



FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1374

Date Filmed 10/25/82 Camera No. --- 2

Cameraman J. A. D.

82040353609

FEDERAL ELECTION COMMISSION

Internal Documents

Information on other La Rance MURs

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

Michael R. Dineen

Date

September 9, 1982

FEC 9-21-77

9204033607



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 26, 1982

Mayer Morganroth, Esquire
24901 Northwestern Highway
Southfield, Michigan 48075

RE: MUR 1374
Citizens for LaRouche

Dear Mr. Morganroth:

On August 24, 1982, the Commission decided to take no further action in this matter. The entire file in this matter has now been closed and will become part of the public record within thirty days.

Should you have any questions, contact Michael Dymersky at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

32040353610

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR - 1374
 Citizens for LaRouche, et al.)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal
 Election Commission Executive Session on August 24, 1982, do hereby
 certify the Commission took the following actions in the above-captioned
 matters:

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8-24-82

Marjorie W. Emmons

Marjorie W. Emmons
 Secretary of the Commission

- . Decided by a vote of 6-0 to take no further action in
MUR 1374 and close the file.

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

3 2 0 4 0 3 5 3 6 1 2

Attest:

8-24-82

Date

Marjorie W. Emons

Marjorie W. Emons
Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 11, 1982

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel *KAG*

SUBJECT:

MUR

1374

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 AUG 11 P 5: 22

I. BACKGROUND

On December 18, 1979, the Commission qualified Citizens for LaRouche (CFL) to receive matching funds for the 1980 presidential primary campaign. During audits conducted pursuant to that qualification, certain irregularities were noted in the documentation submitted by CFL. The Commission undertook investigations into those irregularities which are summarized as follows:

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E. MUR 1374

This MUR arose from the post-primary audit undertaken pursuant to 26 U.S.C. § 9038(a). On June 16, 1981, the Commission found reason to believe CFL had violated 26 U.S.C. § 9042(c)(1)(A) by submitting false information to obtain matching funds, in connection with purported contributions to CFL that apparently were really loans the committee had previously repaid.

320403353614

82040353615

C) MUR 1374 - Knowing and Willful Violations

As was discussed in the original General Counsel's Report dated June 10, 1981, the evidence in this matter is purely circumstantial. On analyzing CFL's recent response in this matter (see attachment 1), it is apparent that there is no direct evidence of a knowing and willful violation. The Committee has offered as an explanation that the circumstances of this matter involve "bookkeeping errors . . . mutually discovered by the FEC Audit Division and CFL." Such an explanation is in keeping with the General Counsel's original theory of the case, as suggested by the June 10, 1981, General Counsel Report. Moreover, on

December 12, 1982, CFL repaid the matching funds in question. Nothing found in the investigation suggests a "'defiance' or 'knowing, conscious and deliberate flaunting' of the Act," the standard applied for a knowing and willful violation in American Federation of Labor and Congress of Industrial Organizations v. FEC, 628 F.2d 97, 101 (D.C. Cir. 1980), cert. denied, 449 U.S. 982 (1980).

Therefore, the Office of General Counsel recommends that the Commission take no further action in this matter, close the file and notify counsel for the respondent of that decision.

Recommendation

-) Take no further action in MUR 1374 and close the file.
-) Approve the attached letter.

Attachment :

- I. CFL's Response in MUR 1374.

3 2 0 4 0 3 5 3 6 1 6

600 #798/8
02 JUN 22 P2:05

June 7, 1982

1

Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

Attention: Office of General Counsel
Kenneth A. Gross, Esq.

Re: MUR 1374

Dear Mr. Gross:

Pursuant to your letter dated May 28, 1982 concerning the above referenced MUR:

1. Citizens for LaRouche denies that there was any knowing or willful violation of 26 U.S.C. 9042 (c)(1)(A) in this matter by CFL or any "agent" of CFL.
2. The circumstances of the bookkeeping errors which led to this matter were fully disclosed to the Audit Division when the errors were mutually discovered by the FEC Audit Division and CFL.
3. CFL repaid the monies to the Treasury which are at issue here.
4. Citizens for LaRouche does not believe that allegations of criminal violations of the FECA and FEC investigations should or can be premised on such investigative fancies as are stated in the factual and legal analysis to this MUR, namely:

"the circumstantial evidence would suggest that Committee agents who submitted the matching funds request knew that the two individuals had been reimbursed for their contributions. It may be possible that such knowledge can be imputed to those persons."

The FEC knows that when this error was discovered, CFL acknowledged it as error and provided an explication to the auditors and repaid the Treasury monies.

Very truly yours,



MAYER MORGANROTH
24901 Northwestern Highway
Southfield, Michigan 48075
ATTACHMENT I 1 of 1

8204033617

201848 RECEIVED
ACC #7988
02 JUN 22 P2:05

June 7, 1982

Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

Attention: Office of General Counsel
Kenneth A. Gross, Esq.

Re: MUR 1374

Dear Mr. Gross:

Pursuant to your letter dated May 28, 1982
concerning the above referenced MUR:

1. Citizens for LaRouche denies that there was any knowing or willful violation of 26 U.S.C. 9042 (c)(1)(A) in this matter by CFL or any "agent" of CFL.
2. The circumstances of the bookkeeping errors which led to this matter were fully disclosed to the Audit Division when the errors were mutually discovered by the FEC Audit Division and CFL.
3. CFL repaid the monies to the Treasury which are at issue here.
4. Citizens for LaRouche does not believe that allegations of criminal violations of the FECA and FEC investigations should or can be premised on such investigative fancies as are stated in the factual and legal analysis to this MUR, namely:

"the circumstantial evidence would suggest that Committee agents who submitted the matching funds request knew that the two individuals had been reimbursed for their contributions. It may be possible that such knowledge can be imputed to those persons."

The FEC knows that when this error was discovered, CFL acknowledged it as error and provided an explication to the auditors and repaid the Treasury monies.

Very truly yours,

Mayer Morganroth
MAYER MORGANROTH
24901 Northwestern Highway
Southfield, Michigan 48075

12040353618

12 JUN 22 P4:56



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 28, 1982

Mayer Morganroth
24901 Northwestern Highway
Suite 314 B
Southfield, Michigan 48075

RE: MUR 1374
Citizens For LaRouche

Dear Mr. Morganroth:

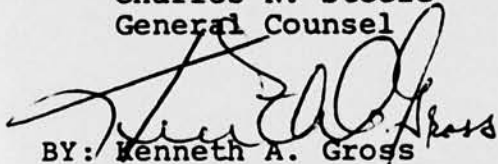
Enclosed, please find a copy of a letter dated April 22, 1982, directed to James A. Schoener. We have not yet received a response from Mr. Schoener on behalf of the Citizens for LaRouche ("CFL") with regard to this matter.

Since you are now representing CFL in matters relating to the Commission, you may want to respond to the allegation in the attached General Counsel's Factual and Legal Analysis. Since we are interested in resolving this matter as soon as possible, your cooperation would be appreciated. Therefore, if you choose to respond, please do so within ten (10) days of your receipt of this letter.

If you have any questions, please contact Michael Dymersky at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Enclosures

8204033619



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 22, 1982

James A. Schoener, Esquire
Miller, Canfield, Paddock and Stone
Suite 300
2555 M Street, N.W.
Washington, D.C. 20037

RE: MUR 1374
(Citizens for LaRouche)

Dear Mr. Schoener:

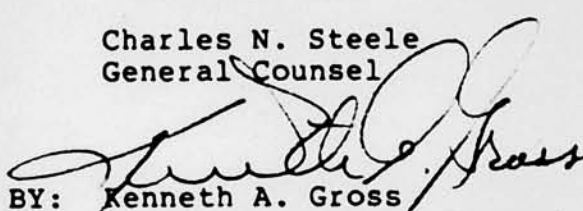
3 2 0 4 0 3 5 3 6 2 0
You were notified by letter dated June 18, 1981, of the Federal Election Commission's determination that there is reason to believe that your client, Citizens for LaRouche, violated 26 U.S.C. § 9042(c) by submitting fraudulent evidence to the Commission to obtain primary matching funds. Enclosed for your convenience are photocopies of the notification letter and the General Counsel's Factual and Legal Analysis.

In the interest of deciding what to recommend to the Commission as to how to proceed in this matter, and as we have yet to receive a response in connection with the enclosed notification, you have an additional opportunity to demonstrate that no action should be taken against your client. Should you decide that a response would be helpful, please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

If you have any questions, please contact Michael Dymersky at 523-4039.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosures



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 18, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James A. Schoener, Esq.
1015 15th Street, N.W.
Suite 1240
Washington, D.C. 20005

Re: MUR 1374

Dear Mr. Schoener:

On June 16, 1981, the Federal Election Commission determined that there is reason to believe that your client violated 26 U.S.C. § 9042(c) by submitting fraudulent evidence to obtain primary matching funds. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

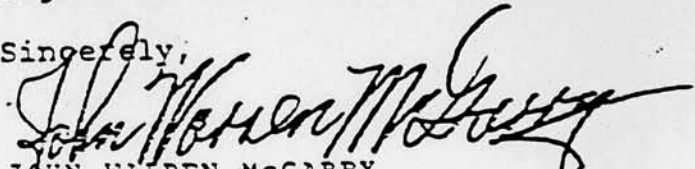
Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe a violation has occurred and proceed with informal 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 desire.

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 Michael Dymersky, the staff member assigned to this matter, at (202) 523-4039.

Sincerely,


JOHN WARREN MCGARRY
Chairman

Enclosures

General Counsel's Factual and
Legal Analysis Procedures

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE June 18, 1981

MUR NO. 1374

RESPONDENT Citizens for LaRouche

STAFF MEMBER(S) & TEL. NO.
Michael Dymersky
(202) 523-4039

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

This matter emanates from an Audit Division ("Audit") referral which raised the possibility that Citizens for LaRouche ("the Committee" or "CFL") submitted fraudulent evidence to obtain primary matching funds in violation of 26 U.S.C. § 9042(c).

FACTUAL AND LEGAL ANALYSIS

The Audit referral disclosed that the Committee listed two \$250 contributions in its January 14, 1980, primary matching fund submission which purportedly represented partially forgiven loans. The two individuals involved initially had made \$1,000 loans to the Committee. 1/ According to signed statements by these individuals

1/ Neither the statute nor the Commission's regulations specifically state that a part of a loan which is forgiven may be matched with public funds. To be matched, a contribution must be made by a "written instrument," meaning "a check written on a personal, escrow, or trust account; a money order; or any other negotiable instrument." 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.2. A loan itself is not matchable. 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.3(b). Nor is a "contract, promise, or agreement...to make a contribution" matchable. 11 C.F.R. § 9034.3(c). While it can

included with the Committee's January 14 submission, both individuals forgave \$250 worth of their respective loans so that the \$250 portion could be matched with public funds. 2/ These signed statements were dated December 10, 1980.

The information provided by Audit, however, indicates that before the Committee provided its matching fund submission, it had fully repaid one of the loans and had repaid all but \$5 of the other loan. Indeed, in the case of David Pepper's loan, the repayment was made by November 23, 1979, over two weeks before Mr. Pepper purportedly signed a statement indicating he wanted part of the loan to be forgiven. 3/ Thus, the Committee's submission sought to match the portions of the loans that allegedly had been forgiven, when in fact the loans already had been fully reimbursed (or substantially reimbursed in the case of Marcia Pepper). 4/

1/ (cont'd.) be argued that the original check tendered when making the loan serves as the "written instrument" required, it could also be argued that the original check serves only as the instrument of the loan and that a separate negotiable instrument should be required if a contributor wishes to make a matchable contribution.

The Guidelines for Presentation in Good Order, approved by the Commission on May 17, 1979, do not resolve this issue. For purposes of this report, it is not necessary to reach the question, though in the future the Commission may wish to consider whether forgiven loans are properly matchable.

2/ The individuals involved are David Pepper and Marcia Pepper.

3/ Audit has verified the repayments by reviewing the cancelled checks negotiated by each of these individuals. Marcia Pepper negotiated two checks from CFL as repayment for her \$1,000 loan, one for \$550 on January 8, 1980, and one for \$445 on January 15, 1980.

4/ The Committee has already refunded the public funds received to match the two contributions in question. Pursuant to the Commission's directive, the Audit Division requested and obtained repayment to the Treasury on December 29, 1980.

Section 9042(c) (1) (A) of Title 26, United States Code, states:

It is unlawful for any person knowingly and willfully --

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission....

The evidence available certainly suggests that the information submitted by the Committee was false. There were not, in fact, two \$250 contributions outstanding from the two individuals listed. The Committee already had issued checks to the individuals in repayment of their original loans of \$1,000.

The circumstantial evidence would suggest that Committee agents who submitted the matching funds request knew that the two individuals had been reimbursed for their contributions. It may be possible that such knowledge can be imputed to those persons.

The issues here involved are sufficiently serious so as to warrant at least an explanation from the Committee. Therefore, the General Counsel recommends that the Commission find reason to believe that CFL violated 26 U.S.C. § 9042(c) (1) (A).

Recommendation

1) Find reason to believe that Citizens for LaRouche violated 26 U.S.C. § 9042(c) (1) (A).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 13, 1982

James A. Schoener, Esquire
1015 15th Street, N.W.
Suite 1240
Washington, D.C. 20005

RE: MUR 1374
(Citizens for LaRouche)

Dear Mr. Schoener:

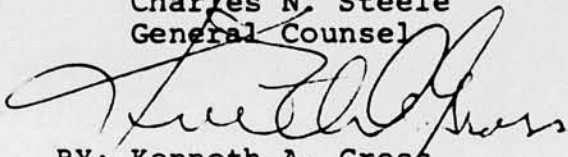
You were notified by letter dated June 18, 1981, of the Federal Election Commission's determination that there is reason to believe that your client, Citizens for LaRouche, violated 26 U.S.C. § 9042(c) by submitting fraudulent evidence to the Commission to obtain primary matching funds. Enclosed for your convenience are photocopies of the notification letter and the General Counsel's Factual and Legal Analysis.

In the interest of deciding what to recommend to the Commission as to how to proceed in this matter, and as we have yet to receive a response in connection with the enclosed notification, you have an additional opportunity to demonstrate that no action should be taken against your client. Should you decide that a response would be helpful, please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

If you have any questions, please contact Michael Dymersky at 523-4039.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosures

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BEFORE THE FEDERAL ELECTION COMMISSION
September 2, 1981

In the Matter of)
Citizens for LaRouche) MUR 1374

81 SEP 9 A10: 39

SENSITIVE

COMPREHENSIVE INVESTIGATIVE REPORT #1

On June 16, 1981, the Commission found reason to believe that the Citizens for LaRouche ("CFL") violated 2 U.S.C. § 9042(c)(1)(A) by seeking to gain primary matching funds for portions of loans that allegedly had been forgiven, but in fact had been previously reimbursed.

Counsel for CFL received the reason to believe notification letter on June 22, 1981. To date, there has been no response from CFL. On July 17, 1981, however, counsel for CFL filed a petition for injunctive relief regarding MUR 1374 in the U.S. District Court for the Southern District of New York. Argument on the CFL's motion for a preliminary injunction was heard on September 3, 1981. The court issued no ruling, but indicated that it would rule promptly on a motion to dismiss the case when filed by the Commission. The General Counsel does not contemplate initiating any discovery in this MUR until the court's ruling which is expected in early October.

Charles N. Steele
General Counsel

Sept 7, 1981
Date

BY:

Kenneth A. Gross
Associate General Counsel



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 18, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James A. Schoener, Esq.
1015 15th Street, N.W.
Suite 1240
Washington, D.C. 20005

Re: MUR 1374

Dear Mr. Schoener:

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Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe a violation has occurred and proceed with informal 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 desire.

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 Michael Dymersky, the staff member assigned to this matter, at (202) 523-4039.

Sincerely,


JOHN WARREN MCGARRY
Chairman

Enclosures

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Lymerahy *MVP 1374*

Form 3811, Jan. 1975

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
☐ Show to whom and date delivered.....
☐ Show to whom, date and address of delivery.....
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.....

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
James A. Schoenly Esq.
1015 15th St. NW.
5th Floor
Washington, D.C. 20005

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
438425

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
Mary Baker

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

12:11 PM JUN 24 1981

6. UNABLE TO DELIVER BECAUSE

CLERK'S INITIALS

RECEIVED

☆GPO : 1979-000-459

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE June 18, 1981

MUR NO. 1374

RESPONDENT Citizens for LaRouche

STAFF MEMBER(S) & TEL. NO.

Michael Dymersky

(202) 523-4039

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

9 2 0 4 0 3 5 3 6 2 9
This matter emanates from an Audit Division ("Audit") referral which raised the possibility that Citizens for LaRouche ("the Committee" or "CFL") submitted fraudulent evidence to obtain primary matching funds in violation of 26 U.S.C. § 9042(c).

FACTUAL AND LEGAL ANALYSIS

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1/ Neither the statute nor the Commission's regulations specifically state that a part of a loan which is forgiven may be matched with public funds. To be matched, a contribution must be made by a "written instrument," meaning "a check written on a personal, escrow, or trust account; a money order; or any other negotiable instrument." 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.2. A loan itself is not matchable. 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.3(b). Nor is a "contract, promise, or agreement...to make a contribution" matchable. 11 C.F.R. § 9034.3(c). While it can

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1/ (cont'd.) be argued that the original check tendered when making the loan serves as the "written instrument" required, it could also be argued that the original check serves only as the instrument of the loan and that a separate negotiable instrument should be required if a contributor wishes to make a matchable contribution.

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2/ The individuals involved are David Pepper and Marcia Pepper.

3/ Audit has verified the repayments by reviewing the cancelled checks negotiated by each of these individuals. Marcia Pepper negotiated two checks from CFL as repayment for her \$1,000 loan, one for \$550 on January 8, 1980, and one for \$445 on January 15, 1980.

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3204033630

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The evidence available certainly suggests that the information submitted by the Committee was false. There were not, in fact, two \$250 contributions outstanding from the two individuals listed. The Committee already had issued checks to the individuals in repayment of their original loans of \$1,000.

The circumstantial evidence would suggest that Committee agents who submitted the matching funds request knew that the two individuals had been reimbursed for their contributions. It may be possible that such knowledge can be imputed to those persons.

The issues here involved are sufficiently serious so as to warrant at least an explanation from the Committee. Therefore, the General Counsel recommends that the Commission find reason to believe that CFL violated 26 U.S.C. § 9042(c) (1) (A).

Recommendation

1) Find reason to believe that Citizens for LaRouche violated 26 U.S.C. § 9042(c) (1) (A).

8204033631

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Citizens for LaRouche)

MUR 1374

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal Election Commission meeting on June 16, 1981, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions regarding MUR 1374:

1. Find REASON TO BELIEVE that Citizens for LaRouche violated 26 U.S.C. §9042 (c) (1) (A).
2. Authorize the notification letter as attached to the First General Counsel's Report dated June 10, 1981.

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

Attest:

6-17-81

Date



Recording Secretary

32040353632

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 JUN 10 A10:08

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 6-10-81

MUR NO. 1374
STAFF MEMBER(S) & TEL. NO.

RESPONDENT Citizens for LaRouche

Michael Dymersky

(202) 523 4039

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RELEVANT STATUTE: 26 U.S.C. § 9042(c)(1)(A)

INTERNAL REPORTS
CHECKED: CFL Submission No. 2

SUMMARY OF ALLEGATIONS

This matter emanates from an Audit Division ("Audit") referral which raised the possibility that Citizens for LaRouche ("the Committee" or "CFL") submitted fraudulent evidence to obtain primary matching funds in violation of 26 U.S.C. § 9042(c).

FACTUAL AND LEGAL ANALYSIS

The Audit referral disclosed that the Committee listed two \$250 contributions in its January 14, 1980, primary matching fund submission which purportedly represented partially forgiven loans. The two individuals involved initially had made \$1,000 loans to the Committee. 1/ According to signed statements by these individ-

1/ Neither the statute nor the Commission's regulations specifically state that a part of a loan which is forgiven may be matched with public funds. To be matched, a contribution must be made by a "written instrument," meaning "a check written on a personal, escrow, or trust account; a money order; or any other negotiable instrument." 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.2. A loan itself is not matchable. 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.3(b). Nor is a "contract, promise, or agreement...to make a contribution" matchable. 11 C.F.R. § 9034.3(c). While it can

uals included with the Committee's January 14 submission, both individuals forgave \$250 worth of their respective loans so that the \$250 portion could be matched with public funds. 2/ See Attachments 2 and 3. These signed statements were dated December 10, 1980.

The information provided by Audit, however, indicates that before the Committee provided its matching fund submission, it had fully repaid one of the loans and had repaid all but \$5 of the other loan. Indeed, in the case of David Pepper's loan, the repayment was made by November 23, 1979, over two weeks before Mr. Pepper purportedly signed a statement indicating he wanted part of the loan to be forgiven. 3/ Thus, the Committee's submission sought to match the portions of the loans that allegedly had been forgiven, when in fact the loans already had been fully reimbursed (or substantially reimbursed in the case of Marcia Pepper). 4/

1/, continued

be argued that the original check tendered when making the loan serves as the "written instrument" required, it could also be argued that the original check serves only as the instrument of the loan and that a separate negotiable instrument should be required if a contributor wishes to make a matchable contribution.

The Guidelines for Presentation in Good Order, approved by the Commission on May 17, 1979, do not resolve this issue. For purposes of this report, it is not necessary to reach the question, though in the future the Commission may wish to consider whether forgiven loans are properly matchable.

2/ The individuals involved are David Pepper and Marcia Pepper.

3/ Audit has verified the repayments by reviewing the cancelled checks negotiated by each of these individuals. Marcia Pepper negotiated two checks from CFL as repayment for her \$1,000 loan, one for \$550 on January 8, 1980, and one for \$445 on January 15, 1980.

4/ The Committee has already refunded the public funds received to match the two contributions in question. Pursuant to the Commission's directive, the Audit Division requested and obtained repayment to the Treasury on December 29, 1980.

Section 9042(c) (1) (A) of Title 2, United States Code, states:

It is unlawful for any person knowingly and willfully --

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission....

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The evidence available certainly suggests that the information submitted by the Committee was false. There were not, in fact, two \$250 contributions outstanding from the two individuals listed. The Committee already had issued checks to the individuals in repayment of their original loans of \$1,000.

Although there is little immediate evidence that the Committee's action was "knowing and willful" as is required for a violation of the statute, the General Counsel recommends pursuing a possible violation by the Committee of § 9042(c) (1) (A), nonetheless.

The circumstantial evidence would suggest that Committee agents who submitted the matching funds request knew that the two individuals had been reimbursed for their contributions. Even though to ultimately prove the Committee liable would probably require some further showing that the persons responsible for making the matching submissions actually had such knowledge, it may be possible that such knowledge can be imputed to those persons. An investigation would seek evidence of actual knowledge and would also look for some indication of "'defiance' or 'knowing, conscious, and deliberate flaunting' of the

Act." American Federation of Labor and Congress of Industrial Organizations v. Federal Election Commission, 628 F.2d 97,101 (D.C.Cir. 1980), cert. denied, _____ U.S. _____, 101 S.Ct. 397 (1980).

Even though it may be very difficult to establish a "knowing and willful" violation since it seems likely that the Committee will respond that its action was due to a clerical mistake or computer processing problem or that this represents a very isolated incident in the framework of a large nationwide campaign, the issues here involved are sufficiently serious so as to warrant at least an explanation from the Committee.

Recommendation

- 1) Find reason to believe that Citizens for LaRouche violated 26 U.S.C. § 9042(c)(1)(A).
- 2) Authorize the attached notification letter.

Attachments

- 1) Pertinent portions of the Audit Division referral on CFL Submission No. 2 (pages).
- 2) Statement from Marcia Pepper.
- 3) Statement from David Stephen Pepper.
- 4) Proposed Letter w/ attachment to Respondent's counsel

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3. Loans/Refunded Contributions Matched

Section 9034.3(b) of Title 11 of the Code of Federal Regulations defines non-matchable contributions to include a subscription, loan, advance, or deposit of money or anything of value.

As part of our testing, we reviewed the Committee's loan records (including repayments) and records relating to contribution refunds. Three (3) instances were noted which require recovery of \$490.54 in matching funds certified for payment to the U.S. Treasury.

#2 a. the Committee submitted for matching two (2) \$1,000 loans from two (2) individuals. Both loans were received in September of 1979. One (1) loan was repaid in full by the Committee in November, 1979 and the other loan was repaid to the extent of \$995 in January, 1980. The loan repayments were verified by a review of the cancelled checks negotiated by the individuals. However, on January 14, 1980, the Committee submitted a matching fund submission to the Commission which included signed statements dated December 10, 1979 from the individuals who made the loans, which indicated that \$250 of the \$1,000 loans were, in fact, not a loan but rather a donation/contribution.

3 b. the Committee submitted for matching on December 31, 1979, a contribution of \$20 which was refunded on October 6, 1979 at the request of the contributor. The refund transaction was not recorded in the Committee's data base and as a result, the \$20 contribution was improperly included in a matching fund submission. Matching funds actually paid out for the refunded contribution and the two (2) loans after the application of the appropriate submission error rates totaled \$490.54.

3 On November 13, 1980, the Commission approved the interim report recommendation that absent a showing to the contrary within 30 days of receipt of the report, the Commission preliminarily determined that, a repayment of \$490.54 be made to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(1) and 11 C.F.R. 9038.2(a)(1).

3 On December 29, 1980, the Audit staff received a repayment of \$490.54 and forwarded the repayment to the U.S. Treasury.

3 Recommendation

The Audit staff recommends no further action.

NY

Attachment 2

December 10, 1979

Dear Sirs:

I, Marcia Pepper, residing at 110 Bennett Ave, New York, 10033, do declare that \$250 of a \$1000 loan to Citizens for LaRouche given September 6, 1979, is now a contribution.

D.S.P. Marcia Pepper
Marcia Pepper

8204033539

NY
Attachment 3

December 10, 1979

Dear Sirs:

I, D. Stephen Pepper, residing at 110 Bennett Ave.,
New York, 10033, do declare that \$250 of a \$1000 loan to
Citizens for La Rouché given on September 6, 1979, is
now a contribution.

D. Stephen Pepper
D. Stephen Pepper

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James A. Schoener, Esq.
1015 15th Street, N.W.
Suite 1240
Washington, D.C. 20005

Re: MUR 1374

Dear Mr. Schoener:

On June , 1981, the Federal Election Commission determined that there is reason to believe that your client violated 26 U.S.C. § 9042(c) by submitting fraudulent evidence to obtain primary matching funds. 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 your client. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe a violation has occurred and proceed with informal 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 desire.

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 Michael Dymersky, the staff member assigned to this matter, at (202)523-4039.

Sincerely,

Enclosures

General Counsel's Factual and
Legal Analysis Procedures

Page 1 of 54

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. 1374

RESPONDENT Citizens for LaRouche

STAFF MEMBER(S) & TEL. NO.

Michael Dymersky

(202) 523-4039

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

This matter emanates from an Audit Division ("Audit") referral which raised the possibility that Citizens for LaRouche ("the Committee" or "CFL") submitted fraudulent evidence to obtain primary matching funds in violation of 26 U.S.C. § 9042(c).

FACTUAL AND LEGAL ANALYSIS

The Audit referral disclosed that the Committee listed two \$250 contributions in its January 14, 1980, primary matching fund submission which purportedly represented partially forgiven loans. The two individuals involved initially had made \$1,000 loans to the Committee. 1/ According to signed statements by these individuals

1/ Neither the statute nor the Commission's regulations specifically state that a part of a loan which is forgiven may be matched with public funds. To be matched, a contribution must be made by a "written instrument," meaning "a check written on a personal, escrow, or trust account; a money order; or any other negotiable instrument." 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.2. A loan itself is not matchable. 26 U.S.C. § 9034(a); 11 C.F.R. § 9034.3(b). Nor is a "contract, promise, or agreement...to make a contribution" matchable. 11 C.F.R. § 9034.3(c). While it can

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1/ (cont'd.) be argued that the original check tendered when making the loan serves as the "written instrument" required, it could also be argued that the original check serves only as the instrument of the loan and that a separate negotiable instrument should be required if a contributor wishes to make a matchable contribution.

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The circumstantial evidence would suggest that Committee agents who submitted the matching funds request knew that the two individuals had been reimbursed for their contributions. It may be possible that such knowledge can be imputed to those persons.

The issues here involved are sufficiently serious so as to warrant at least an explanation from the Committee. Therefore, the General Counsel recommends that the Commission find reason to believe that CFL violated 26 U.S.C. § 9042(c) (1) (A).

Recommendation

1) Find reason to believe that Citizens for LaRouche violated 26 U.S.C. § 9042(c) (1) (A).



FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1374

Date Filmed 10/25/82 Camera No. 1

Cameraman J. A. Q.

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