(8)(B)(iv) and section 100.7 (b)(8) of Commission Regulations, the term "contribution" does not include any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such activity by such individual does not exceed $1,000 with respect to a single election. Prior to January 8, 1980, the effective date of the 1979 Amendments, this exemption was only $500. See former 2 U.S.C. § 431(e)(5)(D) and former 11 C.F.R. § 100.7 (b)(6). Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidential to volunteer activity is not a contribution. 11 C.F.R. § 100.7(b)(8).

During a review of the Committee's expenditure records the Audit staff noted a letter form Charles Wick to the Reagan for President Committee dated January 18, 1980, requesting a $19,478.59 reimbursement from the Committee for expenses paid by Mr. Wick in conjunction with the primary election campaign. 1/ According to the letter, the expenses were incurred during the period of September 12, 1979, through November 15, 1979, and were for such costs as limousine charges ($766.05), hotel bills ($15,032.48), airline trips ($2,842.00) and miscellaneous items ($838.06). Mr. Wick's letter states that the hotel accommodations were "used as a general headquarters and office for the New York Announcement Dinner Ground Floor Committee" and it appears that the other expenses for which Mr. Wick requests reimbursement were related to that activity as well. Mr. Wick informed the Committee that because he determined some expenditures he incurred to be "personal expenses," he did not bill the Committee for them and that "[w]hile the air fare represents first class travel, we are billing you for the coach fare." 2/

1/ Charles Wick made a $1,000 contribution to the Reagan for President Committee on March 29, 1979.

2/ The air fare charges represent nine one-way trips between Los Angeles and New York plus one trip from Minneapolis to New York. Six of the trips between Los Angeles and New York were taken by Charles Wick. The remaining flights were taken by Mary Jane Wick. In the course of the audit, it was learned that the Committee had adopted a policy of paying only coach fare for persons traveling at committee expense.

Documentation accompanying Mr. Wick's January 18, 1980, letter indicates that his wife, Mary Jane Wick, paid at least one of the bills which were later submitted to the Committee for reimbursement. The bill was in the amount of $766.05 and was incurred for limousine services. Additionally, a review of Commission records reveals that Mary Jane Wick made a $1,000 contribution to the Reagan for President Committee on March 26, 1979.

The March 1980 report of the Committee reported a debt of $19,478.59 to Charles Wick for professional services and fundraising expenses. The report for April 1980 reported payment by the Committee to Charles Wick on April 9, 1980, of $19,478.59. The expenditure was reported on the expenditure schedule as being reimbursement "for hotel accommodations, air travel and limousine service"; the corresponding debt schedule reported the nature of the obligation to Charles Wick as having been for "fundraising expenses".

It is the view of the General Counsel that an excessive contribution of more than $18,712.54 ($19,478.59 less $766.05) from Charles Wick and an excessive contribution of $766.05 from Mary Jane Wick existed as a result of the advances made by them. 3/ The apparent violations are aggravated by the fact that a full seven months elapsed from the time the Wicks incurred some of the expenses to the time they were reimbursed, and three months even elapsed from the time the Wicks billed the Committee to the time they were reimbursed.

The Act plainly contemplates that an "advance ... of money or anything of value" is a contribution. 2 U.S.C. § 431(8)(A)(i); former 2 U.S.C. § 431(e)(1). While past Commission pronouncements have indicated that individuals may incur expenses on behalf of

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3/ The amount Charles Wick contributed to the Committee in excess of the contribution limit constitutes the $18,712.54 owed to Mr. Wick for hotel bills, airfare, and miscellaneous items plus the difference between the first class and coach rates for his wife on three airplane flights between New York and Los Angeles and one flight between Minneapolis and New York. As stated above, only the coach rates of the flights were submitted to the Committee for reimbursement. As Charles Wick, not Mary Jane Wick, appears to have paid for Mrs. Wick's flights, the $500 travel exemption then permitted to Mr. Wick under the Act is not applicable to those fare differences. However, the monetary difference in coach and first class airplane fares for the six flights taken by Mr. Wick should be considered to qualify under Mr. Wick's exemption for travel expenses. Based upon documentation attached to Mr. Wick's letter and information obtained from a commercial airline, the rate difference for the six flights would not have exceeded $500.

political committees and receive subsequent reimbursement, 4/ the Commission has never indicated that the advances made by such individuals are not contributions subject to the Act's limitations. Indeed, it would undermine the purposes of the contribution limitations if an individual could incur massive expenditures for a candidate or committee with his or her own funds without affecting his or her contribution limitations. This is no less so if the individual is expressly designated as an agent of the candidate or committee. The candidate or committee plainly enjoys the benefit of the goods or services from the moment they are purchased by the individual. The transaction represents a contribution as long as the advance is unreimbursed and, in that sense, it resembles a loan transaction (which is clearly subject to the contribution limitations).

In the General Counsel's view the contribution arises from the moment the individual makes payment for the goods or services, i.e., at the time cash, a check, or a credit card is tendered. At that point the vendor receives either money, a negotiable instrument, or a firm contractual right to payment, and the candidate or committee receives goods or services through the efforts of the individual. At that point also, there will be a written receipt or other documentation available to evidence the date, amount, purpose, and payee of the transaction. See 2 U.S.C. § 432(c)(5).

It is true that Commission regulations, at 11 C.F.R. § 100.7(a)(4), provide that the term "contribution" does not include the extension of credit by any person for a length of time within normal business or trade practice. However, this limited exemption is geared toward businesses and commercial vendors which have established, standardized billing cycles whereby goods or services are routinely provided first and paid for later. Individuals carrying out volunteer political activities, rather than business or commercial activities, cannot claim the benefit of this exemption, in the General Counsel's view.

4/ In the Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 138-143 for example, it is stated that a political committee should report the overall reimbursement to an individual for expenditures on Schedule B, with memo entries detailing the ultimate recipients and particulars of each expenditure above $100. This implicitly approves of the concept of individuals advancing funds to a political committee and receiving reimbursement thereafter.

In the instant matter, because Mr. and Mrs. Wick had already each contributed $1,000 to the Committee, they were not entitled to advance additional sums to the Committee. The Committee should have either paid for the various expenses directly by committee check or advanced funds to the Wicks to enable them to incur the expenses. In the view of this office, it is a matter of considerable importance that committees not be able to "ride" on the credit of various individuals in a manner which enables the committees to receive goods and services without payment and enables the individuals to exceed their applicable contribution limitations. 5/

(B) Improper reporting of the expenses incurred by Charles Wick and Mary Jane Wick

Pursuant to 2 U.S.C. § 434(b)(5)(A) a political committee is required to report the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure. The Commission has required a committee to report the ultimate recipient of an expenditure unless the expenditure was incurred in connection with the travel and subsistence costs of a committee agent to whom an advance or reimbursement was made. Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing (Primary Election Financing), July 1979, at pp. 129-130, 138-139.

In regard to the Committee's reporting of the repayment to Charles Wick, the Committee did not report, as required by 2 U.S.C. § 434(b)(5)(A), the ultimate recipients of the expenditures incurred by Mr. Wick on behalf of the Committee. Rather, the Committee simply reported an expenditure to Charles Wick on April 9, 1980, as reimbursement for hotel accomodations, air travel and limousine services. Based upon documentation obtained during the audit, some of the expenditures involved in this matter were in excess of $200, the amount required to be itemized. The Committee, therefore, should have reported the ultimate recipient of all such expenditures except for those incurred by Mr. Wick

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5/ It would not be impermissible for individuals who had not reached their contribution limit to advance funds to a candidate or committee as long as the advance did not cause an excessive contribution. Thus, for example, individuals authorized by a candidate's committee to carry out committee activities will ordinarily be able to make expenditure from their personal funds for items which are needed on short notice. Such expenditures, however, will not be able to exceed $1,000 when aggregated with any other outstanding contributions by that individual.

for his own travel and subsistence. The ultimate recipients of the expenditures should have been reported as a memo entry. Id. 6/ In view of the Committee's failure to disclose the ultimate recipients of expenditures incurred by Charles Wick and Mary Jane Wick on behalf of the Committee, the General Counsel recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(5)(A).

(C) Committee to Elect Reagan

Section 433(b)(6) of Title 2, United States Code, requires a political committee to include on its statement of organization a listing of all banks or other depositories used by the committee. A political committee is further required by 2 U.S.C. § 433(c) to report any change in information previously submitted in a statement of organization no later than ten days after the date of the change. Pursuant to 2 U.S.C. § 432(c), the treasurer of a political committee is required to keep an account of all contributions received and all disbursements made by the committee. Section 434(b) of Title 2, United States Code, requires a political committee to report all disbursements made by the committee.

A review of Committee records by the Audit staff revealed that the Committee received a $10,000 check dated May 19, 1980, from the Committee to Elect Reagan. As the Committee to Elect Reagan is not registered with the Commission, it is the opinion of Audit that the Committee to Elect Reagan may be a political committee under the Act and, therefore, subject to the contribution limitations.

According to the audit report, the transfer was recorded by the Committee as an internal transfer and reported in unitemized receipts. The audit report also stated that the transfer was in conjunction with a fundraising event held in Oregon which raised $14,417 in contributions (donations from 525 contributors)

6/ Specifically, it appears that the Committee should reported as a memo entry a $14,926.61 expenditure to the Mayfair Regent, a $299.35 expenditure to National Car Rental, and the names of the various airlines and costs of airplane tickets for flights taken by Mary Jane Wick. In regard to the advance from Mary Jane Wick for limousine costs, it appears that since the expenditure was not incurred in relation to Mrs. Wick's own travel, the ultimate recipient, Madden's Limousine Service, should have been reported as well.

less $4,417 in expenditures. Documentation obtained by the Audit staff indicates that contributions to the fundraising event were in the approximate amount of $25 or less and that the money was raised through the "'Reagan for President' headquarters" in Linn County, Oregon. Additionally, Audit has noted that $4,417 in receipts and expenditures have not been reported by the Committee and that the expenditure information has not been obtained by the Committee. 7/

A review of the amended statements of organization filed by the Committee has revealed that the Committee amended its statement of organization on June 25, 1980 (received by the Commission on June 30, 1980) to include as a committee depository the Oregon bank upon which the $10,000 check from the Committee to Elect Reagan had been drawn. In view of this circumstance, it appears that the Committee to Elect Reagan is not a separate political committee subject to a $1,000 contribution limit, but rather a Committee depository set up to facilitate fundraising in Oregon. However, it is the view of the General Counsel that since the Committee did not amend its statement of organization until a month after the check was drawn on the Oregon bank, the Committee violated 2 U.S.C. § 433(c). Additionally, since the Committee, through the period audited, had not maintained records relating to the $4,417 in expenditures for the fundraising event, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 432(c) by failing to keep an account of all disbursements made by the Committee, and 2 U.S.C. § 434(b) by failing to report certain contributions and expenditures incurred in connection with the event.

(D) Corporate and Business Contributions

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the

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7/ Audit has noted, however, that the Committee did keep an account of all contributions ($4,417) received.

difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

1. Ruth Jones, Ltd.

The interim audit report for the Committee noted that the Committee entered into a written agreement with Ruth Jones, Ltd., effective October 1, 1979, for the provision of assistance in the planning of all media advertising for the Reagan 1980 campaign. The letter of agreement states that the Committee will pay Ruth Jones, Ltd. a $3,500 per week fee (payable on the last day of each month), commencing with the effective date of the agreement (October 1, 1979) through March 31, 1980, and that if it was generally considered that Ronald Reagan had secured the nomination by March 31, both parties would agree to renegotiate the agreement "during the interim months until planning [began] for the general election." The agreement continues that:

> [s]hould the status of the nomination not be clear by March 31, the original terms will remain in force until July 31, when this agreement will be renegotiated regarding fees to be paid for general election service. In either case it is agreed that, in the event Mr. Reagan is nominated, Ruth Jones, Ltd. will continue to handle the media services outlined through the general election. [emphasis added]

Additionally, the agreement provides that the Committee will pay all out-of pocket expenses incurred on its behalf, including salaries of additional media buyers, telephones, travel, and accounting costs in connection with FEC reports, and will be billed at net cost (gross less 15% agency commission). The audit report noted that

as of April 22, 1980, the Committee paid Ruth Jones, Ltd. media advertising commissions of $91,433.50.

As a result of a disagreement over whether a contractural obligation existed between the Committee and Ruth Jones, Ltd. through the general election period, both parties entered into a settlement agreement on September 2, 1980. The agreement states that both parties:

> agree that a fair and just legal settlement of this matter, arising out of the primary, would save both parties time and legal expenses, do mutually consider any contractual rights created by the October 5, 1979 agreement terminated. [emphasis added].

Moreover, pursuant to the agreement, the Committee paid Ruth Jones, Ltd. $30,000 in settlement of this matter.

As stated above, the Committee paid commission fees to Ruth Jones, Ltd. of $3,500 per week for a total of $91,433.50 (approximately 5.87% of the total $1,558,952.48 paid to Ruth Jones). It appears, however, based upon the October 5, 1979, letter of agreement, that the usual agency commission is 15% of each media buy and that the Committee should have paid Ruth Jones, Ltd. $275,155 in commission fees (approximately 15% of $1,558,952.48) instead of $91,433.50. Thus, the charge to the Committee appears to be less than "the normal and usual charge" and not the "commercially reasonable rate" prevailing at the time the services were rendered. It is therefore, the view of the General Counsel that the Committee accepted an in-kind contribution from Ruth Jones, Ltd. in the amount of $183,721.50 ($275,155 less $91,433.50) in violation of 2 U.S.C. § 441b(a).

A second issue raised by Audit concerning the Committee's business relationship with Ruth Jones, Ltd. is whether it was permissible for the Committee to pay the entire $30,000 settlement from its primary election account, rather than its general election account, since the letter of agreement between the Committee and Ruth Jones, Ltd. stated that Ruth Jones, Ltd. would be retained for the 1980 general election, as well.

Section 9032.9 of Commission Regulations dealing with primary financing defines the term "qualified campaign expense" to mean a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred in connection with a candidate's campaign for nomination. Section 9034.4(a) of Commission Regulations further provides that all contributions received by an individual from the date he or she becomes a candidate, and all matching payments

received by the candidate, shall be used to defray qualified campaign expenses or to repay loans or otherwise restore funds which were used to defray qualified campaign expenses.

It is the view of the General Counsel that the September 2, 1980, settlement agreement rescinded the original contract of October 5, 1979, and constituted a new contract. The language used in the subsequent contract, "arising out of the primary" (see page 9), clearly indicates that the settlement was in connection with primary election activities. In support of this view is the fact that the fees paid to Ruth Jones, Ltd., when reported as outstanding debts and obligations, were listed as primary election debts and not as obligations incurred in relation to the general election. In view of the foregoing, it is the position of the General Counsel that it was permissible under the Act for the Committee to pay the settlement agreement from its primary election account and that the Committee did not violate 11 C.F.R. § 9034.4(a).

2. Telephone Banks

During a review of Committee records the Audit staff noted three invoices, two from corporations and one from an apparently unincorporated business, for the use of telephone banks at the rate of thirty-five cents ($.35) per telephone per day. Specifically, documentation obtained during the audit of the Committee revealed that the Committee received an invoice from Chapman and Company (unincorporated) on June 3, 1980, for $8.40, from Warren Properties Realtors, Inc. (incorporated) on April 30, 1980, for $10.50, and from Mercury Exploration Company (incorporated) on May 28, 1980, for $3.15. 8/ As it is the opinion of the Audit Division that the rate of thirty-five cents ($.35) per telephone per day may not be a commercially reasonable rate for the rental of the telephones here in question, this matter was referred to the Office of General Counsel.

In addition to Commission Regulations concerning the use of corporate and business facilities discussed above,

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8/ The audit report noted that all three invoices were promptly paid by the Committee.

the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that the Committee did not reimburse Mercury Exploration Company, Warren Properties Realtors, Inc., and Chapman and Company in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that the Committee received in-kind contributions from Chapman and Company, Warren Properties Realtors, Inc., and the Mercury Exploration Company. As Warren Properties Realtors, Inc. and the Mercury Exploration Company are incorporated businesses, it is the view of the General Counsel that the Committee violated 2 U.S.C. § 441b(a). Moreover, it is also the view of the General Counsel that the Committee violated 2 U.S.C. § 434(b) by failing to report the receipt of an in-kind contribution from Chapman and Company.

Recommendations

1. Find reason to believe the Reagan for President Committee violated 2 U.S.C. §§ 441a(f), 432(c), 433(c), 434(b), 434(B)(5)(A) and 441b(a).

2. Find no reason to believe the Reagan for President Committee violated 11 C.F.R. § 9034.4(a).

Questions To: Reagan for President Committee

1. a) Please state the reason that the Reagan for President Committee paid Ruth Jones, Ltd. commission fees of $3,500 per week for a total of $91,433.50, rather than $275,155, fifteen percent (15%) of the net owed to Ruth Jones, Ltd.

b) Please provide any evidence you have to demonstrate how the commission fees paid to Ruth Jones, Ltd. represent the commercially reasonable rate prevailing at the time the services were rendered.

2. In regard to the telephone banks provided to the Reagan for President Committee by the Mercury Exploration Company, please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) for three days in Fort Worth, Texas, during April and May 1980. Please provide any evidence you have to demonstrate how the amount paid to Mercury Exploration Company represents the commercially reasonable rate prevailing at the time the services were rendered.

3. In regard to the telephone banks provided to the Reagan for President Committee by Warren Properties Realtors Inc., please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) for six days in Austin, Texas, during April 1980. Please provide any evidence you have to demonstrate how the amount paid to Warren Properties Realtors, Inc.

represents the commercially reasonable rate prevailing at the time the services were rendered.

4. In regard to the telephone banks provided to the Reagan for President Committee by Chapman and Company, please state the approximate cost to the Reagan for President Committee of renting, in the commercial market, comparable facilities (office space, telephones, etc.) in Lubbock, Texas, during May or June 1980. Please provide any evidence you have to demonstrate how the amount paid to Chapman and Company represents the commercially reasonable rate prevailing at the time the services were rendered.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ruth Jones
Ruth Jones, Ltd.
123 East 75th Street
New York, New York

Re: MUR 1349

Dear Ms. Jones:

On 1981, the Federal Election Commission determined that there is reason to believe Ruth Jones, Ltd., violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making a $183,721.50 in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit, under oath, answers to the enclosed questions within 15 days of your receipt of this letter.

In absence of any additional information which demonstrates that no further action should be taken against Ruth Jones, Ltd., the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures
Questions

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1349

RESPONDENT Ruth Jones, Ltd.

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent $183,721.50 in-kind contribution to the Committee from Ruth Jones, Ltd. in violation of 2 U.S.C. § 441b(a).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii) (A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the difference between the usual and normal charge for the goods of services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

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The interim audit report for the Committee noted that the Committee entered into a written agreement with Ruth Jones, Ltd., effective October 1, 1979, for the provision of assistance in the planning of all media advertising for the Reagan 1980 campaign. The letter of agreement states that the Committee will pay Ruth Jones, Ltd. a $3,500 per week fee (payable on the last day of each month), commencing with the effective date of the agreement (October 1, 1979) through March 31, 1980, and that if it was generally considered that Ronald Reagan had secured the nomination by March 31, both parties would agree to re-negotiate the agreement "during the interim months until planning [began] for the general election."

The agreement continues that:

> [s]hould the status of the nomination not be clear by March 31, the original terms will remain in force until July 31, when this agreement will be renegotiated regarding fees to be paid for general election service. In either case it is agreed that, in the event Mr. Reagan is nominated, Ruth Jones, Ltd. will continue to handle the media services outlined through the general election. [emphasis added]

Additionally, the agreement provides that the Committee will pay all out-of pocket expenses incurred on its behalf, including salaries of additional media buyers, telephones, travel, and accounting costs in connection with FEC reports, and will be billed at net cost (gross less 15% agency commission). The audit report noted that as of April 22, 1980, the Committee paid Ruth Jones, Ltd. media advertising commissions of $91,433.50.

As a result of a disagreement over whether a contractural obligation existed between the Committee and Ruth Jones, Ltd. through the general election period, both parties entered into a settlement agreement on September 2, 1980. Pursuant to the agreement, the Committee paid Ruth Jones, Ltd. $30,000 in settlement of the matter.

As stated above, the Committee paid commission fees to Ruth Jones, Ltd. of $3,500 per week for a total of $91,433.50 (approximately 5.87% of the total $1,558,952.48 paid to Ruth Jones). It appears, however, based upon the October 5, 1979, letter of agreement, that the usual agency commission is 15% of each media buy and that the Committee should have paid Ruth Jones, Ltd. $275,155 in commission fees (approximately 15% of $1,558,952.48) instead of $91,433.50. Thus, the charge to the Committee appears to be less than "the normal and usual

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charge" and not the "commercially reasonable rate" prevailing at the time the services were rendered. It is therefore, the view of the General Counsel that Ruth Jones, Ltd. made an in-kind contribution to the Committee in the amount of $183,721.50 ($275,155 less $91,433.50) in violation of 2 U.S.C. § 441b(a).

Recommendation

1. Find reason to believe Ruth Jones, Ltd. violated 2 U.S.C. § 441b(a).

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Questions To: Ruth Jones, Ltd.

1. a) State whether a fifteen percent (15%) commission fee is the usual and normal amount charged by Ruth Jones, Ltd. to its clients for planning, and ordering schedules for, media advertising.

b) If fifteen percent (15%) is not the usual and normal fee charged by Ruth Jones, Ltd. in commission fees, please describe the policy of Ruth Jones, Ltd. in regard to commission fees and, where available, provide documentation in support of the policy.

2. a) If the answer to question 1a is yes, state whether, during the period of 1979 through 1980, Ruth Jones, Ltd. charged a client a commission fee of other than fifteen percent (15%) and describe the reason for the change in policy.

b) If the answer to question 2a is yes, state the names of all clients Ruth Jones, Ltd. charged a commission fee of other than fifteen percent (15%). For each client listed, please state the reason for the deviation, the time period during which the services were rendered, and the percent the commission fee was to the net.

3. a) Please state the reasons the Reagan for President Committee was billed by Ruth Jones, Ltd. for commission fees of $3,500 per week, for a total of $91,433.50, rather than $275,155, fifteen percent (15%) of the net owed.

b) Please provide any evidence you have to demonstrate

how the commission fees paid to Ruth Jones, Ltd. represent the commercially reasonable rate prevailing at the time the services were rendered.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Warren Properties Realtors, Inc.
5511 Parkcrest, Suite 107
Austin, Texas 78731

Re: MUR 1349

Dear Sir or Madam:

On , 1981, the Federal Election Commission determined that there is reason to believe Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this notification.

In the absence of any additional information which demonstrates that no further action should be taken against Warren Properties Realtors, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation which states the name, address, and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

3304080517

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1349

RESPONDENT Warren Properties Realtors, Inc.

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent corporate contribution from Warren Properties Realtors, Inc. to the Committee in violation of 2 U.S.C. § 441b(a).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 441b(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the the usual and normal charge for such goods or services, is a contribution. The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

During a review of Committee records the Audit staff noted an invoice from Warren Properties Realtors, Inc., dated April 30, 1980, in the amount of $10.50. The invoice was for the use of a telephone bank on six days (five phones per day) at the rate of thirty-five cents ($.35) per telephone per day. The invoice was paid by the Committee on June 10, 1980.

In addition to Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that Warren Properties Realtors, Inc., was not reimbursed by the Committee in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that Warren Properties Realtors, Inc. made an in-kind contribution to the Committee. As Warren Properties Realtors, Inc. is an incorporated business, it is the view of the General Counsel that Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution to the Reagan for President Committee.

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Recommendation

1. Find reason to believe Warren Properties Realtors, Inc. violated 2 U.S.C. § 441b(a).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Darden, President
Mercury Exploration Company
1212 Ridgelea Bank Building
Fort Worth, Texas 76116

Re: MUR 1349

Dear Mr. Darden:

On , 1981, the Federal Election Commission determined that there is reason to believe the Mercury Exploration Company violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an in-kind contribution to the Reagan for President Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Your response should be submitted within 15 days of your receipt of this notification.

In the absence of any additional information which demonstrates that no further action should be taken against the Mercury Exploration Company, the Commission may find probable cause to believe that a violation has occurred and proceed with formal conciliation. 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 request by letter.

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If you intend to be represented by counsel in this matter, please advice the Commission by sending a letter of representation which states the name, address and telephone number of the counsel, and authorizes such counsel to receive all notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Maura White, the staff member assigned to this matter, at 202/523-4060.

Sincerely,

Enclosures
General Counsel's Factual and Legal Analysis
Procedures

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____ MUR NO. 1349

RESPONDENT Mercury Exploration Company

STAFF MEMBER & TEL. NO.
Maura White
202-523-4060

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

Based on information obtained during the post-primary audit of the Reagan for President Committee ("Committee"), the Audit Division referred this matter to the Office of General Counsel. Involved is an apparent corporate contribution from the Mercury Exploration Company to the Committee in violation of 2 U.S.C. § 44lb(a).

FACTUAL BASIS AND LEGAL ANALYSIS

Section 44lb(a) of Title 2, United States Code, prohibits any corporation from making any contribution or expenditure in connection with any election to federal office. The term "contribution" is defined at section 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. Section 100.7(a)(1)(iii)(A) of Commission Regulations states that the term "anything of value" includes all in-kind contributions and that the provision of any goods or services without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution.

The amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; for any services it means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time services were rendered. 11 C.F.R. § 100.7(a)(iii)(B).

Section 114.9(d) of Commission Regulations states that persons making use of corporate facilities, such as using telephones or typewriters or borrowing office furniture for activity in connection with a federal election, are required to reimburse the corporation within a commercially reasonable time in the amount of the normal and usual charge for the use of the facilities.

During a review of Committee records the Audit staff noted an invoice from the Mercury Exploration Company, dated May 28, 1980, in the amount of $3.15. The invoice was for the use of a telephone bank on April 15, 1980, (two phones), April 16, 1980, (two phones), and May 3, 1980, (five phones) at the rate of thirty-five cents ($.35) per telephone per day. The invoice was paid by the Committee on June 10, 1980.

In addition to the Commission Regulations concerning the use of corporate and business facilities discussed above, the Commission determined in Advisory Opinion 1978-34 that, in order for an in-kind contribution not to occur, a political committee which uses corporate and noncorporate business telephones must reimburse the business or corporation for the cost of the phone calls made plus whatever other costs would be subsumed in the normal and usual charge for the rental value of such phones in the normal market, including the use of office space, utilities, and furniture to conduct the telephoning. Thus, as it appears that the Mercury Exploration Company was not reimbursed by the Committee in an amount fully equal to the normal and usual charge for the use of the telephones, it appears that the Mercury Exploration Company made an in-kind contribution to the Committee. As the Mercury Exploration Company is an incorporated business, it is the view of the General Counsel that the Mercury Exploration Company violated 2 U.S.C. § 441b(a) by making an in-kind contribution to the Reagan for President Committee.

Recommendation

1. Find reason to believe the Mercury Exploration Company violated 2 U.S.C. § 441b(a).

MUR 1049

REAGAN-BUSH COMPLIANCE FUND

901 South Highland Street
Arlington, Virginia 22204
(703) 685-3400

1 MAR 3 P5:58

March 3, 1981

1 MAR 4 A10:04

The Honorable John W. McGarry
Chairman
The Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Dear Mr. Chairman:

I am writing to inform you that effective March 4, 1981, Edward L. Weidenfeld, a partner in the law firm of McKenna, Conner & Cuneo, 1575 Eye Street, N.W., Suite 800, Washington, D. C. 20005, has been appointed General Counsel to Reagan for President, the Reagan Bush Committee, and the Reagan Bush Compliance Fund, and that Mr. Weidenfeld and members of the law firm of McKenna, Conner & Cuneo are authorized to act on the Committee's behalf in matters pending before the Federal Election Commission.

Sincerely,

Scott Mackenzie
Treasurer

cc: Charles N. Steele, Esq.
Mr. Robert J. Costa, Assistant Staff
Director of Audit Division

Reagan-Bush Compliance Fund—United States Senator Paul Laxalt, Chairman; Bay Buchanan, Treasurer.
A copy of our report is filed with and available for purchase from the Federal Election Commission, Washington, D.C. 20463

Reagan & Bush

Reagan Bush Committee
901 South Highland Street, Arlington, Virginia 22204 (703) 685-3400

GCC# 95 02

1349

December 5, 1980

HAND DELIVERED

The Honorable Max L. Friedersdorf,
Chairman
Federal Election Commission
1325 K Street, NW
Washington, D.C. 20463

Dear Mr. Chairman:

Mary Lee Garfield and Harry Diffendal, both members of the bar of the District of Columbia, are hereby authorized to represent the Reagan for President Committee and the Reagan Bush Committee in all matters before the Federal Election Commission.

The address to be used is:

Garfield & Hamersley
1800 M Street, NW
Washington, D.C. 20036
202-785-3333

Mrs. Garfield is authorized to receive any and all notifications and other communications from the Comission on behalf of the Reagan and Reagan Bush Committees, and has been appointed agent for service of process.

Sincerely yours,

Loren A. Smith

Loren A. Smith
Chief Counsel

LAS/ip
cc: Anne Weissenborn
Marybeth Tarrant

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RECEIVED
80 DEC 8 All: 22

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80 DEC 8 All: 38

Paid for by Reagan Bush Committee. United States Senator Paul Laxalt, Chairman. Bay Buchanan, Treasurer.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 10, 1980

MEMORANDUM

TO: Robert J. Costa

THROUGH: B. Allen Clutter, III
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Analysis of Interim Post-Primary Audit Report on Reagan for President - A-852

The Office of Ceneral Counsel has reviewed the interim post-primary audit report on Reagan for President ("the Committee"). With the understanding that prior to submission of the report to the Commission certain figures may be changed and certain facts added to the report, but that the recommendations will nct change, this Office has comments as follows:

II. Interim Audit Findings and Recommendations Relating to Title 2 of the United States Code

A. Limitation on Expenditures

Pursuant to discussions among staff members of this Office and the Audit Division, it is understood that this subsection is being revised to point out the Audit Division's disagreement with the Committee's use of a standard 20% factor when determining the portion of particular types of expenditures to be allocated to exempt fundraising expenses, but also to indicate that, because the Committee has already allocated $2,725,954.15 in direct changes toward its overall $2,944,000 fundraising exemption limitation, only $218,045.85 in national headquarters expenses may still be so allocated. This $218,045.85 would represent approximately 9% of overall national headquarters expenses, a percentage which the Audit Division deems reasonable. The Office of General Counsel concurs with these findings.

1. Allocation of Fundraising Expenses

This Office concurs with the determination that the Committee should reclassify $376,252.71 as operating expenses, this figure being the amount by which the Committee has exceeded its fundraising exemption limitation in its reports.

2. Limitation on Expenditures

The Office of General Counsel recommends that the language of the recommendation in this section be modified to read as follows:

> The Audit Staff recommends that the Committee be requested to show within 30 days of receipt of the audit report that the overall expenditure limitation has not been exceeded as set forth in the interim post-primary audit report. Absent such a showing, a determination will be made regarding an amount required to be repaid to the U.S. Treasury.

B. Allocation of Expenditures to States

It is the understanding of this Office that only with regard to Iowa, New Hampshire and South Carolina were the Committee's allocated expenditures within 10% or approximately $30,000 of the state expenditure limits. Hence the Audit Division has concentrated upon these three states with regard to apparent allocation errors.

1. Media Expense and Commissions
(Consultant Fees)

It is the understanding of this Office that all references to "commissions" in the final paragraph of this section will be changed to "fees".

This Office concurs with the finding that the $3,500 per week paid a media consultant in lieu of the standard 15% agency commission on all media time and space purchased must be allocated to Iowa, New Hampshire and South Carolina as appropriate.

The audit report also discusses differences between the Committee and the Audit Division concerning the proper method of allocating Boston television costs to New Hampshire. The Committee has reportedly based its percentage for New Hampshire upon a ratio of the population of all of the states

or portion of states coming within the areas of a grade B contour for one representative Boston station to the population of the portion of New Hampshire which comes within the same contour. The figures cover the entire population of the contour area, not just the voting age population. Included within the total contour are approximately two-thirds of Massachusetts (as far west as Worcester County), all or parts of five counties in southern New Hampshire, all but the extreme southwestern corner of Rhode Island and the northeastern corner of Connecticut. It does not cover any portion of Vermont.

The alternative allocation method cited by the Audit Division, and actually used by the Committee for stations other than those in Boston, is the use of the Arbitron Television Market Report for 1979-80 ("ADI") which is a private company's statistical marketing study defining the "area of dominant influence" for television market in specific geographic areas. The ADI method provides totals of television households by county and state which are reached by stations located in particular cities. These totals are used to produce a ratio of overall reach to the population covered in one state. Population figures are broken down by age and result in a finding of 2.1 voting age persons per household. The ADI figures for Boston stations cover approximately two-thirds of the area of Massachusetts (as far west as Worcester County), approximately half of New Hampshire (the six southern most counties), and one county in southern Vermont. It does not include any portions of Rhode Island or Connecticut.

The principal objection of the Audit Division to the Committee's use of the grade B contour for the Boston stations is apparently that the Committee did not consistently use this approach for all stations affecting the same New England market.

11 C.F.R. § 106.2(c)(1) states that "(e)xpenditures for publication and distribution of . . . radio, television, and other types of advertisements in more than one State shall be attributed to each State in proportion to the estimated viewing audience . . . of voting age which can reasonably be expected to be influenced by these advertisements."

The regulations do not mandate the use of any particular method for attributing radio and television expenditures to states. Therefore any reasonably accurate method of estimating viewing audiences would apparently be acceptable. However, once a committee has selected a method, that committee should be required to support any deviation from that selection.

A reasonably accurate method would be one which includes a breakdown of all areas of dominant influence, reflecting the voting age population in those areas and taking into account the timing of the primary vis-a-vis the broadcast date.

It appears that the ADI figures for Boston stations more nearly meet these criteria than does the grade B contour. The latter uses total 1970 population figures, not those for current voting age populations, while the ADI approach results in more current figures for voting age persons per television household. The grade B contour for the Boston stations includes Rhode Island where a primary was not held until June and does not include Vermont where a primary was held in early March. On the other hand, the ADI study excludes Rhode Island, although, unlike the grade B contour, it also excludes Connecticut where a primary was held at the end of March. With the exception of Rhode Island, the geographic areas described by ADI and Grade B appear relatively the same in the terms of influence. However, the inclusion/exclusion of Rhode Island is a significant factor since inclusion would reduce the amount to be allocated to New Hampshire. Given the fact that the Rhode Island primary was not until June 9, the inclusion of Rhode Island in the Grade B plan makes that approach suspect.

Given the above relative advantages of the ADI figures and the fact that the Committee utilized the ADI approach for stations other than those in Boston, this Office recommends that the Committee be given 30 days to show why a grade B contour would result in a more accurate figure than would the ADI approach. Absent such a showing the Committee should be required to add to the expenditures allocated to New Hampshire the amount by which the use of the ADI approach exceeds a finding based upon use of a grade B coutour.

It is suggested that the grade B contour maps and portion of the ADI report pertaining to Boston be attached to the Audit Report.

2. Adjustments to the Committee Allocated Totals for Iowa, New Hampshire and South Carolina

This Office concurs with the recommendation that the cited media, salary and consulting fees, outstanding debts, intrastate travel, tour-related disbursements, other vendor payments and other miscellaneous expense allocation adjustments should be made by the Committee.

It is also agreed that the Committee should provide documents and working papers in support of its allocation of tour

disbursements. We understand that the subsection (e)(i) is going to be elaborated upon to provide additional information concerning the location of the hotel used on these tours, the manner in which the Committee has allocated expenses, and additional evidence supporting a requirement of allocation to New Hampshire.

This Office suggests that additional information also be provided in subsection (e)(ii) spelling out the specific ways in which the Committee has allocated the categories of expenditures listed, e.g., that rental cars have been allocated to Massachusetts.

C. Contribution Limitations

1. Responses to Threshold Audit Findings

The Office of General Counsel has noted in referral updates received from the Reports Analysis Division that the Committee has submitted several responses to requests for additional information concerning apparently excessive contributions. The responses appear to serve as amendments to the Committee's reports pertaining to the thirty contributors listed in the threshold audit report as duplicate entries , and as to 26 of the 49 contributions cited in that same report as having been reapportioned but not so reported. The responses also serve as report amendments regarding 24 of the 128 excessive contributors cited in the threshold audit report. Either refunds or reapportionments are now cited for these 24 persons, leaving 104 apparently still not addressed in the reports even though some of these persons have received refunds according to the Committee's records. We understand that the audit report is being amended to include this information.

2. Post Primary Audit

The above-cited RFAI responses filed by the Committee serve to amend the Committee's reports to show 85 of the 93 refunds which had been made by the Committee as of August 31, 1980. In addition, the responses indicate alleged reattributions by fifty contributors, which, if documented, would reduce the amount of excessive contributions received by the Committee to $158,630.45.

This Office recommends that the present recommendations be amended to include the following:

b) provide documentation in support of $31,374.00 in reattributed contributions and of $42,962.44 in refunded contributions;

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c) refund the $158,630.45 in contributions which still appear to be in excess of the limitation and present evidence (as outlined in item (a) above, or . . .

d) file an amended report correcting the public record for contributions reapportioned to the individuals but not yet so reported.

D. Possible Excessive Contributions

The Office of General Counsel concurs with the recommendation that matters involving a $19,478.19 reimbursement of an individual and a $10,000 transfer from a non-registered, unauthorized committee be referred to this Office for review. The attachments regarding this matter contain sufficient documentation of apparent violations so as not to warrant the routine 30-day audit verification which this Office and the Audit Division frequently recommend.

E. Settlement of Corporate Debts

1. Ruth Jones, Ltd.

In the interim audit report it is noted that the Committee and Ruth Jones, Ltd. entered into an agreement on September 2, 1980, whereby a contract dispute was settled for the sum of $30,000. This dispute apparently involved whether or not the parties had agreed in October of 1979 that Ruth Jones, Ltd. would be engaged to assist in the planning of media services and the ordering of schedules for media advertising through the general election campaign period. The Committee apparently paid, and Ruth Jones, Ltd., accepted $30,000 in settlement of the contract dispute.

Evidence in hand indicates that the $30,000 involved in the agreement does not represent payment of a debt for services actually rendered which could have been considered contributions by Ruth Jones, Ltd. to the Committee if no compensation had been received. Rather, the $30,000 apparently represents consideration for the release of the Committee from a contract obligation to utilize the services of the company in the general election campaign. It is therefore the opinion of the Office of General Counsel that the September 2, 1980, agreement between the parties is not a debt settlement but rather an agreement to cancel a contract for consideration. This situation does not come within the coverage of 11 C.F.R. § 114.10 and no debt settlement statement need be submitted to the Commission.

The Audit Division poses two additional questions concerning (1) the reasonableness of the $3,500 per week fee paid by the Committee to Ruth Jones, Ltd., in lieu of the 15% agency commission usually charged by media purchasers for each media buy, and (2) the appropriate Reagan committee which should have made the $30,000 settlement payment to the company. The Office of General Counsel concurs with the recommendation that these matters be referred to this Office for further consideration.

2. C. T. Clyne Company, Inc.

The interim audit report also discusses a dispute between C. T. Clyne Company, Inc., and the Committee concerning amounts which Clyne deemed owed by the Committee for advertising services. Attached to the audit report are copies of the contract, correspondence related to the disputed claim, a release signed by both parties, and an unsigned copy of a letter from the Committee to the company in which was allegedly enclosed a check for $40,000 representing settlement of the account.

It is the recommendation of the Office of General Counsel that the audit report be amended to require the Committee and/or C. T. Clyne Company to submit a debt settlement statement for approval. There appears to be no reason for this matter to be referred to this Office at this time.

F. Contributions Received After the Primary Election

The Office of General Counsel concurs with the recommendations contained in the interim audit report concerning the disposal of contributions received after the candidate's date of ineligibility and not needed to meet remaining obligations. It should be noted that the first portion of subsection (ii) should read "In the case of a contribution not designated in writing . . . " and that the correct citation in recommendation (c) is 11 C.F.R. § 9003.3(a)(iii).

G. Disclosure of Debts and Obligations

1. Response to Threshold Audit Finding

For purposes of clarity the Office of General Counsel suggests that the Audit Division provide somewhat more detail in its discussion. In particular, the reference to the initial $30,000 increment in the letter of credit is unclear without referring back to the Threshold Audit.

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2. Post-Primary Audit

a. Line of Credit

This Office suggests that the following sentences be added at the end of the second paragraph:

> Moreover, an analysis of this matter performed subsequent to the Threshold Audit indicates that the candidate provided his conditional guaranty.

b. Accounts Payable

The Office of General Counsel concurs in Audit's finding.

Audit's Recommendation

While the Office of General Counsel concurs in the Audit Division's recommendation, it is suggested that Items 1 and 2a be separated so as to avoid unnecessary confusion.

H. Earmarked Contributions

1. Response to Threshold Audit Findings

The Office of General Counsel recommends that the Audit Division specify the date that the amendment disclosing conduits was due pursuant to the recommendation in the Threshold Audit Report.

This office suggests that the following, or similar, language be substituted under "Recommendation":

"The Audit staff reminds the Committee that it has yet to file the amendments as recommended in the Threshold Audit Report, and that further delay may result in the referral of the matter to the Office of General Counsel. With respect to the Committee's failure to disclose conduits noted during the Post-Primary audit period, the Audit Division recommends that within 30 days of receipt of this report the Committee file an amended report with the Commission disclosing the earmarked contributions pursuant to the provisions outlined above.

I. Contributions Received From Non-Affiliated Committees

1. Response to Threshold Audit Findings

The Office of General Counsel recommends that Audit indicate the date on which the amendment was due.

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2. Post-Primary Audit

Regarding the $2,675 contribution reported as earmarked, this Office understands that the multi-candidate committee in question did not report the contribution as having been earmarked, and the Committee based its characterization on the letter which accompanied the contribution which indicated the wishes of a number of contributors. To the extent that further documentation would not change the result, the Office of General Counsel concurs in the Audit Division's finding and recommendation.

J. Disclosure of Refunds

The Office of General Counsel concurs in the Audit Division's finding and recommendation with respect to the "Disclosure of Refunds."

K. Other Income

The Office of General Counsel concurs in the Audit Division's finding and recommendation with respect to required itemization of interest income, but suggests the addition of the phrase "together with the date and amount" in the first sentence.

L. Telephone Banks

The Office of General Counsel concurs in the Audit Division's recommendation that the question of the Committee's use of corporate and other business telephones be referred to this office. Given the nature of the possible violations, it is the view of this Office that it is more appropriate to make the referral at this time rather than to await the Committee response to the interim report.

M. Established Expenditure Policy

Office of General Counsel staff had discussed this finding with Audit, and feels that the Audit Division should perform additional review regarding the incurrence of expenses by Committee staff, consultants, volunteers and authorized vendors. While the policy itself (Attachment 14 of the report) does not appear to be unreasonable on its face, Audit's concern as to its implications for contribution and expenditure limits is well taken. If the Audit Division concludes that there is a likelihood of violations subsequent to this additional review, a referral to this Office can be made at that time. In view of the above, the reference in the finding to the Clyne Company should be deleted and the Recommendation should be changed to inform the Committee of what items you may need to review.

N. Financial Activity Not Accurately Stated

The Office of General Counsel concurs in the Audit Division's findings and recommendations with respect to the accuracy of Committee reports. We recommend, however, that the Audit Division indicate in paragraph 1 the date requested in the Threshold Report for making the subject bank records available for review.

O. Campaign Tours

The Office of General Counsel concurs in the Audit Division's recommendations that the Commmittee identify the ground costs associated with the campaign tours in question, and provide Audit staff with appropriate documentation.

Based on staff discussions, it is our understanding that the Committee did provide sufficient documentation for ground costs associated with tours 1-3. It is our understanding that further inquiry with respect to ground costs associated with tours 4-13, 15 and 21-25 may indicate that charges to the media were reasonable. Based on a pro rata charge, the Audit Division feels that it is doubtful that charges to the media for tours 14, 16-20 and 26 could be brought within reasonable limits by associated ground costs.

This Office recommends that either the language of the finding or information contained in Attachment 9A indicate the above-described distinctions.

III. Finding Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Excessive Payments From the Matching Payment Account

While the Office of General Counsel is in substantial agreement with Audit's findings and recommended repayments, several changes should be made.

This Office recommends that footnote 10 on page 29 be changed to read as follows:

> Commission regulations at 11 C.F.R. § 9032.6 provide that the date on which a party nominates its candidate for president is the end of the matching payment period for a candidate seeking the presidential nomination of that party. 11 C.F.R. § 9033.5(c) provides that the last day of the

matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. §§ 9033.5(a) or (b). Since Ronald Reagan was nominated as the Republican Party's presidential candidate at its national convention on July 16, 1980, that date is the date of Mr. Reagan's ineligibility.

1. Payment of Matching Funds After the Date of Ineligibility

As Audit correctly stated in the first paragraph of Finding A, the regulations provide that a candidate may not receive matching payments after he or she has become ineligible if he or she has no net outstanding campaign obligations. It is recommended, therefore, that the finding read as follows:

As noted above, the candidate's date of ineligibility was July 16, 1980. On July 17, 1980, the Committee received a matching fund payment of $179,292.63. The Statement of Net Outstanding Campaign Obligations ("NOCO") which the Committee submitted on July 31, 1980 showed that there were no net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5 (Attachment 10). Since the candidate did not have net outstanding campaign obligations, and the Committee received payment after the candidate's ineligibility date, the matching funds received ($179,292.63) constituted an excessive payment which is repayable to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(1).

2. Excessive Payment/Credit Made Prior to Candidate's Date of Ineligibility

While this Office supports Audit's position with respect to the repayment of matching funds received in the form of a credit, the language may lead to some confusion. For this reason, it is recommended that the finding explicitly state that the Committee still would have been required to repay $20,900.83 in excessive payments from amounts received before the candidate's date of ineligibility had the Committee not sought additional matching payments. In addition, the use of the phrase "credit", while technically correct, may have a misleading connotation to the lay reader; therefore a term such as adjustment might be less confusing.

Finally, please delete the word "certified" on the fourth line from the bottom and substitute "received by the Committee."

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B. Apparent Non-Qualified Campaign Expense

1. Expenditures in Excess of State Limitations

The Office of General Counsel recommends that the language of the recommendation in this section be modified to read as follows:

> The Audit Staff recommends that the Committee be requested to show within 30 days of receipt of the audit report that the state expenditure limitation has not been exceeded. Absent such a showing, a determination will be made regarding an amount required to be repaid to the U. S. Treasury.

2. Expenditure in Excess of the Overall Limitation

The Office of General Counsel recommends that the language of the recommendation in the audit report be modified to read as follows:

> The Audit Staff recommends that the Committee be requested to show within 30 days of receipt of the audit report that the overall expenditure limitations has not been exceeded. Absent such a showing, a determination will be made regarding an amount required to be repaid to the U. S. Treasury.

C. Determination of Net Outstanding Campaign Obligations - Surplus

It is the understanding of this Office that Audit expects that there will be several adjustments to the figures indicated in the Re-Cap on page 37 and to the revised NOCO Statement (Attachment 11)

Unity Dinners

Footnote g states that no value has been included for amounts due the Committee from the Republican Unity dinners. The Office of General Counsel recommends that such amounts due be treated in a manner consistent with the Commission determination of November 6, 1980.

Interest Payment

Audit recommends that the Committee be required to pay an interest charge for the number of days that payment of the amount due under 11 C.F.R. § 9038.3(c)(1) was delinquent. It is the view

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of this Office that such a charge cannot be assessed absent a finding that the Committee violated the provision in question. This issue has been referred to our Office separately as A-841 and is being reviewed for appropriate action. Accordingly, the reference to the interest charge should be deleted from the report.

Audit's Recommendation

The Office of General Counsel recommends that the language of the recommendation be modified to read as follows:

> Absent a showing to the contrary within 30 days of receipt of this report, the Audit staff will recommend to the Commission that the value of the items detailed above ($), which are also subject to an upward adjustment, be repaid in full to the United States Treasury.

D. Valuation of Committee Assets

1. Assets Purchased by Reagan/Bush Committee

This Office understands that the recommendation related to this section is being reworded to require the Committee to establish a value equal to the "usual and normal charge" for the goods at issue and to bill the Reagan Bush Committee accordingly. We concur with this recommendation.

2. Committee Assets Utilized by the Reagan Bush Committee Without Compensation

The Office of General Counsel concurs with the recommendation that the Committee place a valuation upon any goods being used by the Reagan Bush Committee which were obtained from the Committee at no charge and bill the Reagan Bush Committee accordingly. Such valuation should be based upon the "normal and usual" charge for such goods.

3. In-Kind Contribution to the Reagan Bush Compliance Fund

The Office of General Counsel concurs with the recommendation that the Committee be required to place a valuation equaling "normal and usual charge" upon the office furniture and machines transferred by the Committee to the Reagan Bush Committee's Compliance Fund, and that the Reagan Bush Committee be requested to reimburse the Committee for the portion of the value of the equipment which represents use for non-compliance purposes.

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4. General Election Campaign Expenditures

The Office of General Counsel understands that language is being added to the audit report pointing out that the Committee has a residual in its accounts and thus could make loans to the Reagan Bush Committee, pursuant to 11 C.F.R. § 9003.4(b)(4)(i), which would have had to be reimbursed within 15 days of the Reagan Bush Committee's receipt of public funds under 26 U.S.C. § 9005. This Office concurs with the recommendation that, absent a showing that the expenditures at issue were in fact made in connection with the primary election, the Committee should obtain reimbursement from the Reagan Bush Committee in order to avoid violation of 26 U.S.C. § 9003(b) by the latter committee.

The reference to 11 C.F.R. § 9003.2(b) should be dropped because it refers to minor and new parties. It is suggested that citation of 26 U.S.C. § 9003(b) be added to the present citation of the relevant regulation.

FEDERAL ELECTION COMMISSION

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THIS IS THE BEGINNING OF MUR # 1349

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