FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1392

Date Filmed 4/28/83 Camera No. --- 2

Cameraman SOC

8 3 0 4 0 5 9 2 0 2 3 8

FEDERAL ELECTION COMMISSION

internal memoranda; internal routing slips; Commissioners' comment sheets; conciliation correspondence and memoranda.

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.
X	(2) Internal rules and practices	___	(7) Investigatory files
X	(3) Exempted by other statute	___	(8) Banking Information
___	(4) Trade secrets and commercial or financial information	___	(9) Well Information (geographic or geophysical)
X	(5) Internal Documents		

Signed Nancy B. Nathan

date 3/31/83

FEC 9-21-77

8 3 0 4 0 3 9 0 2 3 9

204 87?

RECEIVED AT THE FEC
Geck # 9740

83 MAR 24 A10: 21

STEIN & HURON
1619 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20009
(202) 797-3680

DOUGLAS B. HURON†
EILEEN M. STEIN
CHRISTINE L. OWENS†
†NOT ADMITTED IN MARYLAND

MARYLAND OFFICE
7504 BYBROOK LANE
CHEVY CHASE, MD. 20815
(301) 657-8220

March 22, 1983

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

re: MUR 1392

Dear Mr. Gross:

As part of the conciliation agreement resolving the captioned matter, the Carter/Mondale Presidential Committee, Inc. has agreed to pay a civil penalty of $1000. Enclosed is a check in that amount payable to the United States Treasury.

Sincerely,

Douglas B. Huron

Douglas B. Huron

Enclosure

83040390240

3304039024 1

SOLAR AMERICA, INC.
2620 SAN MATEO N. E., SUITE D 883-0959
ALBUQUERQUE, NEW MEXICO 87110

1078

№ 7010

The First National Bank in Albuquerque
New Mexico's Largest Home-Owned Independent Bank
Albuquerque, New Mexico 87105

95-27/1070

PAY solar america 50 dol's 00 cts

TO THE ORDER OF	DATE	AMOUNT
The Treasurer of the United States	3-16-83	$ 50.00

⑈007010⑈ ⑆107000275⑆ 19146207⑈

83040390242

STEIN & HURON
1619 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20009

WASHINGTON, DC
PM
23 MAR
1983

83 MAR

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 11, 1983

Douglas B. Huron, Esq.
Stein and Huron
1619 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Re: MUR 1392
Carter-Kennedy Unity Dinner

Dear Mr. Huron:

On March 8, 1983, the Commission accepted the conciliation agreement signed by you, together with a civil penalty, in settlement of a violation of 2 U.S.C. §§ 434(b)(2) and (3) and 441a(a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly the file has been closed in this matter, and it will become part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise this Office in writing.

Enclosed is a fully executed copy of the final conciliation agreement, for your files.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross

By: Kenneth A. Gross
Associate General Counsel

Enclosure
conciliation agreement

3 3 0 4 0 3 9 0 2 1 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 11, 1983

William C. Oldaker, Esq.
Epstein, Becker, Borsody and Green
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1392
Carter-Kennedy Unity Dinner

Dear Mr. Oldaker:

On March 8, 1983, the Commission accepted the conciliation agreement signed by you, together with a civil penalty, in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise this Office in writing.

Enclosed is 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

RECEIVED AT THE FEC

83 FEB 3 P3: 10

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter Of)
)
Carter-Kennedy Unity Dinner Committee)
Carter-Mondale Presidential Committee) MUR 1392
Kennedy for President Committee)

CONCILIATION AGREEMENT

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

Following submission of findings by the Commission's auditors concerning the Carter-Kennedy Unity Dinner Committee ("Unity Committee"), the Carter-Mondale Presidential Committee ("Carter-Mondale"), and the Kennedy for President Committee ("Kennedy") ("respondents"), the Commission found reason to believe: 1) that respondent Carter-Mondale Presidential Committee violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of a disproportionate share of the expenses of the Carter-Kennedy Unity Dinner, and 2 U.S.C. §§ 434(b)(2) and (3) by failing to properly report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee; 2) that respondent Kennedy for President Committee violated 2 U.S.C. § 441a(f) by accepting a contribution from the Carter-Mondale Presidential Committee that is violative of 2 U.S.C. § 441a(a)(1)(A), in the form of a disproportionate share of the expenses of the

Carter-Kennedy Unity Dinner; and 3) that respondent Carter-Kennedy Unity Dinner Committee violated 2 U.S.C. § 441a(f) by accepting contributions violative of § 441a(a)(1)(A) as to contributions exceeding individual contributors' limits under 2 U.S.C. § 441a, and 2 U.S.C. § 441a(a)(8) in failing to report to the Commission and to the Carter-Mondale Presidential Committee those contributions earmarked for the Carter-Mondale.

NOW, THEREFORE, the Commission and respondents, having participated in informal methods of conciliation, do hereby agree as follows:

I. The Commission has jurisdiction over respondents and the subject matter of this proceeding, and this Agreement has the effect of a conciliation agreement under 2 U.S.C. § 437g(a)(4)(A).

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

III. Respondents enter voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are:

1. Respondent Carter-Kennedy Unity Dinner Committee registered with the Commission as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter-Mondale Presidential Committee and the Kennedy for President Committee. The Unity Committee reported an opening cash balance of -0-,

total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

2. It was agreed by the participants that the first $500,000 of proceeds of the Unity Dinner were to go to the Kennedy Committee. Dinner receipts totalled $365,062.85, from which gross amount was subtracted $52,445.75 (because certain contributions were earmarked for Carter-Mondale, and because certain other contributions represented excessive individual contributions to Kennedy and were refunded). Total dinner expenses were $73,815.08.

3. The percentage of receipts allocated to Kennedy was 85.63%. Because the same percentage of expenses was not allocated to Kennedy, the interim report recommended that the Unity Committee seek a refund of $45,692.54 from Kennedy and distribute it to Carter-Mondale. Such a refund has not been made by Kennedy or distributed to Carter-Mondale.

4. Of the contributions received by the Unity Committee that exceed the individual contributors' limits under 2 U.S.C. § 441a, refunds of $1,900 in contributions have not been made by the Unity Committee.

5. Contributions received by the Unity Committee that were earmarked for Carter-Mondale totalled $12,100. Of that amount, $1,000 is unattributable to Carter-Mondale because it represents an excessive contribution for the contributor.

6. The Unity Committee has not distributed the $11,100 in earmarked contributions acceptable to Carter-Mondale to Carter-Mondale.

V.1. Respondent Carter-Mondale Presidential Committee has made an excessive contribution to the Kennedy for President Committee in the form of a disproportionate share of the expenses of the Carter-Kennedy Unity Dinner, in violation of 2 U.S.C. § 441a(a)(1)(A).

2. Respondent Kennedy for President Committee accepted a contribution from the Carter-Mondale Presidential Committee that is violative of 2 U.S.C. § 441a(a)(1)(A), in the form of a disproportionate share of Unity Dinner expenses, in violation of 2 U.S.C. § 441a(f).

3. Respondent Carter-Kennedy Unity Dinner Committee accepted contributions exceeding individuals' § 441a contribution limits, in violation of 2 U.S.C. § 441a(f).

4. Respondent Carter-Kennedy Unity Dinner Committee failed to report to the Commission and to the Carter-Mondale Presidential Committee those contributions earmarked for Carter-Mondale, in violation of 2 U.S.C. § 441a(a)(8).

5. Respondent Carter-Mondale Presidential Committee failed to report to the Commission the receipt of contributions earmarked for Carter-Mondale, in violation of 2 U.S.C. §§ 434(b)(2) and (3).

VI.1. Respondent Kennedy for President Committee agrees to transfer to the Carter-Mondale Presidential Committee $9,750, and a promissory note in the amount of $34,942.54.

2. Respondent Carter-Kennedy Unity Dinner Committee agrees to refund $1,900 in contributions violative of individual contributors' § 441a limits to those contributors.

3. Respondent Carter-Mondale Presidential Committee agrees to file an amended report reflecting its receipt of $12,100 in contributions earmarked for Carter-Mondale.

4. Respondent Carter-Kennedy Unity Dinner agrees to file an amended report reflecting $12,100 in contributions earmarked for Carter-Mondale and received by the Unity Committee, and to transfer the $11,100 of said contribution acceptable to Carter-Mondale to the Carter-Mondale Presidential Committee. The $1,000 contribution earmarked for Carter-Mondale that is violative of the contributor's individual contribution limits will be refunded to that contributor by the Unity Committee.

5. Respondent Carter-Kennedy Unity Dinner Committee agrees to send to all contributors to the Committee letters informing them of the allocation of their contribution, as proposed by the Committee in its June 12, 1981 response to the interim audit report, and attached thereto as Exhibit 1.

VII. Respondents agree that they will not undertake any activity that is in violation of the Federal Election Campaign Act of 1971, as amended, § 431 et seq.

VIII. 1. Respondent Carter-Mondale Presidential Committee agrees to pay to the United States Treasury a civil penalty in the amount of One Thousand Dollars ($1,000.00) for the actions described in Paragraph V, subparagraphs 1 and 5.

2. Respondent Kennedy for President Committee agrees to pay to the United States Treasury a civil penalty in the amount of One Thousand Dollars ($1,000.00) for the actions in Paragraph V, subparagraph 2.

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

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

XI. It is agreed that respondents shall have no more than ninety days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

Charles N. Steele
General Counsel

March 9, 1983
Date

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

Carter-Kennedy Unity Dinner Committee

2/1/83
Date

~~BY:~~ Winifred L. Lee

Carter-Mondale Presidential Committee

1/11/83
Date

BY: Douglas B. Huron

Kennedy for President Committee

2/1/83
Date

BY: Winifred L. Lee

3 3 0 4 0 3 9 0 2 3 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Douglas B. Huron, Esq.
Stein and Huron
1619 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Re: MUR 1392
Carter-Kennedy Unity Dinner

Dear Mr. Huron:

On , 1983, the Commission accepted the conciliation agreement signed by you, together with a civil penalty, in settlement of a violation of 2 U.S.C. §§ 434(b)(2) and (3) and 441a(a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly the file has been closed in this matter, and it will become part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise this Office in writing.

Enclosed is 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

NR
3/9/83

Enclosure
conciliation agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esq.
Epstein, Becker, Borsody and Green
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1392
Carter-Kennedy Unity Dinner

Dear Mr. Oldaker:

On , 1983, the Commission accepted the conciliation agreement signed by you, together with a civil penalty, in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise this Office in writing.

Enclosed is 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

NBL
3/9/83

Enclosure
conciliation agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Carter-Kennedy Unity Dinner	)	
Committee	)	MUR 1392
Carter-Mondale Presidential	)	
Committee	)	
Kennedy for President Committee	)	

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal Election Commission meeting on March 8, 1983, do hereby certify that the Commission decided in a vote of 5-1 to take the following actions with respect to MUR 1392:

1. Approve the conciliation agreement signed by the respondents attached to the Memorandum to the Commission dated February 22, 1983.
2. Close the file in this matter.
3. Send the letters attached to the Memorandum to the Commission dated February 22, 1983.

Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively. Commissioner Aikens dissented.

Attest:

3-9-83
Date

Lena L. Stafford
Recording Secretary

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE,
GENERAL COUNSEL

mwE

FROM: MARJORIE W. EMMONS/ JAN SAVAGE JS

DATE: FEBRUARY 23, 1983

SUBJECT: OBJECTION - MUR 1392 Memorandum to the Commission dated February 22, 1983

The above-named document was circulated to the Commission on February 23, 1983 at 11:00.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	
Commissioner Elliott	
Commissioner Harris	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Reiche	X (Comments)

This matter will be placed on the Executive Session agenda for Tuesday, March 8, 1983.

33040390235

February 22, 1983

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1392

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

Attachment

cc: Nathan

33040390256

83 FEB 3 P3: 10

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter Of	)	
	)	
Carter-Kennedy Unity Dinner Committee	)	
Carter-Mondale Presidential Committee	)	MUR 1392
Kennedy for President Committee	)	

CONCILIATION AGREEMENT

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

Following submission of findings by the Commission's auditors concerning the Carter-Kennedy Unity Dinner Committee ("Unity Committee"), the Carter-Mondale Presidential Committee ("Carter-Mondale"), and the Kennedy for President Committee ("Kennedy") ("respondents"), the Commission found reason to believe: 1) that respondent Carter-Mondale Presidential Committee violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of a disproportionate share of the expenses of the Carter-Kennedy Unity Dinner, and 2 U.S.C. §§ 434(b)(2) and (3) by failing to properly report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee; 2) that respondent Kennedy for President Committee violated 2 U.S.C. § 441a(f) by accepting a contribution from the Carter-Mondale Presidential Committee that is violative of 2 U.S.C. § 441a(a)(1)(A), in the form of a disproportionate share of the expenses of the

3 3 0 4 0 3 9 0 2 5 7

Attachment 1 - 1 of 7

Carter-Kennedy Unity Dinner; and 3) that respondent Carter-Kennedy Unity Dinner Committee violated 2 U.S.C. § 441a(f) by accepting contributions violative of § 441a(a)(1)(A) as to contributions exceeding individual contributors' limits under 2 U.S.C. § 441a, and 2 U.S.C. § 441a(a)(8) in failing to report to the Commission and to the Carter-Mondale Presidential Committee those contributions earmarked for the Carter-Mondale.

NOW, THEREFORE, the Commission and respondents, having participated in informal methods of conciliation, do hereby agree as follows:

I. The Commission has jurisdiction over respondents and the subject matter of this proceeding, and this Agreement has the effect of a conciliation agreement under 2 U.S.C. § 437g(a)(4)(A).

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

III. Respondents enter voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are:

1. Respondent Carter-Kennedy Unity Dinner Committee registered with the Commission as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter-Mondale Presidential Committee and the Kennedy for President Committee. The Unity Committee reported an opening cash balance of -0-,

total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

2. It was agreed by the participants that the first $500,000 of proceeds of the Unity Dinner were to go to the Kennedy Committee. Dinner receipts totalled $365,062.85, from which gross amount was subtracted $52,445.75 (because certain contributions were earmarked for Carter-Mondale, and because certain other contributions represented excessive individual contributions to Kennedy and were refunded). Total dinner expenses were $73,815.08.

3. The percentage of receipts allocated to Kennedy was 85.63%. Because the same percentage of expenses was not allocated to Kennedy, the interim report recommended that the Unity Committee seek a refund of $45,692.54 from Kennedy and distribute it to Carter-Mondale. Such a refund has not been made by Kennedy or distributed to Carter-Mondale.

4. Of the contributions received by the Unity Committee that exceed the individual contributors' limits under 2 U.S.C. $ 441a, refunds of $1,900 in contributions have not been made by the Unity Committee.

5. Contributions received by the Unity Committee that were earmarked for Carter-Mondale totalled $12,100. Of that amount, $1,000 is unattributable to Carter-Mondale because it represents an excessive contribution for the contributor.

6. The Unity Committee has not distributed the $11,100 in earmarked contributions acceptable to Carter-Mondale to Carter-Mondale.

V.1. Respondent Carter-Mondale Presidential Committee has made an excessive contribution to the Kennedy for President Committee in the form of a disproportionate share of the expenses of the Carter-Kennedy Unity Dinner, in violation of 2 U.S.C. § 441a(a)(1)(A).

2. Respondent Kennedy for President Committee accepted a contribution from the Carter-Mondale Presidential Committee that is violative of 2 U.S.C. § 441a(a)(1)(A), in the form of a disproportionate share of Unity Dinner expenses, in violation of 2 U.S.C. § 441a(f).

3. Respondent Carter-Kennedy Unity Dinner Committee accepted contributions exceeding individuals' § 441a contribution limits, in violation of 2 U.S.C. § 441a(f).

4. Respondent Carter-Kennedy Unity Dinner Committee failed to report to the Commission and to the Carter-Mondale Presidential Committee those contributions earmarked for Carter-Mondale, in violation of 2 U.S.C. § 441a(a)(8).

5. Respondent Carter-Mondale Presidential Committee failed to report to the Commission the receipt of contributions earmarked for Carter-Mondale, in violation of 2 U.S.C. §§ 434(b)(2) and (3).

Attachment 1 - 4 of 7

VI.1. Respondent Kennedy for President Committee agrees to transfer to the Carter-Mondale Presidential Committee $9,750, and a promissory note in the amount of $34,942.54.

2. Respondent Carter-Kennedy Unity Dinner Committee agrees to refund $1,900 in contributions violative of individual contributors' § 441a limits to those contributors.

3. Respondent Carter-Mondale Presidential Committee agrees to file an amended report reflecting its receipt of $12,100 in contributions earmarked for Carter-Mondale.

4. Respondent Carter-Kennedy Unity Dinner agrees to file an amended report reflecting $12,100 in contributions earmarked for Carter-Mondale and received by the Unity Committee, and to transfer the $11,100 of said contribution acceptable to Carter-Mondale to the Carter-Mondale Presidential Committee. The $1,000 contribution earmarked for Carter-Mondale that is violative of the contributor's individual contribution limits will be refunded to that contributor by the Unity Committee.

5. Respondent Carter-Kennedy Unity Dinner Committee agrees to send to all contributors to the Committee letters informing them of the allocation of their contribution, as proposed by the Committee in its June 12, 1981 response to the interim audit report, and attached thereto as Exhibit 1.

Attachment 1 - 5 of 7

VII. Respondents agree that they will not undertake any activity that is in violation of the Federal Election Campaign Act of 1971, as amended, § 431 <u>et</u> <u>seq</u>.

VIII. 1. Respondent Carter-Mondale Presidential Committee agrees to pay to the United States Treasury a civil penalty in the amount of One Thousand Dollars ($1,000.00) for the actions described in Paragraph V, subparagraphs 1 and 5.

2. Respondent Kennedy for President Committee agrees to pay to the United States Treasury a civil penalty in the amount of One Thousand Dollars ($1,000.00) for the actions in Paragraph V, subparagraph 2.

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

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

XI. It is agreed that respondents shall have no more than ninety days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

Charles N. Steele
General Counsel

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

Carter-Kennedy Unity Dinner Committee

2/1/83 ~~BY:~~ _______________
Date

Carter-Mondale Presidential Committee

1/11/83 BY: _______________
Date

Kennedy for President Committee

2/1/83 BY: _______________
Date

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esq.
Epstein, Becker, Borsody and Green
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1392
Carter-Kennedy Unity Dinner

Dear Mr. Oldaker:

On , 1983, the Commission accepted the conciliation agreement signed by you, together with a civil penalty, in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise this Office in writing.

Enclosed is 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

83040390254

Attachment 2 - 1 of 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Douglas B. Huron, Esq.
Stein and Huron
1619 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Re: MUR 1392
Carter-Kennedy Unity Dinner

Dear Mr. Huron:

On   , 1983, the Commission accepted the conciliation agreement signed by you, together with a civil penalty, in settlement of a violation of 2 U.S.C. §§ 434(b)(2) and (3) and 441a(a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly the file has been closed in this matter, and it will become part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise this Office in writing.

Enclosed is 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

Attachment 2 - 2 of 2

WASHINGTON D.C.
FEB -1 '83
U.S. POSTAGE
E 0 5 4

EPSTEIN BECKER BORSODY & GREEN, P. C.
ATTORNEYS AT LAW
1140 19TH STREET, N. W.
WASHINGTON, D. C. 20036

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY RANSOM JCR

DATE: NOVEMBER 29, 1982

SUBJECT: OBJECTIONS - MUR 1392 Memorandum to the Commission dated November 23, 1982; Received in OCS, 11-23-82, 4:18

The above-named document was circulated to the Commission on November 24, 1982 at 11:00.

Commissioners Harris, Elliott and Aikens submitted objections on November 29, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday, December 14, 1982.

November 23, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1392

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

Attachment

cc: Nathan

July 23, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1392

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

Attachment

cc: Nathan

33040390255

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

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

DATE: MAY 4, 1982

SUBJECT: ADDITIONAL OBJECTIONS - MUR 1392 Memorandum to the Commission dated 4-29-82; Received in OCS, 4-29-82, 4:26

You were notified previously of an objection by Commissioner Reiche.

Commissioners Elliott and Aikens submitted additional objections this date.

This matter will be discussed in executive session on Tuesday, May 11, 1982.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY CUSTER RANSOM

DATE: MAY 4, 1982

SUBJECT: OBJECTION - MUR 1392 Memorandum to the Commission dated 4-29-82; Received in OCS, 4-29-82, 4:26

The above-named document was circulated to the Commission on April 30, 1982 at 2:00.

Commissioner Reiche submitted an objection to this matter 11:32, May 3, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday, May 11, 1982. A copy of Commissioner Reiche's vote sheet with his comments is attached.

Attachment

83040390271

April 29, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1392

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

Attachment

cc: Nathan

8304039027

8 3 0 4 0 3 9 0 2 7 3

Ms. Nancy B. Nathan
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
7th Floor
Washington, D.C. 20463

STEIN & HURON
1619 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20009

83040390274

WASHINGTON, DC
PM
18 DEC
1981

RECEIVED

SPACE SHUTTLE

Kenneth Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, NW
Washington, DC 20005

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER JC

DATE: JANUARY 26, 1982

SUBJECT: ADDITIONAL OBJECTION - MUR 1392
General Counsel's Report dated
January 22, 1982; Received in OCS,
1-22-82, 9:40

You were previously notified of an objection by Commissioner Aikens to the above-named matter.

Commissioner Reiche submitted an additional objection at 9:31, January 26, 1982.

This matter will be discussed in Executive Session on Tuesday, February 2, 1982. A copy of Commissioner Reiche's vote sheet with his comments is attached.

Attachment:
Vote sheet

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY CUSTER JC

DATE: JANUARY 25, 1982

SUBJECT: OBJECTION - MUR 1392 General Counsel's Memorandum dated January 22, 1982; Received in OCS, 1-22-82, 9:40

The above-named document was circulated to the Commission on January 22, 1982 at 2:00.

Commissioner Aikens submitted an objection at 2:31, January 25, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday, February 2, 1982.

8 3 0 4 0 3 9 0 2 7 6

January 22, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1392

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

Attachment

cc: Nathan

83040520277

CCC# 5939

GRAHAM & JAMES

ATTORNEYS AT LAW

1050-17TH STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 296-0505

OTHER OFFICES
SAN FRANCISCO
LOS ANGELES
LONG BEACH
NEWPORT BEACH
ANCHORAGE
SINGAPORE
LONDON
ROME
MILAN

CABLE ADDRESS ALL OFFICES "CHALGRAY"

TLX 90-4103 CHALGRAY WSH

December 16, 1981

81 DEC16 P4:27

Kenneth Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 1392

Dear Mr. Gross:

I understand from Doug Huron that due to the current discussions he is having with your office aimed at a speedy conciliation of the Commission's Enforcement Action involving the Carter/Kennedy Unity Dinner Committee that no response to the Commission's Reason to Believe notification is expected at the present time.

Please advise me if this is correct.

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

Sincerely,

William C. Oldaker

WCO:jv

8304039027?

83040390219

GRAHAM & JAMES
1050-17TH STREET, N.W.
WASHINGTON, D.C. 20036

Kenneth Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

7th Flr

102305

RECEIVED
GCC# 5910
81 DEC 10 P3: 14

STEIN & HURON
1619 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20009
(202) 797-3880

DOUGLAS B. HURON
EILEEN M. STEIN

MARYLAND OFFICE
7504 BYBROOK LANE
CHEVY CHASE, MD. 20015
(301) 657-9220

81 DEC 10 P4: 06

December 3, 1981

Kenneth Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, NW
Washington, DC 20000

re: MUR 1392

Dear Mr. Gross:

On November 13, 1981 Chairman McGarry wrote the Carter/Mondale Presidential Committee concerning MUR 1392. On December 12, 1981 I met with you to discuss a number of matters, including this MUR.

Since MUR 1392 involves the Kennedy for President Committee as well as our own, we agreed that I would contact appropriate officials of the Kennedy Committee before making any substantive response to this MUR. I hope to be able to provide the Commission with such a response in the near future.

Sincerely,

Douglas B. Huron

8 3 0 4 0 3 7 0 2 3 0

STEIN & HURON
1619 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20009

WASHINGTON, DC 200
PM
3 DEC
1981

81 DEC 10

Kenneth Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, NW
Washington, DC 20000

Not for Route No. 618

83040390281

102-2

RECEIVED
GC# 5897

81 DEC 7 P2:

WILLIAM C. OLDAKER
ATTORNEY AT LAW
1050 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

TELEPHONE
202 296-0505

CABLE ADDRESS: "OHALORAY"
710-822-9967

November 30, 1981

81 DEC 7 P4:

Scott Thomas, Esquire
Office of General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20036

RE: MUR 1392

Dear Mr. ~~Thomas~~: Tom

I today received Chairman McGarry's notification of November 13, 1981, that the Commisssion had found reason to believe that the Carter/Kennedy Unity Dinner Committee violated the Federal Election Campaign Act.

Pursuant to your conversation with my associate, Gary Christian, I will file the reply of the Kennedy for President Committee at the same time as the response of the Carter/Kennedy Unity Dinner Committee on December 15, 1981.

Please contact me if you have any questions on this matter.

Sincerely,

Bill

William C. Oldaker

WCO:jv

83040390233

8 3 0 4 0 3 9 0 2 3 3

SUITE 1200
1050 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

RECEIVED

81 DEC 7 P2:43

NOV30'81
D.C.
.20

Scott Thomas, Esquire
Office of General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20036

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 13, 1981

S. Lee Kling, Treasurer
Carter/Mondale Presidential Committee
4710 Bethesda Avenue
Suite 302
Bethesda, Maryland 20814

Re: MUR 1392

Dear Mr. Kling:

On November 12, 1981, the Federal Election Commission determined that there is reason to believe that your committee violated 2 U.S.C. §§434(b)(2), 434(b)(3), and 441a (a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by failing to report to the Commission receipt of contributions earmarked for the Carter/Mondale Presidential Committee and collected by the Carter/Mondale Unity Dinner Committee, and by making an excessive contribution to the Kennedy for President Committee in the form of a disproportionate share of the expenses of the Carter/Kennedy Unity Dinner. 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 within fifteen (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 conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. <u>See</u> 11 C.F.R. §111.18(d).

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.

S. Lee Kling
Page (2)

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 Nancy B. Nathan, the attorney assigned to this matter at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

NBW 11/12/81

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

S. Lee Kling, Treasurer
Carter/Mondale Presidential Committee
4710 Bethesda Avenue
Suite 302
Bethesda, Maryland 20814

Re: MUR 1392

Dear Mr. Kling:

On November 12, 1981, the Federal Election Commission determined that there is reason to believe that your committee violated 2 U.S.C. §§434(b)(2), 434(b)(3), and 441a (a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by failing to report to the Commission receipt of contributions earmarked for the Carter/Mondale Presidential Committee and collected by the Carter/Mondale Unity Dinner Committee, and by making an excessive contribution to the Kennedy for President Committee in the form of a disproportionate share of the expenses of the Carter/Kennedy Unity Dinner. 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 within fifteen (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 conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. <u>See</u> 11 C.F.R. §111.18(d).

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 Nancy B. Nathan, the attorney assigned to this matter at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1392
STAFF MEMBER & TEL. NO.

Nancy B. Nathan
523-4073

RESPONDENT: Carter/Mondale
Presidential Committee

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

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed apparent violations of the Federal Election Campaign Act of 1971, as amended. Referred to the Commission's Office of General Counsel for further review and action were the following findings as to the Carter/Mondale Presidential Committee: (1) an excessive contribution under 2 U.S.C. §441a(a) (1) (A) (totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds, and (2) failure by Carter/Mondale to report contributions earmarked for Carter/Mondale.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee ("the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period from October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total expenditures of $365,181.50, and a closing cash balance of $15,405.60.

1. ALLOCATION OF FUND-RAISING EXPENSES

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365,062.85. Subtracted from that gross was $52,445.75, because certain contributions were earmarked for Carter/Mondale and because the §441a(a)(1)(A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee (see <u>infra</u>).

As the audit report notes, Advisory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint

fundraiser, expenses ordinarily must be shared on a pro rata basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its pro rata share of expenses, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 -- 85.63% of the expenses.)

The interim audit report recomended that the Unity Committee seek a refund of approximately that amount 1/ from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared pro rata is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO-1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. See also, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers. Thus, the excessive contribution appears to be $43,692.18 ($44,692.18 minus $1,000 as allowed by 2 U.S.C. § 441a(a)(1)(A)).

[redacted] cites 2 U.S.C. §437 f ([redacted] asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section.[2/]

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In <u>California Medical Association v. Federal Election Commission</u>, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in §431(8)(A) be subject to the limitations of §441a.[3/]

2/ 2 U.S.C. §437 f (b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 CFR §102.7(b)(7).

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." <u>CMA v. FEC</u>, <u>supra</u>, 101 S.Ct. 2712 at 2723 n. 19.

8 3 0 4 0 3 9 0 2 9 1

Accord, Buckley v. Valeo, 424 U.S. 1, 37; United States v. Chestnut, 394 F. Supp. 581, 586-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), cert. denied, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done within §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on pro rata allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C §431(8)(A). That contention overlooks 11 CFR §110.1(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committee's assertion, the opinions referred to do not demonstrate that one committee may pay another's solitication expenses without making a contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to freely support their association with dues that are partially used for

the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly, Re:AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.4/ It is inapposite to the relationship between Carter/Mondale and Kennedy for President , [illegible]

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitatio expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).5/

4/ While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/ In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978). That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441b (b) (2) (c). <u>See</u>, e.g., <u>California Medical Association v. Federal Election Commission</u>, <u>supra</u>, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.")

Therefore, it is recommended that the Commission find reason to believe the Carter/Mondale Presidential Committee has violated 2 U.S.C. §441a (a) (1) (A) by making an excessive contribution to the Kennedy for President Committee, in the form of a disproportionate share of Unity Dinner expenses.

2. EARMARKED CONTRIBUTIONS

The second finding concerns $12,000 in contributions to the Unity Dinner that were earmarked for Carter/Mondale. Of those, a $1,000 contribution is not acceptable to Carter/Mondale because it represents an excess contribution for the contributor.

The interim audit report recommended that the earmarked contributions acceptable to Carter/Mondale be included in the proceeds distributed to that Committee, and that the unacceptable $1,000 be refunded to the contributor.

The Unity Committee's response to the interim audit report said that the recommended action would not be taken pending the Commission's ruling on the first finding, which will determine final distribution of dinner proceeds (see supra). The Unity Committee's delay to date in allocating contributions earmarked for Carter/Mondale to that committee has resulted in an apparent violation of 2 U.S.C. §434 (b)(2) and (3) by Carter/Mondale. Those provisions of the Act require committees to report to the Commission all contributions received and to identify all persons contributing in excess of $200 within a calendar year, and the amounts and dates of their contributions.

RECOMMENDATIONS

Therefore, it is recommended that the Commission find reason to believe that the Carter/Mondale Presidential Committee violated 2 U.S.C. §441a (a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the *pro rata* share of proceeds of that dinner received by Carter/Mondale, and find reason to believe the Carter/Mondale Presidential Committtee violated 2 U.S.C. §434 (b)(2) and (3) by failing to report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee.

FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

TO: FILE

FROM: NANCY NATHAN

SUBJECT: Letter and enclosures sent to William C. Oldaker on 11/13/81 were returned and resent on 11/23/81.

83040390296

GCC# 5830

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 NOV 19 P4:51

November 13, 1981

William C. Oldaker, Esquire
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On Novembeer 12, 1981, the Federal Election Commission determined that there is reason to believe that your client, the Carter/Kennedy Unity Dinner Committee, violated 2 U.S.C. §441a(f) and 441a(a)(8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting contributions violative of 2 U.S.C. §441a(a)(1)(A) and by failing to report to the Commission and to the Carter/ Mondale Presidential Committee those contributions earmarked for Carter/Mondale. 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 demonstate 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 within fifteen (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 client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. <u>See</u> 11 C.F.R. §111.18(d).

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.

8 3 0 4 0 3 9 0 2 9 7

Nanc

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 13, 1981

William C. Oldaker, Esquire
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On Novembeer 12, 1981, the Federal Election Commission determined that there is reason to believe that your client, the Carter/Kennedy Unity Dinner Committee, violated 2 U.S.C. §441a(f) and 441a(a)(8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting contributions violative of 2 U.S.C. §441a(a)(1)(A) and by failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale. 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 demonstate 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 within fifteen (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 client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. <u>See</u> 11 C.F.R. §111.18(d).

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.

83040390279

William C. Oldaker
Page 2

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 Nancy B. Nathan, the attorney assigned to this matter, at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

11/12/81
[illegible]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esquire
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On , the Federal Election Commission determined that there is reason to believe that your client, the Carter/Kennedy Unity Dinner Committee, violated 2 U.S.C. §441a(f) and 441a(a)(8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting contributions violative of 2 U.S.C. §441a(a)(1)(A) and by failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale. 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 demonstate 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 within fifteen (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 client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. §111.18(d).

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 Nancy B. Nathan, the attorney assigned to this matter, at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1392
STAFF MEMBER & TEL. NO.

Nancy B. Nathan

RESPONDENT: Carter/Kennedy Unity Dinner committee

523-4073

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

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed apparent violations of the Federal Election Campaign Act of 1971, as amended. Referred to the Commission's Office of General Counsel for further review and action were the following findings as to the Carter/Kennedy Unity Dinner. 1) an excessive contribution under 2 U.S.C. §441a(a)(1)(A)(totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds, and the acceptance by Kennedy for President of an excessive contribution; (2) failure of the Unity Committee to document notification to contributors of the allocation of their contributions, as the participants in the Unity Dinner previously had agreed, so that contributors might observe the §441a limits; (3) failure by the Unity Committee to document refunds of some contributions received from persons who had exceeded their individual contribution limits; and (4) failure by the Unity Committee to allocate contributions earmarked for Carter/Mondale, pending the Commission's resolution of the question of allocation

(2)

of expenses, supra.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee "the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period for October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

1. ALLOCATION OF FUND-RAISING EXPENSES

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365.062.85. Subtracted from that gross by Audit was $52,445.75, because certain contributions were earmarked for Carter/Mondale and because the § 441a(a) (1) (A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee (see infra).

As the audit report notes, Adivsory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint

fundraiser, expenses ordinarily must be shared on a pro rata basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its pro rata share of expenses, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 -- 85.63% of the expenses.)

The interim audit report recomended that the Unity Committee seek a refund of approximately that amount 1/ from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared pro rata is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO-1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. See also, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers. Thus, the excessive contribution appears to be $43,692.18 ($44,692.18 minus $1,000 as allowed by 2 U.S.C. § 441a(a)(1)(A)).

It cites 2 U.S.C. §437 f (b) asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section. 2/

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in §431(8)(A) be subject to the limitations of §441a. 3/

2/ 2 U.S.C. §437 f (b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 CFR §102.7(b)(7).

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." CMA v. FEC, supra, 101 S.Ct. 2712 at 2723 n. 19.

Accord, Buckley v. Valeo, 424 U.S. 1, 37; United States v. Chestnut, 394 F. Supp. 581, 586-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), cert. denied, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done within §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on pro rata allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C §431(8)(A). That contention overlooks 11 CFR §110.1(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committee's assertion, the opinions referred to do not demonstrate that one committee may pay another's solitication expenses without making a contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to

the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly, Re:AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.4/ It is inapposite to the relationship between Carter/Mondale and Kennedy for President, [illegible]

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitation expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).5/

4/ While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/ In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978). That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441(b)(b)(2)(c). See, e.g., California Medical Association v. Federal Election Commission, supra, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.").

Therefore, it is recommended that the Commission find reason to believe the Carter/Mondale Presidential Committee has violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee, in the form of a disproportionate share of Unity Dinner expenses, and that the Kennedy Committee has violated §441a(f) by knowingly accepting such contribution.

2. NOTICE TO CONTRIBUTORS OF ALLOCATION OF CONTRIBUTIONS

At the time of the audit report, it was unclear whether there had been a resolution of the basis for the second finding: failure of the Unity Committee to notify contributors of the allocation of their contributions. At the time of the Audit report, a draft of such a notification had been submitted by the Committee. As a part of the enforcement process, the Committee's fulfillment of its obligation of notification will be sought.

3. REFUND OF INDIVIDUALS'EXCESS CONTRIBUTIONS

The third finding involves Committee receipt of contributions totalling $5,900 from individuals who already had contributed $1,000 to both Carter/Mondale and Kennedy for President. Additionally, there was a $5,000 contribution to the Unity Committee by a multicandidate committee that already had contributed $5,000. Photocopies of refund checks for the $5,000 amount, and for $4,000 of the $5,900 in excess individual contributions, have been furnished by the Unity Committee. Because there is no evidence that $1,900 in individual contributions has been refunded, the matter was referred to OGC. The Unity Committee's response to the interim audit report simply stated that the Committee had refunded (all) contributions the Audit Division found excessive; no reference was made to the $1,900 for which copies of refund checks were not furnished. Therefore, a violation by the Unity Committee of 2 U.S.C. §441a(f) appears to be made out in the knowing acceptance of contributions violative of §441a(a)(1)(A), i.e., contributions that exceed the individual contributors' §441a limits.

4. EARMARKED CONTRIBUTIONS

The fourth finding concerns $12,000 in contributions to the Unity Dinner that were earmarked for Carter/Mondale. Of those, a $1,000 contribution is not acceptable to Carter/Mondale because it represents an excess contribution for the contributor.

The interim audit report recommended that the earmarked contributions acceptable to Carter/Mondale be included in the proceeds distributed to that Committee, and that the unacceptable $1,000 be refunded to the contributor.

The Unity Committee's response to the interim audit report said that the recommended action would not be taken pending the Commission's ruling on the first finding, which will determine final distribution of dinner proceeds (see supra). Because of the delay to date in complying with the requirements that 2 U.S.C. §441a(a)(8) places on intermediary recipients of earmarked contributions, a violation of that section appears to be made out by the Unity Committee's failure to report the source of the contribution and the intended recipient to both the Commission and the intended recipient (here, Carter/Mondale). Additionally, the Unity Committee's delay to date in allocating contributions earmarked for Carter/Mondale to that committee has resulted in an apparent violation of 2 U.S.C. §434(b)(2) and (3) by Carter/Mondale. Those provisions of the Act require committees to report to the Commission all contributions received and to identify all persons contributing in excess of $200 within a calendar year, and the amounts and dates of their contributions.

Therefore, it is recommended that the Commission find reason to believe that the Carter/Mondale Presidential Committee violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale; find reason to believe the Kennedy for President Committee violated 2 U.S.C. §441a(f) by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale; find reason to believe the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(f) in knowingly accepting contributions violative of §441a(a)(1)(A), as to contributions exceeding contributors' individual §441a limits; find reason to believe the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(a)(8) in failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale; and find reason to believe the Carter/Mondale Presidential Committee violated 2 U.S.C. §434(b)(2) and (3) by failing to report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 13, 1981

William C. Oldaker, Esquire
Treasurer, Kennedy for President
Committee
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On November 12, 1981 , the Federal Election Commission determined that there is reason to believe that your committee, Kennedy for President Committee, violated 2 U.S.C. §441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale. 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 within fifteen (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 conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. §111.18(d).

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 Nancy B. Nathan, the attorney assigned to this matter at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

11/12/81
nsbn

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esquire
Treasurer, Kennedy for President
Committee
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On , the Federal Election Commission determined that there is reason to believe that your committee, Kennedy for President Committee, violated 2 U.S.C. §441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale. 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 within fifteen (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 conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. §111.18(d).

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.

8 3 0 4 0 3 9 0 3 1 5

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 Nancy B. Nathan, the attorney assigned to this matter at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

8 3 0 4 0 3 9 0 3 1 6

Enclosures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1392
STAFF MEMBER & TEL. NO.

Nancy B. Nathan
523-4073

RESPONDENT: Kennedy for President Committee

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

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed apparent violations of the Federal Election Campaign Act of 1971, as amended. Referred to the Commission's Office of the General Counsel for further review and action was the following finding as to the Kennedy for President Committee:

- acceptance of an excessive contribution (totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee ("the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period from October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365,062.85. Subtracted from that gross by audit was $52,445.75, because certain contributions were earmarked for Carter/Mondale and because the §441a(a)(1)(A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee.

As the audit report notes, Advisory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint

fundraiser, expenses ordinarily must be shared on a pro rata basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its pro rata share of expenses, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 -- 85.63% of the expenses.)

The interim audit report recomended that the Unity Committee seek a refund of approximately that amount 1/ from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared pro rata is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO-1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. See also, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers. Thus, the excessive contribution appears to be $43,692.18 ($44,692.18 minus $1,000 as allowed by 2 U.S.C. § 441a(a)(1)(A)).

(Attachment 2 at 2). It cites 2 U.S.C. §437(f)(b), asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section.2/

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in §431(8)(A) be subject to the limitations of §441a.3/

2/ 2 U.S.C. §437(f)(b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 CFR §102.7(b)(7).

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be coverted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." CMA v. FEC, supra, 101 S.Ct. 2712 at 2723 n. 19.

Accord, Buckley v. Valeo, 424 U.S. 1, 37, U.S. v. Chestnut, 394 F. Supp. 581, 586-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), cert. denied, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done within §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on pro rata allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C §431(8)(A). That contention overlooks 11 CFR §110.0(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committees' assertion, the opinions referred to do not demonstrate that one committee may pay another's solitication expenses without making a contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to freely support their association with dues that are partially used for

83040390321

the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly, Re:AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.[4/] It is inapposite to the relationship between Carter/Mondale and Kennedy for President.

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitation expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).[5/]

4/ While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/ In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978). That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441b (b)(2)(c). See, e.g., California Medical Association v. Federal Election Commission, supra, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.")

Therefore, it is recommended that the Commission find reason to believe the Kennedy for President Committee has violated 2 U.S.C. §441a(f) by accepting an excessive contribution in the form of a disproportionate share of Unity Dinner expenses paid in effect by the Carter/Mondale Presidential Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER JC

DATE: NOVEMBER 12, 1981

SUBJECT: WITHDRAWAL OF OBJECTION TO MUR 1392

You were previously notified of an objection by Commissioner Harris to the First General Counsel's Report in MUR 1392.

By memorandum this date, Commissioner Harris has withdrawn his objection to this matter and cast an affirmative vote.

The certification in this matter is attached as well as a copy of Commissioner Harris' memorandum.

Attachments:
Certification
Memorandum

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1392
Carter/Kennedy Unity Dinner Committee	)	
Carter/Mondale Presidential Committee	)	
Kennedy for President Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 12, 1981, the Commission decided by a vote of 4-0 to take the following actions regarding MUR 1392:

1. Find REASON TO BELIEVE that the Carter/Mondale Presidential Committee violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale.

2. Find REASON TO BELIEVE the Kennedy for President Committee violated 2 U.S.C. §441a(f) by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale.

(Continued)

3. Find REASON TO BELIEVE the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(f) in knowingly accepting contributions violative of §441a(a)(1)(A), as to contributions exceeding contributors' individual §441a limits.

4. Find REASON TO BELIEVE the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(a)(8) in failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale.

5. Find REASON TO BELIEVE the Carter/Mondale Presidential Committee violated 2 U.S.C. §434(b)(2) and (3) by failing to report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee.

6. Send the letters as attached to the First General Counsel's Report dated November 5, 1981.

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

Attest:

11-12-81

Date

Jody A. Custer

for Marjorie W. Emmons
Secretary of the Commission

Received in Office of the Commission Secretary: 11-5-81, 3:41
Circulated on 48 hour vote basis: 11-6-81, 2:00

FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

November 12, 1981

MEMORANDUM TO: Commission Secretary

FROM: Thomas E. Harris TEH

SUBJECT: Withdrawal of Objection

I would like to withdraw my objection to the First General Counsel's Report for MUR 1392, placed on November 9, 1981.

I would like to be recorded as casting an affirmative vote on this matter.

81 NOV 12 A9:49

8 3 0 4 0 3 9 0 3 2 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER JC

DATE: NOVEMBER 10, 1981

SUBJECT: OBJECTION - MUR 1392 First General Counsel's Report dated 11-5-81; Received in OCS, 11-5-81, 3:41

The above-named document was circulated on a 48 hour vote basis at 2:00, November 6, 1981.

Commissioner Harris submitted an objection at 4:50, November 9, 1981.

This matter will be placed on the Executive Session Agenda for Tuesday, November 17, 1981.

A copy of Commissioner Harris' vote sheet with his comments is attached.

Attachment:
Vote sheet

83040390328

November 5, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1392

Please have the attached First General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Nathan

83040390329

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 11-5-81

81 NOV 5 P2: 41

SENSITIVE

STAFF MEMBER
Nancy Nathan

SOURCE: Internally Generated

RESPONDENTS' NAMES: Carter/Kennedy Unity Dinner Committee;
Carter/Mondale Presidential Committee
Kennedy for President Committee.

RELEVANT STATUTE: 2 U.S.C. §§441a(a)(1)(A), 441a(f), 441a(a)(8)
434(b)(2) and (3).

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed several apparent Act violations; the Committee's response challenged the auditors' preliminary determinations with respect to those potential violations. (Attachments 1 and 2) Based upon the Committee's response, the four matters at issue were referred to the Office of General Counsel for further review and action.

SUMMARY OF ALLEGATIONS

The four findings of the interim audit report that were referred to OGC were: 1) an excessive contribution under 2 U.S.C. §441a(a)(1)(A) (totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds, and the acceptance by Kennedy for President of an excessive contribution;

8 3 0 4 0 3 9 0 3 3 0

(2) failure of the Unity Committee to document notification to contributors of the allocation of their contributions, as the participants in the Unity Dinner previously had agreed, so that contributors might observe the §441a limits; (3) failure by the Unity Committee to document refunds of some contributions received from persons who had exceeded their individual contribution limits; and (4) failure by the Unity Committee to allocate contributions earmarked for Carter/Mondale, pending the Commission's resolution of the question of allocation of expenses, supra.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee ("the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period from October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

1. ALLOCATION OF FUND-RAISING EXPENSES

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365,062.85. Subtracted from that gross by audit was $52,445.75, because certain contributions were earmarked for Carter/Mondale and because the §441a(a)(1)(A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee (see infra).

As the audit report notes, Advisory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint fundraiser, the expenses ordinarily must be shared on a pro rata basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its pro rata share of expense, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 - 85.63% of the expenses).

The interim audit report recommended that the Unity Committee seek a refund of approximately that amount[1/] from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared pro rata is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO 1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. See also, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers.

(Attachment 2 at 2). It cites 2 U.S.C. §437 f (b), asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section. 2/

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in

---

2/ 2 U.S.C. §437 f (b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or Chapter 96 of Title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 C.F.R. §102.7(b)(7). Attachment 3

§431(8)(A) be subject to the limitations of §441a.[3/] Accord, Buckley v. Valeo, 424 U.S. 1, 37; United States v. Chestnut, 394 F. Supp. 581-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), cert. denied, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done with in §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on pro rata allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C. §431(8)(A). That contention overlooks 11 C.F.R. §110.1(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committee's assertion, the opinions referred to do not demonstrate that one committee may pay another's solicitation expenses without making a

---

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." CMA v. FEC, supra, 101 S.Ct. 2712 at 2723 n. 19.

contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to freely support their association with dues that are partially used for the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly, Re AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.4/ It is inapposite to the relationship between Carter/Mondale and Kennedy for President.

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitation expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).5/

4/While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978).That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441 b (b)(2)(c). *See*, *e.g.*, *California Medical Association v. Federal Election Commission*, *supra*, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.").

Therefore, it is recommended that the Commission find reason to believe the Carter/Mondale Presidential Committee has violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee, in the form of a disproportionate share of Unity Dinner expenses, and that the Kennedy Committee has violated §441a(f) by knowingly accepting such contribution.

2. NOTICE TO CONTRIBUTORS OF ALLOCATION OF CONTRIBUTIONS

At the time of the audit report, it was unclear whether there had been a resolution of the basis for the second finding: failure of the Unity Committee to notify contributors of the allocation of their contributions. At the time of the Audit report, a draft of such a notification had been submitted by the Committee. While the Committee's June 12, 1981 response to the interim audit report said the Committee was "in the process of sending" the letter to contributors, this Office's review of the final audit report noted that the letters may be being held pending resolution of the distribution problem.

The recently proposed regulations on joint fundraising would require disclosure of the allocation formula to contributors at the time of the solicitation. At present, however, the auditors' finding rests on the participants' own agreement to notify contributors of the eventual allocation of proceeds. Therefore, there is no recommendation for Commission action on this matter; as a part of the enforcement process, the Committee's fulfillment of its obligation of notification will be sought.

3. REFUND OF INDIVIDUALS' EXCESS CONTRIBUTIONS

The third finding involves Committee receipt of contributions totalling $5,900 from individuals who already had contributed $1,000 to both Carter/Mondale and Kennedy for President. Additionally, there was a $5,000 contribution to the Unity Committee by a multicandidate committee that already had contributed $5,000. Photocopies of refund checks for the $5,000 amount, and for $4,000 of the $5,900 in excess individual contributions, have been furnished by the Unity Committee. Because there is no evidence that $1,900 in individual contributions has been refunded, the matter was referred to OGC. The Unity Committee's response to the interim audit report simply stated that the Committee had refunded (all) contributions the Audit Division found excessive; no reference was made to the $1,900 for which copies of refund checks were not furnished. Therefore, a violation by the Unity Committee of 2 U.S.C. §441a(f) appears to be made out in the knowing acceptance of contributions violative of §441a(a)(1)(A), i.e., contributions that exceed the individual contributors' §441a limits.

4. EARMARKED CONTRIBUTIONS

The fourth finding concerns $12,000 in contributions to the Unity Dinner that were earmarked for Carter/Mondale. Of those, a $1,000 contribution is not acceptable to Carter/Mondale because it represents an excess contribution for the contributor.

The interim audit report recommended that the earmarked contributions acceptable to Carter/Mondale be included in the proceeds distributed to that Committee, and that the unacceptable $1,000 be refunded to the contributor.

The Unity Committee's response to the interim audit report said that the recommended action would not be taken pending the Commission's ruling on the first finding, which will determine final distribution of dinner proceeds (see <u>supra</u>). Because of the delay to date in complying with the requirements that 2 U.S.C. §441a(a)(8) places on intermediary recipients of earmarked contributions, a violation of that section appears to be made out by the Unity Committee's failure to report the source of the contribution and the intended recipient to both the Commission and the intended recipient (here, Carter/Mondale). Additionally, the Unity Committee's delay to date in allocating contributions earmarked for Carter/Mondale to that committee has resulted in an apparent violation of 2 U.S.C. §434(b)(2) and (3) by Carter/Mondale. Those provisions of the Act require committees to report to the Commission all contributions received and to identify all persons contributing in excess of $200 within a calendar year, and the amounts and dates of their contributions.

<u>RECOMMENDATION</u>

1. Find reason to believe that the Carter/Mondale Presidential Committee violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the <u>pro rata</u> share of proceeds of that dinner received by Carter/Mondale.

2. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. §441a(f) by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale.

3. Find reason to believe the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(f) in knowingly accepting contributions volative of §441a(a)(1)(A), as to contributions exceeding contributors' individual §441a limits.

4. Find reason to believe the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(a)(8) in failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale.

5. Find reason to believe the Carter/Mondale Presidential Committee violated 2 U.S.C. §434(b)(2) and (3) by failing to report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee.

6. Send the attached letters.

Attachments
1. Interim Audit Report
2. Response of Carter/Kennedy Unity Dinner Committee to Interim Audit Report
3. Draft of 11 C.F.R. §102.7(b)(7).
4. Letters to Respondents

Nov 5, 1981
Date

Charles N. Steele
General Counsel

Kenneth A. Gross

BY: Kenneth A. Gross
Associate General Counsel

8 3 0 4 0 3 9 0 3 3 9

WILLIAM C. OLDAKER
ATTORNEY AT LAW
1050 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

TELEPHONE
202 296-0505

CABLE ADDRESS: "CHALORAY"
710-822-9287

Attachment 2

June 12, 1981

Mr. Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Costa:

This letter is submitted on behalf of the Carter/Kennedy Unity Dinner Committee in response to your letter of May 6, 1981, enclosing a copy of the interim audit report for the Committee.

Recommendation A.

(1) The Committee wishes to object to the interim report's recommendations that the Committee should seek a refund of $46,633.41 from the Kennedy for President Committee and distribute $44,692.18 to the Carter/Mondale Committee.

This recommendation is based on the erroneous contention that, as a matter of law, authorized committees that engage in joint fundraising must share expenses on a pro-rata basis. There is no FEC regulation which requires joint fundraising expenses to be shared on this particular basis and, indeed, the Commission has permitted non-pro-rata sharing of joint fundraising expenses in situations not involving authorized committees.

The interim audit report reflects the lack of a regulatory basis for its position by citing no statutory or regulatory support for its legal argument, instead only four Advisory Opinions. The Committee is willing to concede that the Commission could, if it so desired, promulgate a regulation that would require pro-rata sharing of joint fundraising expenses by political committees. The Advisory Opinion process, however, cannot substitute for the issuance of regulations. The Federal Election Campaign Act mandates that "[a]ny rule of law which is not stated in this Act ... may be initially proposed only as a rule or regulation pursuant to the procedures established in section 438(d)." 2 U.S.C. § 437f(b)(Supp.III 1979).

8 3 0 4 0 3 9 0 3 4 0

The pro-rata sharing rule stated by the four Advisory Opinions cited in the interim report (Advisory Opinions 1977-14, 1977-61, 1979-12, and 1979-35) is not set forth in the Act or in Commission regulations. The Advisory Opinions cited reflect this. AO 1977-14 gives no citation of the section of the Act or Commission regulations on which the pro-rata rule is based, although it does contain a tangential footnote referring to the regulation that treats the entire amount paid for a ticket to a fundraising event as a contribution by the purchaser. (Current version at 11 C.F.R. § 100.7(a)(2) (1981).) Similarly, AO 1977- only cites two previous Advisory Opinions, neither of which give any direct statutory or regulatory support. In AO 1979-12 the Commission pointed to the Act's definition of contribution-in-kind and the general rule for allocating expenditures between candidates in 11 C.F.R. § 106.1. But the allocation rule cited only requires a reasonable basis allocation and the different treatment accorded joint fundraising by non-affiliated separate segregated funds shows that non-pro-rata sharing is not <u>per se</u> unreasonable. Subsequently, in Advisory Opinion 1979-35, the Commission once again set forth the pro-rata sharing rule without any support for its position.

The four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations. It is precisely this type of legal legerdemain that Congress intended to prevent by enacting the prohibition contained in 2 U.S.C. § 437f(b).

Even assuming, <u>arguendo</u>, that the Act's definition of contribution-in-kind might require some expense sharing between authorized committees in certain situations, there is the threshold question of whether, in the case of the Unity Dinner Committee, payments for expenses by one candidate were made for the purpose of influencing the election of the other candidate. <u>See</u> 2 U.S.C. § 431(8)(A) (Supp.III 1979). Post-election joint fundraising between two opponents cannot be interpreted logically to be for the purpose of influencing a candidate's election. It strains credulity to argue that a candidate would make expenditures to influence the nomination or election of his or her opponent. Furthermore, at the time the Unity Dinner was held, Senator Kennedy had lost the nomination and President Carter was engaged in a general election campaign against then Governor Reagan and Congressman John Anderson. It therefore was impossible for the Carter/Mondale Committee's payment of most of the fundraising expenses of the Unity Dinner Committee to have been for the purpose of influencing Senator Kennedy's election, and inconceivable that it was for the purpose of influencing the election of Ronald Reagan or John Anderson.

Mr. Robert J. Costa
June 12, 1981
Page Three

Furthermore, the Commission has adopted a different rule for joint solicitations conducted by labor organizations and trade associations. In these situations the Commission has not required fundraising expenses to be shared on a pro-rata basis, or be considered a contribution, even where the participating groups are not affiliated. One labor organization may, in fact, bear the entire expense of soliciting contributions to another labor organization's separate segregated fund. See FEC Audit Report #159, at 3-4 (1978). Similarly, a member corporation of an incorporated trade association may help defray the administrative expenses of the trade association's separate segregated fund without this being considered a contribution. Advisory Opinión 1980-59. Both these decisions, it should be emphasized, involved unaffiliated organizations. The Commission also has not required that joint federal-state solicitation expenses be pro-rated between an organization's state and federal committees so long as all expenses are borne by a political fund which contains only monies lawfully contributed under Act. (See AOR 1976-24.) Similarly, the Commission has permitted a national trade association and its member state groups to engage in joint solicitation without pro-rating expenses (see AO 1979-75).

The Commission has not explained why it treats authorized committees differently from other political committees. Since the definition of contribution is equivalent for all political committees, there appears to be no rational basis for the distinction. If authorized committees are to be penalized for their status, due process requires there at least be a rational basis for doing so and that this basis be articulated in a manner that would permit judicial review. If the Commission determines that there is a rational basis for treating authorized committees differently, it should propose a regulation, with notice and opportunity for public comment, and allow the Act's legislative review. The regulation should be accompanied with an explanation and justification articulating the basis for the Commission's decision. Until that is done, the Commission's arbitrary treatment of joint fundraising by authorized committees offends constitutional requirements of due process and violates the Act's attempt to prevent such arbitrary treatment through the safeguard of legislative review of regulations.

(2) The Committee is in the process of sending the attached letter (Exhibit I) to contributors to notify them as to how their contributions were allocated.

8 3 0 4 0 3 9 0 3 4 2

Recommendation B.

The Committee has refunded the contributions the Audit Division found to be excessive. Copies of the refund checks are enclosed. (Exhibit II.)

Recommendation C.

(1) As this recommendation is contingent on the Commission's determination with respect to the Committee's response to Recommendation A, the Committee will withhold action on these earmarked contributions.

(2) With respect to the $2,000 contribution earmarked to the Kennedy for President Committee, the Committee obtained a letter signed by both the signator of the check and her spouse that states that the contribution was a joint contribution. This documentation is enclosed as Exhibit III.

Sincerely,

William C. Oldaker

Enclosures

cc: Commissioners, General Counsel

EXHIBIT 1

Dear :

President Carter and Senator Kennedy wish to thank you for your generous contribution to the Carter/Kennedy Unity Dinner held last September.

This is to let you know that your contribution was allocated to ______________________________.

Your past, and we trust, future support of the Democratic Party is deeply appreciated.

Sincerely,

William C. Oldaker

(ii) Designated contributions which exceed the contributor's limit to the designated participant under 11 C.F.R. Part 110 may not be re-allocated by the fundraising representative absent the permission of the contributor.

(7) Allocation of Expenses and Distribution of Net Proceeds.

(i) If participating committees are not affiliated as defined in 11 C.F.R. 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 C.F.R. 102.7(c)(6)(i) the fundraising representative shall determine each participant's share of expenses based on the percentage of the total receipts each participant has been allocated. See 11 C.F.R. 102.7(c)(3)(i) regarding funds not included in total receipts for expense allocation purposes. To determine each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 C.F.R. Part 110.

(ii) If participating committees are affiliated as defined in 11 C.F.R 110.3 prior to the joint fundraising activity or if participants are committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(8) Reporting of Receipts and Disbursements.

(i) Reporting Receipts

(A) If the fundraising representative is a separate fundraising committee or a participating committee, the fundraising representative shall report all funds received in the reporting period in which they are received. If the fundraising representative is a commercial fundraising agent or firm, a participating political committee shall report gross receipts in the reporting period in which they are received by fundraising representative.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esquire
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On , the Federal Election Commission determined that there is reason to believe that your client, the Carter/Kennedy Unity Dinner Committee, violated 2 U.S.C. §441a(f) and 441a(a)(8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting contributions violative of 2 U.S.C. §441a(a)(1)(A) and by failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale. 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 demonstate 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 within fifteen (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 client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. <u>See</u> 11 C.F.R. §111.18(d).

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 Nancy B. Nathan, the attorney assigned to this matter, at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

85040390348

Enclosures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

[redacted]

MUR NO. 1392
STAFF MEMBER & TEL. NO.

Nancy B. Nathan

523-4073

RESPONDENT: Carter/Kennedy Unity Dinner committee

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

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed apparent violations of the Federal Election Campaign Act of 1971, as amended. Referred to the -- Commission's Office of General Counsel for further review and action were the following findings as to the Carter/Kennedy Unity Dinner. 1) an excessive contribution under 2 U.S.C. §441a(a)(1)(A)(totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds, and the acceptance by Kennedy for President of an excessive contribution; (2) failure of the Unity Committee to document notification to contributors of the allocation of their contributions, as the participants in the Unity Dinner previously had agreed, so that contributors might observe the §441a limits; (3) failure by the Unity Committee to document refunds of some contributions received from persons who had exceeded their individual contribution limits; and (4) failure by the Unity Committee to allocate contributions earmarked for Carter/Mondale, pending the Commission's resolution of the question of allocation

83040390349

of expenses, supra.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee ("the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period of October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

1. ALLOCATION OF FUND-RAISING EXPENSES

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365.062.85. Subtracted from that gross by Audit was $52,445.75, because certain contributions were earmarked for Carter/Mondale and because the § 441a(a) (1) (A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee (see infra).

As the audit report notes, Adivsory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint fundraiser, expenses ordinarily must be shared on a *pro rata* basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its *pro rata* share of expenses, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 — 85.63% of the expenses.)

The interim audit report recomended that the Unity Committee seek a refund of approximately that amount 1/ from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared *pro rata* is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO-1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. *See also*, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers.

[redacted] It cites 2 U.S.C. §437 f (b), asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section.[2/]

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in §431(8)(A) be subject to the limitations of §441a.[3/]

2/ 2 U.S.C. §437 f (b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 CFR §102.7(b)(7).

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." CMA v. FEC, supra, 101 S.Ct. 2712 at 2723 n. 19.

Accord, Buckley v. Valeo, 424 U.S. 1, 37; United States v. Chestnut, 394 F. Supp. 581, 586-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), cert. denied, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done within §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on pro rata allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C §431(8)(A). That contention overlooks 11 CFR §110.1(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committee's assertion, the opinions referred to do not demonstrate that one committee may pay another's solitication expenses without making a contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to freely support their association with dues that are partially used for

the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly, Re:AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.[4/] It is inapposite to the relationship between Carter/Mondale and Kennedy for President.

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitation expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).[5/]

4/ While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/ In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978). That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441(b)(b)(2)(c). *See*, *e.g.*, *California Medical Association v. Federal Election Commission*, *supra*, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.").

Therefore, it is recommended that the Commission find reason to believe the Carter/Mondale Presidential Committee has violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee, in the form of a disproportionate share of Unity Dinner expenses, and that the Kennedy Committee has violated §441a(f) by knowingly accepting such contribution.

2. NOTICE TO CONTRIBUTORS OF ALLOCATION OF CONTRIBUTIONS

At the time of the audit report, it was unclear whether there had been a resolution of the basis for the second finding: failure of the Unity Committee to notify contributors of the allocation of their contributions. At the time of the Audit report, a draft of such a notification had been submitted by the Committee. As a part of the enforcement process, the Committee's fulfillment of its obligation of notification will be sought.

3. REFUND OF INDIVIDUALS' EXCESS CONTRIBUTIONS

The third finding involves Committee receipt of contributions totalling $5,900 from individuals who already had contributed $1,000 to both Carter/Mondale and Kennedy for President. Additionally, there was a $5,000 contribution to the Unity Committee by a multicandidate committee that already had contributed $5,000. Photocopies of refund checks for the $5,000 amount, and for $4,000 of the $5,900 in excess individual contributions, have been furnished by the Unity Committee. Because there is no evidence that $1,900 in individual contributions has been refunded, the matter was referred to OGC. The Unity Committee's response to the interim audit report simply stated that the Committee had refunded (all) contributions the Audit Division found excessive; no reference was made to the $1,900 for which copies of refund checks were not furnished. Therefore, a violation by the Unity Committee of 2 U.S.C. §441a(f) appears to be made out in the knowing acceptance of contributions violative of §441a(a)(1)(A), _i.e._, contributions that exceed the individual contributors' §441a limits.

4. EARMARKED CONTRIBUTIONS

The fourth finding concerns $12,000 in contributions to the Unity Dinner that were earmarked for Carter/Mondale. Of those, a $1,000 contribution is not acceptable to Carter/Mondale because it represents an excess contribution for the contributor.

The interim audit report recommended that the earmarked contributions acceptable to Carter/Mondale be included in the proceeds distributed to that Committee, and that the unacceptable $1,000 be refunded to the contributor.

The Unity Committee's response to the interim audit report said that the recommended action would not be taken pending the Commission's ruling on the first finding, which will determine final distribution of dinner proceeds (see supra). Because of the delay to date in complying with the requirements that 2 U.S.C. §441a(a)(8) places on intermediary recipients of earmarked contributions, a violation of that section appears to be made out by the Unity Committee's failure to report the source of the contribution and the intended recipient to both the Commission and the intended recipient (here, Carter/Mondale). Additionally, the Unity Committee's delay to date in allocating contributions earmarked for Carter/Mondale to that committee has resulted in an apparent violation of 2 U.S.C. §434(b)(2) and (3) by Carter/Mondale. Those provisions of the Act require committees to report to the Commission all contributions received and to identify all persons contributing in excess of $200 within a calendar year, and the amounts and dates of their contributions.

Therefore, it is recommended that the Commission find reason to believe that the Carter/Mondale Presidential Committee violated 2 U.S.C. §441a(a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale; find reason to believe the Kennedy for President Committee violated 2 U.S.C. §441a(f) by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale; find reason to believe the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(f) in knowingly accepting contributions violative of §441a(a)(1)(A), as to contributions exceeding contributors' individual §441a limits; find reason to believe the Carter/Kennedy Unity Dinner Committee violated 2 U.S.C. §441a(a)(8) in failing to report to the Commission and to the Carter/Mondale Presidential Committee those contributions earmarked for Carter/Mondale; and find reason to believe the Carter/Mondale Presidential Committee violated 2 U.S.C. §434(b)(2) and (3) by failing to report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

S. Lee Kling, Treasurer
Carter/Mondale Presidential Committee
4710 Bethesda Avenue
Suite 302
Bethesda, Maryland 20814

Re: MUR 1392

Dear Mr. Kling:

On , the Federal Election Commission determined that there is reason to believe that your committee violated 2 U.S.C. §§434(b)(2), 434(b)(3), and 441(a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by failing to report to the Commission receipt of contributions earmarked for the Carter/Mondale Presidential Committee and collected by the Carter/Mondale Unity Dinner Committee, and by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale. 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 within fifteen (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 conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. See 11 C.F.R. §111.18(d).

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 Nancy B. Nathan, the attorney assigned to this matter at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1392
STAFF MEMBER & TEL. NO.

Nancy B. Nathan
523-4073

RESPONDENT: Carter/Mondale Presidential Committee

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

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed apparent violations of the Federal Election Campaign Act of 1971, as amended. Referred to the Commission's Office of General Counsel for further review and action were the following findings as to the Carter/Mondale Presidential Committee: (1) an excessive contribution under 2 U.S.C. §441a(a) (1) (A) (totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds, and (2) failure by Carter/Mondale to report contributions earmarked for Carter/Mondale.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee ("the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period from October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total expenditures of $365,181.50, and a closing cash balance of $15,405.60.

1. ALLOCATION OF FUND-RAISING EXPENSES

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365,062.85. Subtracted from that gross was $52,445.75, because certain contributions were earmarked for Carter/ Mondale and because the §441a(a)(1)(A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee (see infra).

As the audit report notes, Advisory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint

fundraiser, expenses ordinarily must be shared on a pro rata basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its pro rata share of expenses, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 -- 85.63% of the expenses.)

The interim audit report recomended that the Unity Committee seek a refund of approximately that amount[1/] from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared pro rata is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO-1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. See also, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers.

[redacted] cites 2 U.S.C. §437 f ([redacted]), asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section.[2/]

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in §431(8)(A) be subject to the limitations of §441a.[3/]

2/ 2 U.S.C. §437 f (b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 CFR §102.7(b)(7).

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." CMA v. FEC, supra, 101 S.Ct. 2712 at 2723 n. 19.

Accord, Buckley v. Valeo, 424 U.S. 1, 37; United States v. Chestnut, 394 F. Supp. 581, 586-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), cert. denied, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done within §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on pro rata allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C §431(8)(A). That contention overlooks 11 CFR §110.1(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committee's assertion, the opinions referred to do not demonstrate that one committee may pay another's solitication expenses without making a contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to freely support their association with dues that are partially used for

the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly, Re:AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.[4/] It is inapposite to the relationship between Carter/Mondale and Kennedy for President.

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitation expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).[5/]

4/ While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/ In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978). That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441b (b) (2) (c). *See*, e.g., *California Medical Association v. Federal Election Commission*, *supra*, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.")

Therefore, it is recommended that the Commission find reason to believe the Carter/Mondale Presidential Committee has violated 2 U.S.C. §441a (a) (1) (A) by making an excessive contribution to the Kennedy for President Committee, in the form of a disproportionate share of Unity Dinner expenses.

2. EARMARKED CONTRIBUTIONS

The second finding concerns $12,000 in contributions to the Unity Dinner that were earmarked for Carter/Mondale. Of those, a $1,000 contribution is not acceptable to Carter/Mondale because it represents an excess contribution for the contributor.

The interim audit report recommended that the earmarked contributions acceptable to Carter/Mondale be included in the proceeds distributed to that Committee, and that the unacceptable $1,000 be refunded to the contributor.

The Unity Committee's response to the interim audit report said that the recommended action would not be taken pending the Commission's ruling on the first finding, which will determine final distribution of dinner proceeds (see supra). The Unity Committee's delay to date in allocating contributions earmarked for Carter/Mondale to that committee has resulted in an apparent violation of 2 U.S.C. §434 (b)(2) and (3) by Carter/Mondale. Those provisions of the Act require committees to report to the Commission all contributions received and to identify all persons contributing in excess of $200 within a calendar year, and the amounts and dates of their contributions.

RECOMMENDATIONS

Therefore, it is recommended that the Commission find reason to believe that the Carter/Mondale Presidential Committee violated 2 U.S.C. §441a (a)(1)(A) by making an excessive contribution to the Kennedy for President Committee in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the pro rata share of proceeds of that dinner received by Carter/Mondale, and find reason to believe the Carter/Mondale Presidential Committtee violated 2 U.S.C. §434 (b)(2) and (3) by failing to report to the Commission receipt of contributions earmarked for Carter/Mondale and collected by the Unity Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esquire
Treasurer, Kennedy for President
Committee
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1392

Dear Mr. Oldaker:

On , the Federal Election Commission determined that there is reason to believe that your committee, Kennedy for President Committee, violated 2 U.S.C. §441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by knowingly accepting a contribution from the Carter/Mondale Presidential Committee that is violative of 2 U.S.C. §441a(a)(1)(A), in the form of expenses of the Carter/Kennedy Unity Dinner that exceed the *pro rata* share of proceeds of that dinner received by Carter/Mondale. 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 within fifteen (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 conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire. *See* 11 C.F.R. §111.18(d).

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 Nancy B. Nathan, the attorney assigned to this matter at 202-523-4073.

Sincerely,

John Warren McGarry
Chairman

Enclosures

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1392
STAFF MEMBER & TEL. NO.

Nancy B. Nathan
523-4073

RESPONDENT: Kennedy for President Committee

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

The Commission's interim audit report of the Carter/Kennedy Unity Dinner Committee detailed apparent violations of the Federal Election Campaign Act of 1971, as amended. Referred to the Commission's Office of the General Counsel for further review and action was the following finding as to the Kennedy for President Committee:

- acceptance of an excessive contribution (totalling about $45,000) by the Carter/Mondale Presidential Committee ("Carter/Mondale") to the Kennedy for President Committee, resulting from Carter/Mondale's assumption of all expenses of the Unity Dinner, rather than the same proportion of expenses as of proceeds.

FACTUAL AND LEGAL ANALYSIS

The Carter/Kennedy Unity Dinner Committee ("the Unity Committee") registered with the Federal Election Commission ("the Commission") as a joint fundraising committee, and was authorized by President Jimmy Carter and Senator Edward M. Kennedy, on September 30, 1980. Affiliated with the Unity Committee were the Carter/Mondale Presidential Committee and the Kennedy for President Committee. Headquarters of the Unity Committee are in Washington, D.C.

The audit covered the period from October 1, 1980 through December 31, 1980. The Unity Committee reported an opening cash balance of -0-, total receipts of $380,587.10, total disbursements of $365,181.50, and a closing cash balance of $15,405.60.

By pre-arrangement, proceeds of the Unity Dinner were to go to the Kennedy Committee, at least to the extent of $500,000. Dinner receipts totalled $365,062.85. Subtracted from that gross by audit was $52,445.75, because certain contributions were earmarked for Carter/Mondale and because the §441a(a)(1)(A) individual contribution limits of some contributors barred allocation of their contributions to the Kennedy Committee.

As the audit report notes, Advisory Opinions 1977-14, 1977-61, 1979-12 and 1979-35 reflect the Commission's consistent position that when there is unequal distribution of proceeds from a joint

fundraiser, expenses ordinarily must be shared on a pro rata basis. Where one participant (here, Carter/Mondale) in the joint fundraiser absorbs more than its pro rata share of expenses, the excess amount represents an in-kind contribution to the other committee (here, Kennedy for President). The Kennedy share of proceeds was 85.63% of receipts. Total expenses for the event were $73,815.08. To date, the Unity Committee has distributed $295,099 to Kennedy for President, which is $45,692.54 more than Kennedy for President's proper net share of proceeds ($312,617.10 -- 85.63% of the expenses.)

The interim audit report recomended that the Unity Committee seek a refund of approximately that amount 1/ from Kennedy for President and distribute it to Carter/Mondale. The Unity Committee has declined to comply with that recommendation, contending that the principle that expenses of joint fundraisers be shared pro rata is not a matter of law, since it has been enunciated only in Advisory Opinions.

Beginning with AO-1977-14, the Commission has cautioned advisory opinion recipients that expenses of joint fundraisers must be allocated in the same proportion as are proceeds in order that a contribution is not made by one participant to the other. See also, AOs 1977-61, 1979-12 and 1979-35. The Unity Committee's response charges that "those four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations."

1/ The amount the audit report recommends be refunded is slightly at variance with the $45,692.54 figure. The auditors finally recommended that $44,692.18 be returned, following receipt of late transfers.

[illegible]. It cites 2 U.S.C. §437(f)(b), asserting that the Commission's position, as taken in the four AOs, amounts to "legal legerdemain" that Congress intended to proscribe by the cited section. 2/

In fact, the cited advisory opinions merely spell out the plain rule that one committee's payment of solicitation expenses for another committee constitutes the making of a contribution to the benefitting committee. This rule is clearly spelled out in the statute and regulations. A "contribution" is defined at 2 U.S.C. §431(8)(A)(i) 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." Under 11 C.F.R. §100.7(a)(1)(iii), "anything of value" includes "all in-kind contributions" and "the provision of any goods or services without charge."

In California Medical Association v. Federal Election Commission, 101 S. Ct. 2712 at 2723 n. 19 (1981), the Supreme Court reaffirmed that Congress intended that all forms of contributions detailed in §431(8)(A) be subject to the limitations of §441a. 3/

2/ 2 U.S.C. §437(f)(b) provides:

"Procedures applicable to initial proposal of rules or regulations, and advisory opinions. Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section."

The Commission presently is considering proposed regulations on all aspects of joint fundraising. The draft regulations contain the same provision on shared expenses that has been enunciated in advisory opinions. Proposed 11 CFR §102.7(b)(7).

3/ The Court saw the inclusion of all forms of financial and in-kind support within the contribution limits as integral to the Act's scheme of preventing political corruption. It warned, "(I)f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be coverted into contributions. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support...In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit." CMA v. FEC, supra, 101 S.Ct. 2712 at 2723 n. 19.

Accord, *Buckley v. Valeo*, 424 U.S. 1, 37, *U.S. v. Chestnut*, 394 F. Supp. 581, 586-87 (S.D.N.Y. 1975), aff'd, 533 F.2d 40 (2d Cir. 1976), *cert. denied*, 429 U.S. 829 (1976). The Commission consistently has reminded advisory opinion recipients that allocation of expenses must be done within §441a limits, as the AOs cited by the Unity Committee illustrate.

The Unity Committee further objects to the findings on *pro rata* allocation of expenses on the substantive ground that, since the event was post-nomination, a contribution "for the purpose of influencing (the) election" cannot have been made by Carter/Mondale in picking-up the excess expenses, as is required by the Act's definition of "contribution." 2 U.S.C §431(8)(A). That contention overlooks 11 CFR §110.0(g)(2), which provides that: "Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110" (Contribution and Expenditure Limitations). Senator Kennedy's campaign debt derived from the presidential primary elections.

A further contention by the Unity Committee is that the Commission treats authorized political committees differently from all other committees, and that the Act does not justify that distinction. In support of this proposition, however, the Committee incorrectly cites several advisory opinions. Contrary to the Committees' assertion, the opinions referred to do not demonstrate that one committee may pay another's solitication expenses without making a contribution to the recipient committee.

Advisory Opinion 1980-59, for instance, recognized the unique relationship between trade associations and their member corporations. It approved member corporations' payments to the trade association which were to be used by the association's political action committee; the AO recognized that, since the Act permits member corporations to freely support their association with dues that are partially used for

the PAC, direct support for the PAC is contemplated by the Act. AO 1980-59 cannot be said to authorize the support respondents argue one candidate's committee should be able to provide to another's committee.

Similarly,Re:AOR 1976-24 is not supportive of respondents' position. The joint solicitation involved there was conducted by a federal committee and a legislative fund not involved in federal elections.[4] It is inapposite to the relationship between Carter/Mondale and Kennedy for President ,

While the Unity Committee also relies upon AO 1979-75, involving joint solicitation by a national trade association and its member state groups, in fact that AO did not consider the question of pro-rating expenses of the solicitation, despite the Committee's contention. It is noteworthy, moreover, that had the Commission there considered the pro-rating question, the Act's express exemption for payment of solicitation expenses by an incorporated membership organization would virtually compel the result that no contribution results where the membership organization pays the solicitation expenses for its federal and non-federal committees. 2 U.S.C. §§441b(b)(2)(C); 431(8)(B)(vi).[5]

4/ While the AOR asked whether the federal committee could bear the entire solicitation costs, the Commission did not answer that question.

5/ In connection with the Unity Committee's contention that the Commission improperly treats joint solicitations by trade associations and labor unions differently from those by all other committees, reference also was made by the Committee to FEC Audit Report #159, at 3-4 (1978). That reference appears to be inaccurate; Audit Report #159 is not pertinent.

Further, the Committee's contention that the Commission arbitrarily favors solicitations by labor and trade organizations and corporations ignores consistent court rulings approving the Act's special treatment, as to solicitations, for unions and corporations, in view of their otherwise circumscribed activities under the Act. 2 U.S.C. §441b (b)(2)(c). *See*, e.g., *California Medical Association v. Federal Election Commission*, *supra*, 101 S. Ct. at 2724 ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.")

Therefore, it is recommended that the Commission find reason to believe the Kennedy for President Committee has violated 2 U.S.C. §441a(f) by accepting an excessive contribution in the form of a disproportionate share of Unity Dinner expenses paid in effect by the Carter/Mondale Presidential Committee.

1050 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

TELEPHONE
202 296-0505

CABLE ADDRESS: "CHALORAY"
710-822-9267

Attachment 2

June 12, 1981

Mr. Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Costa:

This letter is submitted on behalf of the Carter/Kennedy Unity Dinner Committee in response to your letter of May 6, 1981, enclosing a copy of the interim audit report for the Committee.

Recommendation A.

(1) The Committee wishes to object to the interim report's recommendations that the Committee should seek a refund of $46,633.41 from the Kennedy for President Committee and distribute $44,692.18 to the Carter/Mondale Committee.

This recommendation is based on the erroneous contention that, as a matter of law, authorized committees that engage in joint fundraising must share expenses on a pro-rata basis. There is no FEC regulation which requires joint fundraising expenses to be shared on this particular basis and, indeed, the Commission has permitted non-pro-rata sharing of joint fundraising expenses in situations not involving authorized committees.

The interim audit report reflects the lack of a regulatory basis for its position by citing no statutory or regulatory support for its legal argument, instead only four Advisory Opinions. The Committee is willing to concede that the Commission could, if it so desired, promulgate a regulation that would require pro-rata sharing of joint fundraising expenses by political committees. The Advisory Opinion process, however, cannot substitute for the issuance of regulations. The Federal Election Campaign Act mandates that "[a]ny rule of law which is not stated in this Act ... may be initially proposed only as a rule or regulation pursuant to the procedures established in section 438(d)." 2 U.S.C. § 437f(b)(Supp.III 1979).

The pro-rata sharing rule stated by the four Advisory Opinions cited in the interim report (Advisory Opinions 1977-14, 1977-61, 1979-12, and 1979-35) is not set forth in the Act or in Commission regulations. The Advisory Opinions cited reflect this. AO 1977-14 gives no citation of the section of the Act or Commission regulations on which the pro-rata rule is based, although it does contain a tangential footnote referring to the regulation that treats the entire amount paid for a ticket to a fundraising event as a contribution by the purchaser. (Current version at 11 C.F.R. § 100.7(a)(2) (1981).) Similarly, AO 1977-61 only cites two previous Advisory Opinions, neither of which give any direct statutory or regulatory support. In AO 1979-12 the Commission pointed to the Act's definition of contribution-in-kind and the general rule for allocating expenditures between candidates in 11 C.F.R. § 106.1. But the allocation rule cited only requires a reasonable basis allocation and the different treatment accorded joint fundraising by non-affiliated separate segregated funds shows that non-pro-rata sharing is not *per se* unreasonable. Subsequently, in Advisory Opinion 1979-35, the Commission once again set forth the pro-rata sharing rule without any support for its position.

The four Advisory Opinions constitute an attempt by the Commission to circumvent the Act's detailed procedures for promulgating regulations. It is precisely this type of legal legerdemain that Congress intended to prevent by enacting the prohibition contained in 2 U.S.C. § 437f(b).

Even assuming, *arguendo*, that the Act's definition of contribution-in-kind might require some expense sharing between authorized committees in certain situations, there is the threshold question of whether, in the case of the Unity Dinner Committee, payments for expenses by one candidate were made for the purpose of influencing the election of the other candidate. *See* 2 U.S.C. § 431(8)(A) (Supp.III 1979). Post-election joint fundraising between two opponents cannot be interpreted logically to be for the purpose of influencing a candidate's election. It strains credulity to argue that a candidate would make expenditures to influence the nomination or election of his or her opponent. Furthermore, at the time the Unity Dinner was held, Senator Kennedy had lost the nomination and President Carter was engaged in a general election campaign against then Governor Reagan and Congressman John Anderson. It therefore was impossible for the Carter/Mondale Committee's payment of most of the fundraising expenses of the Unity Dinner Committee to have been for the purpose of influencing Senator Kennedy's election, and inconceivable that it was for the purpose of influencing the election of Ronald Reagan or John Anderson.

83040390379

Furthermore, the Commission has adopted a different rule for joint solicitations conducted by labor organizations and trade associations. In these situations the Commission has not required fundraising expenses to be shared on a pro-rata basis, or be considered a contribution, even where the participating groups are not affiliated. One labor organization may, in fact, bear the entire expense of soliciting contributions to another labor organization's separate segregated fund. See FEC Audit Report #159, at 3-4 (1978). Similarly, a member corporation of an incorporated trade association may help defray the administrative expenses of the trade association's separate segregated fund without this being considered a contribution. Advisory Opinion 1980-59. Both these decisions, it should be emphasized, involved unaffiliated organizations. The Commission also has not required that joint federal-state solicitation expenses be pro-rated between an organization's state and federal committees so long as all expenses are borne by a political fund which contains only monies lawfully contributed under Act. (See AOR 1976-24.) Similarly, the Commission has permitted a national trade association and its member state groups to engage in joint solicitation without pro-rating expenses (see AO 1979-75).

The Commission has not explained why it treats authorized committees differently from other political committees. Since the definition of contribution is equivalent for all political committees, there appears to be no rational basis for the distinction. If authorized committees are to be penalized for their status, due process requires there at least be a rational basis for doing so and that this basis be articulated in a manner that would permit judicial review. If the Commission determines that there is a rational basis for treating authorized committees differently, it should propose a regulation, with notice and opportunity for public comment, and allow the Act's legislative review. The regulation should be accompanied with an explanation and justification articulating the basis for the Commission's decision. Until that is done, the Commission's arbitrary treatment of joint fundraising by authorized committees offends constitutional requirements of due process and violates the Act's attempt to prevent such arbitrary treatment through the safeguard of legislative review of regulations.

(2) The Committee is in the process of sending the attached letter (Exhibit I) to contributors to notify them as to how their contributions were allocated.

Recommendation B.

The Committee has refunded the contributions the Audit Division found to be excessive. Copies of the refund checks are enclosed. (Exhibit II.)

Recommendation C.

(1) As this recommendation is contingent on the Commission's determination with respect to the Committee's response to Recommendation A, the Committee will withhold action on these earmarked contributions.

(2) With respect to the $2,000 contribution earmarked to the Kennedy for President Committee, the Committee obtained a letter signed by both the signator of the check and her spouse that states that the contribution was a joint contribution. This documentation is enclosed as Exhibit III.

Sincerely,

William C. Oldaker

Enclosures

cc: Commissioners, General Counsel

EXHIBIT I

Dear :

President Carter and Senator Kennedy wish to thank you for your generous contribution to the Carter/Kennedy Unity Dinner held last September.

This is to let you know that your contribution was allocated to ______________________________.

Your past, and we trust, future support of the Democratic Party is deeply appreciated.

Sincerely,

William C. Oldaker

8 3 0 4 0 3 9 0 3 8 2

8 3 0 4 0 3 9 0 3 8 5

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1392

Date Filmed 4/28/83 Camera No. --- 2

Cameraman AC

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 1392.

EPSTEIN BECKER BORSODY & GREEN, P.C.
ATTORNEYS AT LAW
1140 19TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 861-0900

250 PARK AVENUE
NEW YORK, NEW YORK 10177
(212) 370-9800

MALLICK TOWER
ONE SUMMIT AVENUE
FORT WORTH, TEXAS 76102'
(817) 334-0701

235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104'
(415) 398-5565

1875 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
(213) 556-8861

JEFFREY H. BECKER
ROBERT P. BORSODY
LAURENCE K. BROWN*
WILLIAM A. CARMELL*
STEVEN B. EPSTEIN
STUART M. GERSON
GILBERT J. GINSBURG
RONALD M. GREEN
KENNETH HARFENIST*
WILLIAM A. HELVESTINE*
GREGORY R. HIESTAND*
ROBERT L. JAUVTIS*
WILLIAM G. KOPIT
FRANK C. MORRIS, JR.
JOSEPH R. PARKER**
SUSAN SCHENKEL-SAVITT*
FRANKLIN R. SEARS**
RICHARD G. VERNON

BRIAN A. BANNON
AMY J. BEECH*
PHILIP M. BERKOWITZ*
CAROL S. BERNHEIM*
DALE E. CALLENDER*
ROBERT A. DOLINKO*
KAREN BONNIE EATON
JACK A. EIFERMAN*
THOMAS M. FARAH
LAURENCE W. FUTTERMAN*

JEAN M. GALLOWAY
PHILIP H. GASSEL*
PETER S. GRAY
DOUGLAS A. HASTINGS
LISA B. HOROWITZ
WAYNE A. KEUP*
LISL E. KING
SANDRA R. KING
DENNIS A. LALLI*
DAVID H. LARRY
JUDAH LIFSCHITZ
DAVID C. MAIN, JR.
STEPHEN R. MILLS*
ROBERT J. MOSES
JOY D. OBERMAN*
DONALD S. PICARD
INA A. PLOTSKY*
KATHERINE McBROOM-REDWINE
RICHARD J. REISSTEIN*
ROBERT D. REIF
DONALD G. SHALHOUB
LYNN E. SHAPIRO
RICHARD L. STEER*
LINDA V. TIANO*
KENNETH S. WECKSTEIN
RANDALL G. WELLS*
TERASA H. WICKERSTY
KATHLEEN M. WILLIAMS
MICHAEL L. ZIEGLER*

STEVEN H. CARSEY**
EDWIN H. EPSTEIN
ARNOLD R. LEVY*
JAMES P. MULKEEN
WILLIAM C. OLDAKER
DONALD PARTLAND*
FREDERICK E. SMITHLINE*
SIDNEY TODRES*
OF COUNSEL

*NOT ADMITTED WASHINGTON
**ADMITTED TEXAS ONLY

'P.C. NEW YORK AND WASHINGTON, D.C. ONLY

June 29, 1983

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

Re: Kennedy for President Committee
Debt Settlement

Dear Mr. Steele:

Enclosed for your approval is a Debt Settlement Agreement entered into between the Kennedy for President Committee and Carter-Mondale Presidential Committee.

The Settlement Agreement calls for the Committee to pay $9,750.00 to settle its outstanding debt of $45,692.54.

Please feel free to contact me if you require additional information.

Sincerely,

Bill

William C. Oldaker

WCO:kb

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	COMMITTEE NO.
	)	C001150022
Kennedy for President Committee	)	
Debt Settlement	)	
	)	

DEBT SETTLEMENT AGREEMENT

1. Pursuant to 11 C.F.R. §114.10(c), the Kennedy for President Committee ("Committee") and Carter-Mondale Presidential Committee, Inc. hereby enter into a debt settlement agreement and request Commission approval of the same.

2. The Committee's current obligation to the Carter-Mondale Presidential Committee, Inc. is: $45,692.54.

3. This obligation was incurred for: Unity Dinner expenses.

4. Being unable to meet its obligation to Carter-Mondale Presidential Committee, Inc., the Committee offers, and Carter-Mondale Presidential Committee, Inc. hereby agrees to accept, the following as settlement in full for the Committee's outstanding obligation to Carter-Mondale Presidential Committee, Inc.: $9,750.00

~~5. Carter-Mondale Presidential Committee, Inc. verifies that the initial extension of credit to committee was commercially reasonable; that it has taken all commercially resonable steps to collect the full amount owing; and that the settlement agreed to is comparable to other debt settlements it has made with commercial debtors.~~

DBW

6. This agreement is conditioned on approval by the Federal Election Commission.

FOR CARTER-MONDALE PRESIDENTIAL COMMITTEE, INC.

Name: Douglas B. Huron
Title: Counsel
Date: 6/21/83

FOR KENNEDY FOR PRESIDENT COMMITTEE

William C. Oldaker
Treasurer
Date: 6/20/83

FOR THE FEDERAL ELECTION COMMISSION:

Approved

Name:
Title:
Date:

WASHINGTON D.C. JUN 27 '83

U.S. POSTAGE

83 JUN 30 A 9: 00

8 3 0 4 0 4 1 3 6 7 5

EPSTEIN BECKER BORSODY & GREEN, P. C.
ATTORNEYS AT LAW
1140 19TH STREET, N. W.
WASHINGTON, D. C. 20036

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

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1392.