FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1469

Date Filmed 4/4/84 Camera No. --- 3

Cameraman JRL

FEDERAL ELECTION COMMISSION

Conciliation Agreements, letters discussing Concil Agmts Routing Cards, Routing Slips, a checks from individuals with acct #s [redacted] it 1/2 dag rept + comment sheets

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

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

Signed [signature]

date 4/2/84

FEC 9-21-77

9404014523

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1469
Little Dixie Supermarkets, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 28, 1984, the Commission decided by a vote of 6-0 to take the following actions in MUR 1469:

1. Take no further action against Little Dixie Supermarkets, Inc.
2. Approve the letters as attached to the General Counsel's Report signed February 23, 1984.
3. Close the file.

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

Attest:

2-28-84
Date

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

Received in Office of Commission Secretary: 2-23-84, 4:05
Circulated on 48 hour tally basis: 2-24-84, 2:00

8401447526

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1984

Robert Murphree, Esq.
Trustee in Bankruptcy
P.O. Box 370
Jackson, Mississippi 39205

RE: MUR 1469
Little Dixie Supermarkets,
Inc.

Dear Mr. Murphree:

This is to advise you that on February 28, 1984, the Commission decided to take no further action against Little Dixie Supermarkets, Inc., and to inform you that the file in this matter has now been closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8440014525

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Murphree, Esq.
Trustee in Bankruptcy
P.O. Box 370
Jackson, Mississippi 39205

RE: MUR 1469
Little Dixie Supermarkets,
Inc.

Dear Mr. Murphree:

This is to advise you that on February 28, 1984, the Commission decided to take no further action against Little Dixie Supermarkets, Inc., and to inform you that the file in this matter has now been closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

3/14

By: Kenneth A. Gross
Associate General Counsel

8404014456

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1984

Robert Bauer, Esq.
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 1469
Dowdy for Congress Committee

Dear Mr. Bauer:

This is to advise you that on February 28, 1984, the entire file in this matter was closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

cc: Congressman Charles Wayne Dowdy
1631 Longworth House Office Building
Washington, D.C. 20515

8401417

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Bauer, Esq.
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 1469
Dowdy for Congress Committee

Dear Mr. Bauer:

This is to advise you that on February 28, 1984, the entire file in this matter was closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

BAM 3/14

By: Kenneth A. Gross
Associate General Counsel

cc: Congressman Charles Wayne Dowdy
1631 Longworth House Office Building
Washington, D.C. 20515

8404014458

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1984

Alvin M. Binder, Esq.
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

RE: MUR 1469
Berryhill Farms, Inc. of Terry

Dear Mr. Binder:

This is to advise you that on February 28, 1984, the entire file in this matter was closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8401014529

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin M. Binder, Esq.
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

RE: MUR 1469
Berryhill Farms, Inc. of Terry

Dear Mr. Binder:

This is to advise you that on February 28, 1984, the entire file in this matter was closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

3/14

By: Kenneth A. Gross
Associate General Counsel

8400144520

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1984

Ms. Jacqueline Pierce Smith
P.O. Box 12294
Jackson, Mississippi 39211

RE: MUR 1469

Dear Ms. Smith:

This is in reference to the complaint you filed with the Commission on September 13, 1982, concerning allegations of violations of the Act by Dowdy for Congress Committee.

After conducting an investigation in this matter, the Commission determined there was probable cause to believe that the Dowdy Committee violated 2 U.S.C. § 441b, 11 C.F.R. § 114.9(e), and 2 U.S.C. § 434 and that Berryhill Farms Inc., of Terry and Little Dixie Supermarkets, Inc. violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e), all provisions of the Federal Election Campaign Act of 1971, as amended. On December 22, 1983, and January 6, 1984, conciliation agreements signed by the respondents were accepted by the Commission, thereby concluding the matter. Copies of these agreements are enclosed for your information. On February 28, 1984, the file in this matter was closed.

The file number in this matter is MUR 1469. If you have any questions, please contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreements

8404144621

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ms. Jacqueline Pierce Smith
P.O. Box 12294
Jackson, Mississippi 39211

RE: MUR 1469

Dear Ms. Smith:

This is in reference to the complaint you filed with the Commission on September 13, 1982, concerning allegations of violations of the Act by Dowdy for Congress Committee.

After conducting an investigation in this matter, the Commission determined there was probable cause to believe that the Dowdy Committee violated 2 U.S.C. § 441b, 11 C.F.R. § 114.9(e), and 2 U.S.C. § 434 and that Berryhill Farms Inc., of Terry and Little Dixie Supermarkets, Inc. violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e), all provisions of the Federal Election Campaign Act of 1971, as amended. On December 22, 1983, and January 6, 1984, conciliation agreements signed by the respondents were accepted by the Commission, thereby concluding the matter. Copies of these agreements are enclosed for your information. On February 28, 1984, the file in this matter was closed.

The file number in this matter is MUR 1469. If you have any questions, please contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

DAM 3/.14

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreements

8 4 0 4 0 1 4 4 5 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: February 23, 1984

SUBJECT: MUR 1469 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[X]	Compliance	[X]
Sensitive	[X]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8 4 0 1 0 1 4 4 5 0 3

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	84 FEB 23 P4: 05
	)	MUR 1469
Little Dixie Supermarkets, Inc.	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 1, 1983, the Commission determined there was probable cause to believe Little Dixie Supermarkets, Inc. and Berryhill Farms, Inc., of Terry, violated the Act in connection with the unreimbursed use of its jointly owned corporate aircraft by the Wayne Dowdy for Congress Committee. On that same date, the Commission found probable cause to believe the Dowdy for Congress Committee violated the Act in connection with its use of the corporate aircraft.

On December 22, 1983, and January 6, 1984, the Commission accepted signed conciliation agreements and civil penalty checks from the Dowdy for Congress Committee and Berryhill Farms, Inc., respectively. There has been no written response by Little Dixie to the Commission's probable cause finding to date.

II. LEGAL ANALYSIS

Little Dixie Supermarkets, Inc., is presently in bankruptcy. Its matters throughout this investigation have been administered by a Robert Murphree, Esquire, of Jackson, Mississippi. Mr. Murphree has stated on several occasions that Little Dixie has no money and has a great deal of creditors. Mr. Murphree has also indicated in telephone conversations with General Counsel staff that Little Dixie would be unable to pay any civil penalty

8401445 04

due to its current status.

Accordingly, the Office of General Counsel recommends that the Commision take no further action as it pertains to Little Dixie Supermarkets, Inc., and close the file.

III. **RECOMMENDATION**

The Office of General Counsel recommends that the Commission:

1) Take no further action against Little Dixie Supermarkets, Inc.,

2. Approve attached letters, and;

3. Close the file.

Charles N. Steele
General Counsel

February 23, 1984
Date

BY: Kenneth A. Gross
Associate General Counsel

Attachments
Letter to Robert Murphree, Esq.
Letter to Robert Bauer, Esq.
Letter to Alvin Binder, Esq.
Letter to Jacqueline Pierce Smith, Esq.

8404044505

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Murphree, Esq.
Trustee in Bankruptcy
P.O. Box 370
Jackson, Mississippi 39205

RE: MUR 1469
Little Dixie Supermarkets,
Inc.

Dear Mr. Murphree:

This is to advise you that the Commission has decided to take no further action against Little Dixie Supermarkets, Inc., and to inform you that the file in this matter has now been closed and will become part of the public record within thirty days.

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8401445 06

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Bauer, Esq.
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 1469
Dowdy for Congress Committee

Dear Mr. Bauer:

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

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

cc: Congressman Charles Wayne Dowdy
1631 Longworth House Office Building
Washington, D.C. 20515

8404014457

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin M. Binder, Esq.
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

RE: MUR 1469
Berryhill Farms, Inc. of Terry

Dear Mr. Binder:

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

Should you have any questions, contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8404014458

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ms. Jacqueline Pierce Smith
P.O. Box 12294
Jackson, Mississippi 39211

RE: MUR 1469

Dear Ms. Smith:

This is in reference to the complaint you filed with the Commission on September 13, 1982, concerning allegations of violations of the Act by Dowdy for Congress Committee.

After conducting an investigation in this matter, the Commission determined there was probable cause to believe that the Dowdy Committee violated 2 U.S.C. § 441b, 11 C.F.R. § 114.9(e), and 2 U.S.C. § 434 and that Berryhill Farms Inc., of Terry and Little Dixie Supermarkets, Inc. violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e), all provisions of the Federal Election Campaign Act of 1971, as amended. On December 22, 1983, and January 6, 1984, conciliation agreements signed by the respondents were accepted by the Commission, thereby concluding the matter. Copies of these agreements are enclosed for your information.

The file number in this matter is MUR 1469. If you have any questions, please contact Duane A. Brown, the attorney assigned this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreements

8401014459

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 11, 1984

Alvin M. Binder, Esq.
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

RE: MUR 1469

Dear Mr. Binder:

On January 9, 1984, the Commission accepted the conciliation agreement signed by your client and the civil penalty in settlement of a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, as it pertains to your client and it will become a part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

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

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

9401446

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1469
Berryhills Farms, Inc., of Terry)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Jacqueline Pierce Smith. An investigation was conducted, and reason to believe has been found that Berryhill Farms, Inc., of Terry ("Respondent") violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) by making a corporate contribution to the Dowdy for Congress Committee.

NOW THEREFORE, the Commission and Respondent, having duly entered into conciliation, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

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

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

1. Respondent is a corporation registered to conduct business in the State of Mississippi.

9401446-1

2. Respondent is co-owner of an aircraft with Little Dixie Supermarket, Inc.

3. Respondent permitted Charles Wayne Dowdy use of its airplane.

V. Respondent consented to the use of its corporate airplane without receiving payment for such use in advance in violation of 2 U.S.C. § 441b and 11 CFR 114.9(e).

VI. Respondent will pay a civil penalty to the Treasurer of the United States in the amount of five hundered dollars ($500) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

VIII. 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.

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

8401445512

X. Respondent shall have no more than thirty (30) 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

January 11, 1984
Date

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

12-8-83
Date

Berryhill Farms, Inc., of Terry
Berryhill Farms, Inc., of Terry

BY: Lowery Berryhill, Sec.

ITS: Sec.

8404014461 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin M. Binder, Esq.
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

RE: MUR 1469

Dear Mr. Binder:

On January 9, 1984, the Commission accepted the conciliation agreement signed by your client and the civil penalty in settlement of a violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, as it pertains to your client and it will become a part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

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

Sincerely,

Charles N. Steele
General Counsel

1/10/84

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

3 4 0 4 0 1 4 4 5 1 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: January 5, 1984

SUBJECT: MUR 1469 - Memorandum to The Commission

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[X]	Compliance	[X]
Sensitive	[X]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8 4 0 0 1 4 4 6 1 5

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

84 JAN 5 P12: 30

January 5, 1984

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

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

SUBJECT: MUR 1469 Conciliation Agreement

Attached is a conciliation agreement which has been signed by the Secretary for Berryhill Farms, Inc., of Terry.

The attached agreement contains no changes from the agreement approved by the Commission. In addition, we have received a check for the civil penalty agreed upon between the parties.

The Office of General Counsel recommends the acceptance of this agreement and the closing of the file as it pertains to the Berryhill Farms, Inc., of Terry.

Attachment
Conciliation Agreement
Civil penalty check

8 4 0 4 0 1 4 4 5 1 6

RECEIVED AT THE FEC

83 DEC 19 P 1:33

LAW OFFICES
BINDER, KNAPP, MILNER & KEYES
911 EAST PEARL STREET
P. O. BOX 22
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
MICHAEL L. KNAPP
LISA BINDER MILNER
SAMUEL W. KEYES, JR.

TELEPHONE
948-8000
AREA CODE 601

December 9, 1983

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Enclosed herewith please find Conciliation Agreement which has been executed by Berryhill Farms, Inc. of Terry together with check of our client in the amount of $500.00 representing payment in full of the civil penalty assessed therein.

We appreciate your cooperation in this matter and remain with kindest personal regards

Sincerely,

BINDER, KNAPP, MILNER & KEYES

Alvin M. Binder

AMB:ncb

Enclosures

0 4 0 1 4 4 6 1 7

Pay to the order of
Federal Election Comm./
For Berryhill Farms, Inc.
of Terry - In full

By

95-35-0001

Pay to the order of any Federal Reserve Bank or Branch or General Depositary for credit to the United States Treasury. This check is in payment of an obligation to the United States and must be paid at par. N.P. Do not wire upon payment.

Date of endorsement. 12-20-83

Larry D. McCoy, Dep. Asst. Staff Dir. for Admin.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. [redacted]

negotiation of this check does not constitute acceptance by the Federal Election Commission of the proposed penalty. The proceeds of this check have been placed in a suspense account pending [redacted] mission consideration of the matter.

8 4 0 4 4 5 1 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 5, 1984

Robert F. Bauer
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

On January 3, 1984, the Commission accepted the conciliation agreement signed by you and the civil penalty in settlement of a violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e), both provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your client and it will become a part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

8401445 19

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert F. Bauer
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

On January 3, 1984, the Commission accepted the conciliation agreement signed by you and the civil penalty in settlement of a violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e), both provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your client and it will become a part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

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

Sincerely,

Charles N. Steele
General Counsel

1/4/84

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

8404014450

GCC #1212

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1469
Dowdy for Congress Committee	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Jacqueline Pierce Smith. An investigation was conducted, and reason to believe has been found that the Dowdy for Congress Committee ("Respondent") violated 2 U.S.C § 434(b), 2 U.S.C. § 441b and 11 CFR § 114.9(e) by not reporting the debt owed for use of the corporate airplane; for using the corporate airplane without making payment; and, for failing to pay for use of the plane in advance.

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

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

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

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

1. Respondent, Dowdy for Congress Committee is the authorized campaign committee for Charles Wayne Dowdy.

8

8401144521

2. As such, the respondent failed to report a debt owed for use of a corporate airplane;

3. In addition, the respondent made use of the corporate airplane but failed to pay for its use in advance.

V. Respondent consented to the use of the airplane but failed to pay for its use in advance in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) and, respondent failed to report the debt owed for use of the corporate airplane in violation of 2 U.S.C. § 434(b).

VI. Respondent will reimburse Berryhill Farms, Inc., and Little Dixie Supermarkets, Inc., the normal and reasonable rate charged for use of the corporate aircraft.

VII. Respondent will pay a civil penalty to the Treasurer of the United States in the amount of one thousand dollars ($1,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

8401445522

X. Respondent shall have no more than thirty (30) 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

January 4, 1984
Date

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

December 2, 1983
Date

Dowdy for Congress Committee

BY: Robert F. Bauer
Robert F. Bauer

ITS: Counsel

8404014452 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: December 21, 1983

SUBJECT: MUR 1469 - Memorandum to The Commission

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[x]	Compliance	[x]
Sensitive	[x]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8404014454 24

SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

83 DEC 21 A9: 10

December 21, 1983

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

SUBJECT: MUR 1469 Conciliation Agreement

Attached is a conciliation agreement which has been signed by Counsel for the Dowdy for Congress Committee.

The attached agreement contains no changes from the agreement approved by the Commission. In addition, we have received a check for the civil penalty agreed upon between the parties.

The Office of General Counsel recommends the acceptance of this agreement and the closing of the file as it pertains to the Dowdy for Congress Committee.

Attachment
Conciliation Agreement
Civil penalty check

8401414525

FEC #1212
Brown

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1469
Dowdy for Congress Committee	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Jacqueline Pierce Smith. An investigation was conducted, and reason to believe has been found that the Dowdy for Congress Committee ("Respondent") violated 2 U.S.C § 434(b), 2 U.S.C. § 441b and 11 CFR § 114.9(e) by not reporting the debt owed for use of the corporate airplane; for using the corporate airplane without making payment; and, for failing to pay for use of the plane in advance.

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

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

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

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

1. Respondent, Dowdy for Congress Committee is the authorized campaign committee for Charles Wayne Dowdy.

8

8401014426

2. As such, the respondent failed to report a debt owed for use of a corporate airplane;

3. In addition, the respondent made use of the corporate airplane but failed to pay for its use in advance.

V. Respondent consented to the use of the airplane but failed to pay for its use in advance in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) and, respondent failed to report the debt owed for use of the corporate airplane in violation of 2 U.S.C. § 434(b).

VI. Respondent will reimburse Berryhill Farms, Inc., and Little Dixie Supermarkets, Inc., the normal and reasonable rate charged for use of the corporate aircraft.

VII. Respondent will pay a civil penalty to the Treasurer of the United States in the amount of one thousand dollars ($1,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

8401446

X. Respondent shall have no more than thirty (30) 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

Date

BY: Kenneth A. Gross
Associate General Counsel

December 2, 1983
Date

Dowdy for Congress Committee

BY: Robert F. Bauer

ITS: Counsel

8404014456 28

WAYNE DOWDY FOR CONGRESS COMMITTEE
MC COMB, MS 39648

1051

11-27 19 83 85-338/653

PAY TO THE ORDER OF U. S. Treasury $ 1000.00

One thousand and no/100 DOLLARS

First Bank
First Bank of Southwest Mississippi
McComb, Mississippi 39648

FOR

Troy Alford

⑈001051⑈ ⑆065303386⑆ 08⑈6576⑈6⑈

8401445299

5

1000.00

95-35-0001
Pay to the order of any Federal Reserve Bank or Branch or General Depositary for credit to the United States Treasury. This check is in payment of an obligation to the United States and must be paid at par. N.P. Do not wire non-payment.
Date of endorsement. 12-5-83
Larry D. McCoy, Dep. Asst. Staff Dir. for Admin.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Negotiation of this check does not constitute acceptance by the Federal Election Commission of the proposed penalty. The proceeds of this check have been placed in a suspense account pending Commission consideration of the penalty.

6

84040144670

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert F. Bauer
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

On December , 1983, the Commission accepted the conciliation agreement signed by you and the civil penalty in settlement of a violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e), both provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your client and it will become a part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

7

8401445731

RECEIVED AT THE FEC

83 DEC 19 P1:33

LAW OFFICES
BINDER, KNAPP, MILNER & KEYES
911 EAST PEARL STREET
P.O. BOX 22
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER

MICHAEL L. KNAPP
LISA BINDER MILNER
SAMUEL W. KEYES, JR.

TELEPHONE
948-8000
AREA CODE 601

December 9, 1983

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Enclosed herewith please find Conciliation Agreement which has been executed by Berryhill Farms, Inc. of Terry together with check of our client in the amount of $500.00 representing payment in full of the civil penalty assessed therein.

We appreciate your cooperation in this matter and remain with kindest personal regards

Sincerely,

BINDER, KNAPP, MILNER & KEYES

Alvin M. Binder

AMB:ncb

Enclosures

R 4 4 5 1 2

6 CA 1279
617

FAY BERRYHILL
P. O. BOX 969 PH. 878-8324
TERRY, MS 39170

Dec. 8 1983

PAY TO THE ORDER OF Al Binder $ 500.00

Five Hundred and no/100 DOLLARS

The American Bank
VICKSBURG • JACKSON • CLINTON, MS

MEMO DEC fine on Derby case

Fay Berryhill

⑆065302222⑆

C20 P3: 01

8401445373

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

MUR 1469

29683

30 Dec 1983
Date

The Federal Election Commission has received $ 500.00 in cash/check for the purchase of copies of documents on file at the Federal Election Commission, or for other materials made available by the Commission.

Federal Election Commission

Purchaser understands any information copied from reports and statements shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. 2 U.S.C. Section 438

8 4 0 4 0 1 4 4 5 3 4

Pay to the order of
Federal Election Comm./
For Berryhill Farms, Inc.
of Terry - In full

BY

95-35-0001

Pay to the order of any Federal Reserve Bank or Branch or General Depositary for credit to the United States Treasury. This check is in payment of an obligation to the United States and must be paid at par. N.P. Do not wire non-payment.

Date of endorsement. 12-20-83

Larry D. McCoy, Dep. Asst. Staff Dir. for Admin.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. [illegible]63

Negotiation of this check does not constitute acceptance by the Federal Election Commission of the proposed penalty. The proceeds of this check have been placed in a suspense account pending Commission consideration of the matter.

LAW OFFICES
BINDER, KNAPP, MILNER & KEYES
511 EAST PEARL STREET
P. O. BOX 55
JACKSON, MISSISSIPPI 39205

RECEIVED AT THE FEC
U.S. POSTAGE
PM
DEC
12 DEC
MISS.
PB METER
1117246

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

84040

WAYNE DOWDY FOR CONGRESS COMMITTEE
MC COMB, MS 39648

1051

11-29 1983 55-328 653

PAY TO THE ORDER OF U. S. Treasury $ 1000.00

One thousand and no/100 DOLLARS

First Bank
First Bank of Southwest Mississippi
McComb, Mississippi 39648

FOR

Troy Alford

⑈001051⑈ ⑆065303386⑆ 08⑈6576⑈6⑈

84040144436

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

29631

5 Dec 1983
Date

The Federal Election Commission has received $ 1,000.00 in cash/check for the purchase of copies of documents on file at the Federal Election Commission, or for other materials made available by the Commission.

Mary Anne Hodgson
Federal Election Commission

Purchaser understands any information copied from reports and statements shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. 2 U.S.C. Section 438

1000.00

95-35-0001

Pay to the order of any Federal Reserve Bank or Branch or General Depositary for credit to the United States Treasury. This check is in payment of an obligation to the United States and must be paid at par. N.P. Do not wire non-payment.

Date of endorsement. 12-5-83

Larry D. McCoy, Dep. Asst. Staff Dir. for Admin.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Negotiation of this check does not constitute acceptance by the Federal Election Commission of the proposed penalty. The proceeds of this check have been placed in a suspense account pending Commission consideration of the penalty.

84040144573

84040144638

AM FEC 2 P2:53

PERKINS, COIE, STONE, OLSEN & WILLIAMS

1110 VERMONT AVENUE, N.W., SUITE 1200

WASHINGTON, D.C. 20005

HAND DELIVER

Attn: Dwayne Brown
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.

LAW OFFICES
BINDER, KNAPP, MILNER & KEYES
501 EAST PEARL STREET
P.O. BOX 22
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER

MICHAEL L. KNAPP
LISA BINDER MILNER
SAMUEL W. KEYES, JR.

TELEPHONE
948-0888
AREA CODE 601

RECEIVED AT THE FEC
83 DEC 5 P2:

November 30, 1983

MUR 1469
Brown

83 DEC 5 P2:39

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

This is to confirm our conversation with you of this date wherein we advised you that we had received the Conciliation Agreement regarding Berryhill Farms, Inc. of Terry assessing a penalty of $500.00.

We further advised you that the homes of Herbert Berryhill and Lowery Berryhill as well as their restaurant were destroyed by arson. The Berryhills were away from home and lost everything. Therefore, we would appreciate it if you would give us an additional two weeks within which to pay the $500.00 civil penalty assessed in the Conciliation Agreement.

With kindest personal regards, we remain

Sincerely,

BINDER, KNAPP, MILNER & KEYES

Alvin M. Binder

AMB:ncb

9 4 0 1 4 1 6 9

LAW OFFICES
BINDER, KNAPP, MILNER & KEYES
511 EAST PEARL STREET
P.O. BOX 55
JACKSON, MISSISSIPPI 39205

RECEIVED AT THE FEC
U.S. POSTAGE

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

84040144

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin Binder, Esquire
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Binder:

This is to advise you that after an investigation was conducted, the Commission concluded on November , 1983, that there is no probable cause to believe that your clients Herbert and Lowery Berryhill violated the Act. Accordingly, the file in this matter, numbered MUR 1469, has been closed as it pertains to your clients. This matter will become part of the public record within 30 days, after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions, contact Duane A. Brown at (202) 523-5071.

Sincerely,

11/3/83

Charles N. Steele
General Counsel

84040144511

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin Binder, Esquire
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

MUR 1469

Dear Mr. Binder:

On November , 1983, the Commission determined there is probable cause to believe that your client Berryhill Farms, Inc., of Terry, committed a violation of the Federal Election Campaign Act of 1971, as amended, in connection with the unreimbursed use of its corporate aircraft in connection with the Wayne Dowdy for Congress Campaign.

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Duane A. Brown, the attorney assigned this matter, at (202) 523-5071.

Sincerely,

BKM 11/3/83

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

8401014512

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Murphree, Esquire
Trustee in Bankrupty
P.O. Box 370
Jackson, Mississippi 39205

MUR 1469

Dear Mr. Murphree:

On November , 1983, the Commission determined there is probable cause to believe that Little Dixie Supermarkets, Inc., committed a violation of the Federal Election Campaign Act of 1971, as amended, in connection with the unreimbursed use of its corporate aircraft during the Wayne Dowdy for Congress Campaign.

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Duane A. Brown, the attorney assigned this matter, at (202) 523-5071.

Sincerely,

8/3/83

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

8401446413

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Bauer, Esquire
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

MUR 1469

Dear Mr. Bauer:

On November , 1983, the Commission determined there is probable cause to believe that your client, the Dowdy for Congress Committee, committed a violation of the Federal Election Campaign Act of 1971, as amended, in connection with its use of a corporate aircraft jointly owned by Little Dixie Supermarkets, Inc., and Berryhills Farms, Inc. In addition, the Commission found no probable cause to believe your client violated 2 U.S.C. § 441a(f) and 11 CFR § 110.4(c)(2).

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Duane A. Brown, the attorney assigned this matter, at (202) 523-5071.

Sincerely,

11/3/87

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

9401445114

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Herbert Berryhill	)	MUR 1469
Lowery Berryhill	)	
Berryhill Farms, Inc.	)	
Little Dixie Supermarkets, Inc.	)	
Wayne Dowdy for Congress Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session of November 1, 1983, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1469:

1. find no probable cause to believe Herbert Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1);

2. find no probable cause to believe that Lowery Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1);

3. find probable cause to believe Berryhill Farms, Inc. violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e);

4. find probable cause to believe Little Dixie Supermarkets, Inc. violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e);

5. find probable cause to believe the Dowdy for Congress Committee violated 2 U.S.C. § 441b, 2 U.S.C. § 434(b) and 11 C.F.R. 114.9(e);

6. find no probable cause to believe that the Dowdy for Congress Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.4(c)(2); and

7. approve the conciliation agreements and letters attached to the General Counsel's report dated October 25, 1983, subject to amendment to conform with the actions taken this date.

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

Attest:

11-2-83

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

0 4 1 0 1 4 4 6 4 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: October 27, 1983

SUBJECT: MUR 1469 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of November 1, 1983

Open Session

Closed Session XX

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	[X]
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[X]	Status Sheets	[ ]
Sensitive	[X]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8 4 0 0 1 4 4 5 1 6

SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	83 OCT 27 A 9: 29
	)	
Herbert Berryhill	)	
Lowery Berryhill	)	MUR 1469 EXECUTIVE SESSION
Berryhill Farms, Inc.,	)	
Little Dixie Supermarkets, Inc.	)	NOV 1 1983
Wayne Dowdy for Congress Committee	)	

GENERAL COUNSEL'S REPORT

Submitted Late

I. BACKGROUND

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil suit filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The civil suit seeks a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., provided to Congressman Dowdy's special election campaign of 1981.

The allegations of the complaint filed with the Commission are that: 1) Herbert Berryhill and Lowery Berryhill made cash contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 2) Herbert Berryhill and Lowery Berryhill made contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 3) the Dowdy for Congress Committee

8 4 0 4 0 1 4 4 5 1 7

failed to report the receipt of the contributions from Herbert Berryhill and Lowery Berryhill; and 4) Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

Herbert Berryhill, Lowery Berryhill, Berryhill Farms, Inc., and the Trustee in Bankruptcy of Little Dixie Supermarkets, Inc. all filed responses to the complaint. On January 5, 1983, the Commission found reason to believe that Herbert Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Lowery Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Berryhill Farms, Inc., violated 2 U.S.C. § 441b, that Little Dixie Supermarkets, Inc., violated 2 U.S.C. § 441b, and that the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2).

On January 18, 1983, the Commission received a response to the reason to believe finding from Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1982. The Dowdy for Congress Committee submitted with its response two affidavits from Congressman Dowdy, two affidavits from Congressman Dowdy's wife, Susan Dowdy, and an affidavit from the

8401445 18

treasurer of the Dowdy for Congress Committee, Robert H. Darville. The Darville affidavit included a number of exhibits. Additionally, the Dowdy for Congress Committee submitted a newspaper article concerning the Berryhills and court papers from three civil actions involving the Berryhills.

On August 26, 1983, the Office of General Counsel sent briefs to Herbert Berryhills, Lowery Berryhill, Berryhill Farms, Inc., Little Dixie Supermarkets, Inc., and the Wayne Dowdy for Congress Committee. Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., notified the Office of General Counsel that they do not intend to file responsive briefs. The Trustee for Little Dixie, and Robert Murphree submitted a response on September 6, (Attachment I) and the Dowdy for Congress Committee submitted a response on September 23. (Attachment II).

8104014454 6

II. LEGAL ANALYSIS

The legal analysis is set out in the briefs of the Office of General Counsel dated August 25, 1983. The only issue on which the Office of General Counsel is recommending probable cause to believe involves the use of a corporate aircraft by the Dowdy Committee. In its response, the Dowdy Committee concedes the unreimbursed use of a corporate aircraft. The Committee, however, continues to attempt to concentrate the Commission's attention on the evidence pertaining to the veracity of the Berryhills. The Committee argues that the lack of credibility found on the part of the Berryhills regarding alleged monies owed the Berryhills by the Dowdy Committee should be a primary factor

considered in determining the exact balance owed on the use of the corporate aircraft. Yet, the Committee fails to justify, when it admits using the aircraft, why it failed to report such use on any of its reports either through a payment or debt owed.

In responding on behalf of Little Dixie Supermarkets, Inc., the Trustee reiterates, as he has in earlier responses, that he has no personal knowledge of the facts or findings discussed in the Commission's Brief. He does, however, continue to question the credibility of the Berryhills.

Accordingly, the Office of General Counsel recommends that the Commission find no probable cause to believe Herbert Berryhill or Lowery Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1) of the Act. In addition, this office recommends that the Commission find probable cause to believe Little Dixie Supermarkets, Inc., and Berryhill Farms, Inc., violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) and the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441b and 11 C.F.R § 114.9(e).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

The Dowdy Committee concedes it used but did not pay for the corporate aircraft owned by Little Dixie Supermarkets, Inc., and Berryhill Farms, Inc. The Berryhills allege that the amount owed to Little Dixie Supermarkets, Inc. and Berryhill Farms, Inc. for use of the aircraft is $4,000. This amount is not specifically contested by the Dowdy Committee. However, the Dowdy Committee questions the amount of time charged for use of the corporate

8401445

aircraft. Thus, the Office of General Counsel recommends the Commission propose a civil penalty of $1,000 against the Dowdy for Congress Committee and $500 each against the joint owners of the corporate aircraft, Little Dixie Supermarkets Inc., and Berryhill Farms, Inc. Finally, a provision has been included in the Dowdy Committee conciliation agreement requiring the committee to reimburse Berryhill Farms, Inc. and Little Dixie Supermarkets, Inc. for the normal and reasonable rate for use of the corporate aircraft.

8 4 0 4 0 1 4 4 5 7 1

IV. RECOMMENDATION

The Office of General Counsel recommends that the Commission:

1) find no probable cause to believe Herbert Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1);

2) find no probable cause to believe that Lowery Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1);

3) find probable cause to believe Berryhill Farms, Inc., violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e);

4) find probable cause to believe Little Dixie Supermarkets, Inc., violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e);

5) find probable cause to believe the Dowdy for Congress Committee violated 2 U.S.C. § 441b, 2 U.S.C. § 434(b) and 11 C.F.R. § 114.9(e);

6) approve the attached conciliation agreements and letters.

25 October 1983
Date

Charles N. Steele
General Counsel

Attachments
I. Robert Murphree Response ("Little Dixie")
II. Dowdy Committee Response
III. Proposed Letters and Conciliation Agreements

8 4 0 4 0 1 4 4 5 7 2

ATTACHMENT I

Doc # 759

ROBERT S. MURPHREE
TRUSTEE IN BANKRUPTCY
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
P. O. Box 370
Jackson, Mississippi 39205

August 29, 1983

83 SEP 6 P4:22

Secretary, Federal Election Commission
Washington, D.C. 30463

Re: Little Dixie Supermarkets, Inc., Congressman Wayne Dowdy, Berryhill Farms, MUR 1469

Dear Sir:

This letter will serve as the responsive brief of the Trustee in Bankruptcy of Little Supermarkets, Inc. to the brief of the General Counsel that I received this morning.

As Trustee in Bankruptcy of Little Dixie Supermarkets, Inc. I have no personal knowledge of the facts or findings discussed in the General Counsel's brief. However in previous correspondence to the Federal Election Commission I have repeatedly emphasized to the General Counsel that all of my dealings with the Berryhill family as trustee in bankruptcy have been unsatisfactory and I have an extremely poor opinion of their creditability. Therefore as a firm believer in fair play it causes me concern that Congressman Dowdy or his campaign may be harmed as a result of the apparent vendetta the Berryhill family seems to be intent on pursuing against Congressman Dowdy and his campaign.

In addition, the woman who filed the Complaint against Congressman Dowdy once had her office next to mine and to my knowledge she was an avid and vocal supporter of the apponent Congressman Dowdy beat in each of his last two elections. So it appears to me these complaints stem more from partisan politics and personnel animosity than from any desire to protect the integrity of the electorial process.

Perhaps it would be in order for the Federal Election Commission to make a determined effort to find out who in fact did own the airplane in issue in this matter. I note with interest that in sworn schedules filed with the United States Bankruptcy Court for the Southern District of Mississippi on September 14, 1981 Lowery Berryhill stated that the aircraft was owned by Little Dixie Supermarkets, Inc. No where in these schedules do I find any mention of a contention that Berryhill Farms, Inc. owned any part of this aircraft.

8104014457 3

Since Little Dixie Supermarkets, Inc. has been in bankruptcy for almost two (2) years now it appears to me that the Dowdy Campaign's reluctance to disburse any funds to the Berryhills in absence of proper documentation would be a prudent concern. As trustee in bankruptcy I would be reluctant to accept funds from the Dowdy Campaign for payment for the use of this airplane if the only substantiation of the amount tendered would be derived from one of the Berryhill family members. In my dear one experience with the Berryhills I have found that relying on their figures or information is most imprudent.

If you need anymore information from me please let me know.

Yours truly,

Robert S. Murphree,
Trustee in Bankruptcy

RSM/dh

8401014154

ATTACHMENT II

D. Brown

BEFORE THE FEDERAL ELECTION COMMISSION

SEP 23 P4:57

In the Matter of)
)
Dowdy for Congress Committee) MUR 1469
)

DOWDY FOR CONGRESS COMMITTEE'S BRIEF

The Dowdy for Congress Committee (the "Committee") respectfully files this reply to the General Counsel's brief of August 25, 1983, which sets forth his conclusions and recommendations on the various issues in this case. The Committee's brief is filed this date pursuant to an extension of time requested by letter dated September 16, 1983.

The Committee will not attempt to reargue the points made in its reply to the General Counsel's "Reason to Believe" finding. Because the Committee completely supports most of the recommendations of the General Counsel, its reply will be brief, and intended primarily to direct Commission attention to certain key factors which, in the Committee's view, should shape the Commission's deliberations. The Committee specifically and respectfully requests that the Commission note the following:

8 4 0 4 0 1 4 4 5 7 5

1. The Committee supports the General Counsel's recommendations and urges the Commission to approve the same;

2. Its concurrence in the General Counsel's recommendations notwithstanding, the Committee strongly believes that insufficient attention was paid in the General Counsel's brief to the overwhelming evidence, proferred by the Committee, that, with the limited exception of the claim relating to unreimbursed corporate aircraft travel, the allegations at issue here were completely fabricated and without foundation. The Committee is specifically concerned that the same level of detail on the fraudulent nature of these allegations be available to the Commission in its deliberations.

For these reasons, the Committee attaches to this brief a copy of the Committee's response to the initial "Reason to Believe" finding. The appendix of documents which accompanied this response has not been attached, but is on file with the General Counsel's office, and is available to those Commissioners who wish to consult it.

3. As previously asserted, the Committee concedes the unreimbursed use of corporate aircraft jointly owned by Little Dixie Supermarket, Inc. and Berryhill Farms, Inc. in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e). As both Congressman Dowdy and the Committee Treasurer, Robert H. Darville, have separately stated in their affidavits, all bills for air transportation known to them were paid upon submission. Neither Congressman Dowdy nor Treasurer Darville can recall any bills for air transportation arranged through

3 4 0 4 1 4 5 7 6

the Berryhill corporation in the amount of $4,000. At the same time, as the General Counsel correctly points out, under Commission regulations corporate air travel must be reimbursed in advance, with the result that the delay on the part of the Committee in making reimbursement represents a violation of the advance reimbursement provision.

With this concession in mind, the Committee wishes to record its views that, consistent with the record of misrepresentation in this case, it is equally conceivable that the Berryhills misrepresented the balance owing for use of the corporate aircraft in question. The Committee suspects that those misrepresentations involved both the number of times the aircraft was used, and the allegedly agreed fare for its use. In short, while the corporate aircraft violation has been conceded in general, the Committee would insist that the General Counsel discount significantly the veracity of the Berryhills' specific allegations relating to the cost of the air transportation. Those details are most important, because they will shape the negotiations in the post-Probable Cause conciliation stage.

Respectfully submitted,

Robert F Bauer /fc

Robert F. Bauer
Counsel, Dowdy for Congress
Committee

DATED: September 23, 1983
Attachment

8 4 0 4 0 1 4 1 5 7

ATTACHMENT III

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin Binder, Esquire
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Binder:

This is to advise you that after an investigation was conducted, the Commission concluded on October , 1983, that there is no probable cause to believe that your clients Herbert and Lowery Berryhill violated the Act. Accordingly, the file in this matter, numbered MUR 1469, has been closed as it pertains to your clients. This matter will become part of the public record within 30 days, after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions, contact Duane A. Brown at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

8401446178

6

RECEIVED AT THE FEC
GC#900
83 SEP 30 P12:81
DB

LAW OFFICES
BINDER, KNAPP & MILNER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
MICHAEL L. KNAPP
LISA BINDER MILNER

TELEPHONE
948-8800
AREA CODE 601

September 27, 1983

SEP 30 P2:39

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Pursuant to our conversation with you of this date, please be advised that contrary to our letter to you under date of September 6, 1983, we will not file a brief on behalf of Berryhill Farms, Inc. in captioned cause.

We shall keep you advised of settlement negotiations regarding this matter.

With kindest personal regards, we remain

Sincerely,

BINDER, KNAPP, MILNER & KEYES

Alvin M. Binder

AMB:ncb

8 4 0 4 0 1 4 4 5 7 9

BINDER, KNAPP & MILNER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

84040130

JACKSON MISS
SEP 1983
MISS

U.S. POSTAGE
$00.30

AIR MAIL FEC

SEP 31

Mr. Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

GCC# 855

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Dowdy for Congress Committee) MUR 1469
)

SEP 23 4:57

DOWDY FOR CONGRESS COMMITTEE'S BRIEF

The Dowdy for Congress Committee (the "Committee") respectfully files this reply to the General Counsel's brief of August 25, 1983, which sets forth his conclusions and recommendations on the various issues in this case. The Committee's brief is filed this date pursuant to an extension of time requested by letter dated September 16, 1983.

The Committee will not attempt to reargue the points made in its reply to the General Counsel's "Reason to Believe" finding. Because the Committee completely supports most of the recommendations of the General Counsel, its reply will be brief, and intended primarily to direct Commission attention to certain key factors which, in the Committee's view, should shape the Commission's deliberations. The Committee specifically and respectfully requests that the Commission note the following:

8400144551

1. The Committee supports the General Counsel's recommendations and urges the Commission to approve the same;

2. Its concurrence in the General Counsel's recommendations notwithstanding, the Committee strongly believes that insufficient attention was paid in the General Counsel's brief to the overwhelming evidence, proferred by the Committee, that, with the limited exception of the claim relating to unreimbursed corporate aircraft travel, the allegations at issue here were completely fabricated and without foundation. The Committee is specifically concerned that the same level of detail on the fraudulent nature of these allegations be available to the Commission in its deliberations.

For these reasons, the Committee attaches to this brief a copy of the Committee's response to the initial "Reason to Believe" finding. The appendix of documents which accompanied this response has not been attached, but is on file with the General Counsel's office, and is available to those Commissioners who wish to consult it.

3. As previously asserted, the Committee concedes the unreimbursed use of corporate aircraft jointly owned by Little Dixie Supermarket, Inc. and Berryhill Farms, Inc. in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e). As both Congressman Dowdy and the Committee Treasurer, Robert H. Darville, have separately stated in their affidavits, all bills for air transportation known to them were paid upon submission. Neither Congressman Dowdy nor Treasurer Darville can recall any bills for air transportation arranged through

8 4 0 4 0 1 4 4 5 5 2

the Berryhill corporation in the amount of $4,000. At the same time, as the General Counsel correctly points out, under Commission regulations corporate air travel must be reimbursed in advance, with the result that the delay on the part of the Committee in making reimbursement represents a violation of the advance reimbursement provision.

With this concession in mind, the Committee wishes to record its views that, consistent with the record of misrepresentation in this case, it is equally conceivable that the Berryhills misrepresented the balance owing for use of the corporate aircraft in question. The Committee suspects that those misrepresentations involved both the number of times the aircraft was used, and the allegedly agreed fare for its use. In short, while the corporate aircraft violation has been conceded in general, the Committee would insist that the General Counsel discount significantly the veracity of the Berryhills' specific allegations relating to the cost of the air transportation. Those details are most important, because they will shape the negotiations in the post-Probable Cause conciliation stage.

8401144553

Respectfully submitted,

Robert F Bauer /jc

Robert F. Bauer
Counsel, Dowdy for Congress
Committee

DATED: September 23, 1983
Attachment

PERKINS, COIE, STONE, OLSEN & WILLIAMS

ANCHORAGE OFFICE
420 "L" STREET
SUITE 301
ANCHORAGE, ALASKA 99501
TELEPHONE: 907-276-8551
TELECOPIER: 907-276-3108

1110 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005
TELEPHONE: 202-857-9030

PLEASE REPLY TO WASHINGTON, D.C. OFFICE

SEATTLE OFFICE
1900 WASHINGTON BUILDING
SEATTLE, WASHINGTON 98101
TELEPHONE: 206-682-8770
TELECOPIER: 206-682-8784
CABLE "PERKINS SEATTLE"
DOM TELEX: 32-0319
INT'L TELEX: 47123

February 2, 1983

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

RE: MUR 1469

Dear Sir:

This letter serves as the response and defense of the Dowdy for Congress Committee ("the Committee") to the Federal Election Commission's ("the Commission") determination on January 5, 1983, that there existed "reason to believe" that the Committee violated various sections of the Act. The Commission's finding stemmed from a complaint filed by one Jacquelin Smith Pierce on September 13, 1982, which made various allegations subsumed within the findings cited by the Commission in its "reason to believe" notification dated January 6, 1983. The Pierce complaint, in turn, was based wholly and without exception on representations made in a civil complaint filed against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. in Berryhill et al. v. Charles Wayne Dowdy (Hinds County Circuit Court, Miss., Civil Action No. 28,991).

As reviewed further below, the Commission cites reason to believe that the Committee violated the Act as follows:

(1) In accepting contributions in excess of the lawful limits in violation of 2 U.S.C. § 441a(f);

(2) In accepting cash contributions in excess of the lawful limit in violation of § 110.4(c)(2) of the Commission's regulations;

8 4 0 4 0 1 4 4 5 5 4

(3) In failing to report the receipt of the contributions cited in (1) and (2); and

(4) In accepting an illegal corporate contribution "by making use of aircraft jointly owned by Little Dixie Supermarket, Inc. and Berryhill Farms, Inc. . . . , but [failing] to pay commercially reasonable rates."

The respondent Committee categorically and vehemently denies each and every one of the Berryhill allegations underlying the Commission's finding (1) through (3). Each of these allegations will be fully reviewed and rebutted below.

In the case of the fourth allegation, involving unpaid travel on corporate aircraft, the Committee admits use of this air transportation. The Committee, however, denies negotiating a specific "rate" for regular use of this aircraft. The aircraft was used on a few occasions and any and all bills submitted for its use were paid. If bills relating to this use are outstanding, the Committee has been, and will continue to be, prepared to pay them upon receipt of documented invoices. Any other uses and related charges claimed by the Berryhills, are denied.

Accordingly, the Committee requests immediate dismissal of the Pierce complaint based on the Berryhill allegations, and will request that the file be closed immediately for failure of the plaintiffs to proffer proof--which is in any event nonexistent--sufficient to justify a "probable cause to believe" finding by the Commission.

INTRODUCTION

The complaint in question, filed by Jacquelin Smith Pierce, is supported solely by reference to allegations made in the previously cited civil complaint filed against Congressman Dowdy by the Berryhills and Berryhill Farms, Inc. Those Berryhill allegations--and specifically, their veracity--are at issue in this matter.

It is the position of the Committee that with the qualified exception of campaign-related plane travel, the Berryhill allegations underlying the Commission's reason to believe notification are utterly without factual foundation. The Committee has made every effort to investigate the grounds for these allegations, but finds none. The evidence available to the Committee, in fact, suggests that these claims were

9404014455

fabricated by "complainant" Berryhills solely and exclusively in response to their own desperate financial situation, which includes pending bankruptcy proceedings under Chapter 11 involving a corporation, Little Dixie Supermarket, Inc., which they own and control. To the best of the Committee's knowledge, the Berryhills seek through these allegations to embarrass and exert illicit pressure on Congressman Dowdy, in the hope that he or the Committee will disgorge cash, in settlement of the claim, which the Berryhills have pressing need for.

It is also apparent that the allegations in question, regardless of whether they are successful in extorting cash from the Congressman or the Committee, represent a pattern in the business affairs of the Berryhills. This pattern can best be captured by the old adage "the best defense is a good offense." As will be demonstrated further, the business affairs of the Berryhills, conducted through Little Dixie Supermarkets, Inc., Berryhill Farms, Inc., and otherwise, are in catastrophic condition. These business affairs, and the conduct of the Berryhills generally, have given rise to considerable controversy in Mississippi over the years. In each instance that the Berryhills have been forced to account for their conduct in court, through the press or otherwise, they have habitually responded with aggressive allegations of misconduct directed against their detractors or others. The record shows that, in each such instance, the Berryhills' diversionary tactics have been exposed for what they are--pure and simple defensive manuevers built around gross misrepresentations of fact.

None of the foregoing is rendered less true by the possibility that the Berryhills are prepared to offer written "proof" or "witnesses" to corroborate their version of the truth. While the Committee has no knowledge to substantiate the point, the Berryhills' allegations refer to various "campaign workers" who were paid by, or otherwise associated with, the Berryhills in connection with certain of the activities giving rise to their civil complaint. The Committee, however, is prepared to categorically deny that the "campaign workers," if any, had any authority whatsoever to make any arrangements with the Berryhills relating to Committee finances. Moreover, in at least one case, one of the "campaign workers" cited by the Berryhills, who had allegedly received payments from them on behalf of the Committee, has been associated with the Berryhills in another, unrelated scheme which was decisively rejected by a Mississippi court for the fraud that it was.

8104014556

In short, the complaint in question raises a fundamental question of the "real" plaintiffs'--the Berryhills'--credibility. That credibility must be carefully weighed in light of the evidence which will be reviewed in this response. This evidence includes, but is not limited to, sworn affidavits of Congressman Dowdy, his wife, and the campaign treasurer; Committee documents which corroborate the sworn testimony of these three individuals; and reams of revealing information about the business and other practices of the Berryhills which suggest that the instant complaint is based on the same modus operandi of individuals whose word simply does not carry the weight necessary to justify further Commission involvement in this matter.

THE BERRYHILLS: THE RELATIONSHIP OF THIS MATTER TO BERRYHILL FINANCIAL AND BUSINESS DIFFICULTIES

This complaint arose out of, and at the time of, the financial collapse of Little Dixie Supermarkets, Inc. a chain of grocery stores owned and operated by Herbert and Lowery Berryhill. A Chapter 11 voluntary bankruptcy petition was filed on behalf of Little Dixie on August 24, 1981.1/ It was shortly before this declaration of bankruptcy, in late spring of 1981, that the Berryhills sought to become involved in the campaign by Congressman Wayne Dowdy for election to the United States Congress. See the affidavit of Congressman Dowdy, dated October 8, 1982 [hereinafter referred to as the "Dowdy October 8th affidavit"].2/ The Congressman considered the Berryhills as merely two among "hundreds of other people" who volunteered and performed volunteer services in connection with his campaign. However the Berryhills understood their role, the Congressman viewed them as nothing other than volunteers, who had never been "asked to assume any [formal] role in the campaign . . . had no official capacity in the election, nor did they ever assume any official capacity in the campaign." See Dowdy October 8th affidavit. The Congressman's testimony on this score is corroborated by Robert H. Darville, Jr., the Treasurer of the Committee, whose affidavit is attached3/ and who

---

1/This petition is included in the Appendix to this response.

2/See Appendix.

3/See Appendix.

8401457

swears that no authorization whatsoever was given to the Berryhills to make any contributions or expenditures in connection with any of the activities undertaken by the Committee.

Nonetheless, following the election, Congressman Dowdy was contacted by telephone by Lowery and Herbert Berryhill, who requested a meeting, held sometime in August 1981 in Macomb, Mississippi. At that time, the Berryhills informed Congressman Dowdy that their businesses were failing, that bankruptcy was imminent and that "Lowery Berryhill should be given a job because of the work done by the Berryhills in the campaign." See Dowdy October 8th affidavit. No claim that money was owing to them was made at that time. The Congressman made no commitment to provide a job to Lowery Berryhill.

Once again, in September, 1981, Herbert Berryhill requested and obtained a meeting with the Congressman in his Jackson office. His request that Lowery Berryhill be given a job in the Congressman's office was pressed. The Congressman simply stated that "I would not be able to give a job to Lowery Berryhill at that time." See Dowdy October 8th affidavit.

The Congressman then undertook to thoroughly investigate the background of both Berryhills, whom, the record shows, he did not know at all until the spring of 1981 when they became involved in his campaign as volunteer workers. The Congressman found that the Berryhills had been embroiled in a series of legal actions, including, but not limited to, the pending Chapter 11 bankruptcy proceeding involving the Little Dixie Supermarket, Inc. owned and operated by the Berryhills.[4/] On the basis of this information, the Congressman informed Herbert Berryhill that he would be unable to offer his son a position with his office. This decision was communicated by telephone in November or December 1981.

8404014568

4/Other legal actions involving the Berryhills include Chase Manhatten v. Berryhill (Hinds County Circuit Court, No. 28796) (action to collect unpaid equipment rental); USS Agri-Chemicals v. Berryhills (Hinds County Circuit Court, No. 24408) (action to collect unpaid bills); and Bank of Hazelhurst v. Berryhill, infra (action in response to default on bank loans).

It was not until July or August 1982 that the Congressman heard again from the Berryhills, and on this occasion the character of the present action was decisively revealed. Lowery Berryhill called the Congressman to make a demand: "Unless I gave him either a job or payment for campaign services within three days, then he would go to the press with his claim that I owed the Berryhills money." See Dowdy October 8th affidavit. This demand was coupled with a threat of a political nature: "Lowery Berryhill stated, 'I have met with the Republicans on this, and I could really hurt you.'" Id. The Congressman refused this patent attempt at extortion. The Berryhills then went public with their claims that the Committee owed them money.

As Congressman Dowdy's affidavit suggests, particularly in referring to continuous legal claims and counterclaims involving the Berryhills, the Berryhills' thinly veiled extortion attempt was consistent with their past record and reputation. This record will be reviewed below, where relevant, in addressing and rebutting each of the specific allegations made by the Berryhills following their unsuccessful attempt to extort money or employment from Congressman Dowdy. It is sufficient to state here that the civil action filed against the Congressman, which is the basis of the Jacquelin Smith Pierce complaint, reflects the highly personal and unprincipled nature of the action pursued against the Congressman.[5/] Thus, for example, in Count 13, the Berryhills make another series of allegations relating to aid they allegedly furnished to the Congressman in connection with his campaign. As the complaint of the Berryhills states the matter "defendant once again returned to the gravy train and obtained a loan from the plaintiff, Herbert Berryhill . . . ." In the same vein, in the same count, the Berryhills denounce the Congressman for failing to repay the loan made to him by the Berryhills, insisting that "this promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else." Apart from the revealing nature of the language used here, it is most interesting that defendants, on the brink of bankruptcy, would view themselves, or expect anyone else to view them, as a "gravy train." Yet, as will be demonstrated below, this gumption is consistent behavior for the Berryhills.

[5/] See Appendix.

8404044559

THE BERRYHILL ALLEGATIONS

Each of the Berryhill claims, which form the basis for the Pierce complaint and the Commission's finding of "reason to believe," will be reviewed below. With the qualified exemption relating to corporate plane travel, each will be shown to be without foundation, and consistent with the Berryhills' practice of making fraudulent misrepresentations to serve their immediate business ends.

1. Excessive Contributions/Cash Contributions

The allegations relating to excessive contributions and excessive cash contributions obviously overlap, and these will be treated together here. Each of the Berryhill allegations underlying these "violations" will be addressed separately here.

a. Alleged $18,000 Cash Contribution to Congressman Dowdy

The Berryhills claim that they loaned Congressman Dowdy $18,000, "every dollar of which was in cold cash." Congressman Dowdy categorically denies this. The Committee Treasurer Robert H. Darville, Jr., who in the course of his responsibilities would have been advised of the availability of this cash, denies this, as well. See Dowdy October 8th affidavit, and affidavit of the Congressman dated January 31, 1983 [hereinafter referred to as Dowdy January 31st affidavit]; see affidavit of Robert H. Darville, Jr., Treasurer of the Committee, dated January 28, 1983 [hereinafter referred to as the Darville affidavit]. Moreover, the Berryhill claims contain specific representations which only underscore their utter lack of credibility.

For example, the Berryhills would claim to be on the verge of bankruptcy, pressed on all sides by creditors, but somehow have access to $18,000 in cash which could be made available for unspecified purposes to Congressman Dowdy. The Berryhills would also maintain that Congressman Dowdy pledged to "report" a cash contribution of $18,000, when, in fact, even the average unsophisticated lay person, much less an experienced politician, would have known that a cash contribution in this amount was prohibited by the "Watergate reforms" incorporated in the Federal Election Campaign Act of 1971, as amended. Finally, as Congressman Dowdy testifies, it is simply incredible that an experienced politician such as

8 4 0 4 0 1 4 1 4 7 0

Congressman Dowdy would have engaged in a transaction such as this with "acquaintances of only weeks." See Dowdy January 31st affidavit.

In support of this contention, the Berryhills make reference to vouchers totalling $11,657.49, concededly a sum significantly less than the $18,000 allegedly loaned to Congressman Dowdy. These vouchers establish nothing. As Mr. Darville, the Committee Treasurer, informed the Commission in the course of the campaign, vouchers such as these were routinely used to track expenditures of the Committee. See Darville letter to Benita Adler, marked as Exhibit "C" to Darville affidavit. There are literally thousands of these vouchers. The Berryhills have been unable to make even the remotest shred of a connection between the vouchers attached to their complaint, and the $18,000 in "cold cash" allegedly loaned to Congressman Dowdy.

Most amusing, the Berryhills contend that Congressman Dowdy made use of the cash to pay radio advertisements to be aired by stations in Macomb, Meadville, Liberty, Natchez, and Vicksburg. Clifford Berryhill, a son of Herbert Berryhill and one Ray Barfield, allegedly "witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election." Unfortunately for the Berryhills, as Congressman Dowdy testifies, neither Meadville nor Liberty have radio stations. Moreover, as both Congressman Dowdy and Mr. Darville have testified, all radio air time was purchased with campaign funds, and these transactions are reflected in reports filed with the Commission in accordance with law.

b. $5,900 in "Bad" Checks Tendered by a Campaign Worker and Cashed on Behalf of the Committee by the Berryhills

It is on this claim that the modus operandi of the Berryhills becomes apparent. A series of checks, totalling $5,900, are attached by the Berryhills to their complaint as evidence that a Dowdy campaign worker sought successfully to have bad checks cashed on behalf of the Committee by the Berryhills. The proffered "evidence" means nothing. One of these checks, dated July 24, 1981, is made out illegibly to a payee who is neither Congressman Dowdy nor his Committee. One of the checks is made out to the Country Kitchen, with a memo that it represents a "loan" for an individual who is neither Congressman Dowdy, Mr. Darville, nor anyone else associated with the Committee. One check is made out to "cash" and another to the Little Dixie Supermarkets, Inc.

8401446571

This is not proof. Both Congressman Dowdy and Mr. Darville categorically deny, in sworn affidavits, that any authority was extended to any person associated with the campaign to cash personal checks for the Committee's use in making expenditures. The Darville affidavit is particularly instructive on this point, because the treasurer makes it abundantly clear that "all . . . authority for [campaign] expenditures was vested solely within me . . . ." See Darville affidavit. The treasurer further testifies that "no payment, if any, for the Berryhills to any person or persons in any fashion associated with the campaign committee and election effort were known to or sought, requested, authorized, directed, ratified or accepted by the Committee." Id.

If any campaign worker proceeded as stated in the Berryhill complaint, he or she did so absolutely without the authority of the Committee. Nor is there any evidence that the cash received from the transaction in question, if it took place, was ever received by the Committee, or spent in connection with its activities.

Finally, it must be stated that the kind of "evidence" offered here mirrors the kind of approach that the Berryhills have taken in response to their own business difficulties. The Committee is speaking specifically here of the fabrication of evidence. This matter will be addressed more specifically below, with reference to the "receipt" for payments allegedly made to secure copier supplies for the Committee, hotel accommodations, and catfish for an "election fry."

c. Alleged Payment by Berryhills of Hotel Accommodations

In Count 10 of the Berryhill complaint, Lowery Berryhill maintains that payment was made on behalf of the Committee for hotel accommodations for Congressman Dowdy, his staff, and press representatives. These accommodations were allegedly procured on or about the 22nd day of June, 1981, on or about the 7th day of July, 1981 (election eve), and on other occasions. Here too, there is "evidence" proffered in the form of Holiday Inn bills paid by Lowery Berryhill. In attempting to establish some connection between these "receipts" and the campaign, Lowery Berryhill maintains that he "authorized the wife of defendant, Susan Dowdy, to sign his name to all such billings." See Count 10 of Berryhill et al. v. Dowdy.

9401441572

The same pattern of outright falsehoods and internal contradictions plagues this allegation, as well as the others. Congressman Dowdy testifies that at no time did Lowery Berryhill provide hotel accommodations for the Congressman, his staff, or press representatives. See Dowdy October 8th affidavit. In fact, the Congressman swears under oath that in the case of the Holiday Inn accommodations required for the pre-primary special election in June 1981, Congressman Dowdy made payment on his personal American Express card signed by his wife, Susan Dowdy, with his knowledge and consent. In his affidavit of January 31, 1983, the Congressman carefully accounts for all charges paid with his credit card on behalf of the campaign. He states further that "no other hotel accommodations were provided anyone associated with the campaign committee." The same testimony is offered with respect to the payment of hotel accommodations and facilities on July 7-8, 1981, when the special general election was held.

Congressman Dowdy's testimony, in his October 8 and January 31 affidavits, is fully corroborated by the Committee Treasurer, Mr. Robert H. Darville, Jr., and his wife, Susan Dowdy.6/ In her affidavit dated October 8, 1982, Susan Dowdy states unequivocably that she has never been "authorized, directed, instructed, or requested by Lowery Berryhill or Herbert Berryhill . . . to sign Lowery Berryhill's name to any document, credit card, or other account of any nature." In a subsequent affidavit prepared January 31, 1983, Mrs. Dowdy corroborates her husband's testimony concerning the use of his American Express card, signed by Mrs. Dowdy with her husband's consent and knowledge, to cover costs associated with the hotel accommodations needed by the campaign on June 23-24, 1981, and on July 7-8, 1981.

Similarly, the Committee Treasurer, Mr. Darville, swears under oath, unequivocably, that if the Berryhills made any cash expenditures on behalf of the Committee for hotel accommodations at any time, "such expenditures, if any . . . bore no relationship to the efforts of the campaign or the campaign committee personnel." See Darville affidavit. Records reflecting payments made by the Committee and/or Congressman Dowdy are attached as exhibits to the Darville affidavit.

6/See Appendix.

8 4 0 4 0 1 4 4 6 7 3

In the face of this evidence, the Holiday Inn "statement" offered by the Berryhills has absolutely no indicia of credibility. These receipts are signed by Lowery Berryhill, and bear no evidence of any relationship whatsoever to the Dowdy campaign. Moreover, as is the case with all allegations made by the Berryhills, their statements carry significant internal contradictions which cast a fatal pall over their credibility. As Darville, the Committee Treasurer, points out in his January 28 affidavit, the campaign had no need for funds to provide hotel accommodations for staff and press representatives. Mr. Darville explains that "all salaried staff members were residents of the Jackson-Hinds County, Mississippi area and all press representatives known to the affiant to have covered the two election nights during the 1981 campaign were affiliated with the local-Jackson, Mississippi media . . ." Thus, for these individuals, hotel accommodations were totally unnecessary. The Commission need only be reminded of the Berryhills' previous claim concerning the use by Congressman Dowdy of cash to pay for radio spots in two towns which had no radio stations. It should be plain, as each allegation is herein addressed, that one fabrication follows another, only to be followed by another.

d. Payments Allegedly Made by the Berryhills to Cover Compensation for "Campaign Workers"

The Berryhills' claim that "pursuant to and at the behest of the defendant Dowdy," they arranged for the payment of salaries to various campaign workers who would function on behalf of the Committee. The Berryhills recite the names of these workers, and the amounts allegedly paid to each. Congressman Dowdy has testified that he "never met" five of the seven campaign workers "reportedly paid" by the Berryhills and that he, in any event, never authorized payment to these individuals as compensated workers on the campaign. See Dowdy October 8th affidavit.

The Congressman's testimony is corroborated by Treasurer Darville, who denies that any authorization was extended to the Berryhills or any other persons to pay the named "workers." If the Berryhills undertook to pay these individuals, they did so entirely on their own authority, outside the channels of authorization established by the Committee, under the direction of Mr. Darville. See Darville affidavit.

8 4 0 4 0 1 4 4 5 7 4

e. Alleged Berryhill Payment of $351.08 in Copier Supplies

Although the amount in question is minor, the allegation with respect to copier supplies, perhaps more than the others, demonstrates the length to which the Berryhills will go to establish a false case against Congressman Dowdy. In support of this claim, the Berryhills offer "evidence" in the form of a receipt, which consists of a handwritten acknowledgement on a sheet of paper apparently signed by someone named "Jill."

The difficulty with the Berryhills' claim on this score begins, in the first instance, with the fact that copier supplies were not needed by the campaign. The campaign headquarters in Jackson, Mississippi, where such supplies were allegedly delivered, "had no copier machine or duplicating machine, nor did the Committee employ any such machine in any office." See Dowdy January 31st affidavit. Congressman Dowdy's testimony to this effect has been corroborated by Mr. Darville, the Committee Treasurer, who testifies in his January 28th affidavit that the purchase of copier supplies was "not authorized, directed or allowed" by the Committee, and that these were, not in any event, needed in a campaign where no copiers had been leased or used in any of the campaign headquarters. See Darville affidavit.

The question than naturally arises: where does the "receipt" come from? Only the plaintiffs who have provided it can answer this question, but there is evidence that suggests that the worst suspicions about the origins of this "receipt" should not be lightly dismissed. These same suspicions naturally arise in the case of other documentary "evidence" offered by the Berryhills, such as the "statement" for hotel accommodations and a "bill" for catfish to be discussed below.

On this question, the Commission is referred to the case of Little Dixie Supermarkets, Inc. v. Bank of Hazelhurst, a matter pending in bankruptcy court in the Southern District of Mississippi in connection with the Chapter 11 bankruptcy proceedings involving Little Dixie.7/ The background to this action is significant. As appears fully in Bank of Hazelhurst v. Berryhill et al. (Hinds County, Civ.

7/See Appendix.

Action No. 29-022),[8] the Berryhills have accumulated substantial debts to the Bank of Hazelhurst over a period of a number of years, now totalling $186,245.82. This full amount was guaranteed by Herbert Berryhill and his two sons Clifford and Lowery in a guarantee agreement dated July 9, 1979. In the face of mounting default on their loans to the Hazelhurst Bank, which ultimately led to the institution of a lawsuit by the bank against the Berryhills, the Berryhills resorted to a familiar tactic. They struck out against the bank.

In Little Dixie Supermarkets, Inc. v. Bank of Hazelhurst, the Berryhills maintained that the bank of Hazelhurst had somehow misplaced or failed to credit to the Berryhills' account a $93,000 deposit. In support of their claim, the Berryhills offered "documentary proof" in the form of a stamped deposit ticket evidencing the deposit in question. Also significant were sworn affidavits in support of their claim submitted by Herbert and Lowery Berryhill, and the same Ray Barfield who "witnessed" Congressman Dowdy paying cash to radio stations that didn't exist. Unfortunately for the Berryhills, when the Bank of Hazelhurst sought supporting documents which would establish the origins of this substantial deposit, the Berryhills refused or were unable to produce any substantial supporting material whatever. The case was accordingly dismissed.

The Berryhills then counterattacked by accusing their counsel of failing to adequately represent them, with the result that new counsel was retained to make a motion to vacate the order of dismissal. A transcript of the hearing on this motion to vacate has been provided to the Commission as part of this response, because it offers a clear and definitive picture of the Berryhills, their way of doing business, and the large tablets of salt with which their allegations must be taken. Thus, for example, the trustee in bankruptcy acting on behalf of Little Dixie testifies at pages 31-32 that he was never convinced that "a viable cause of action existed and could never document it. . . ." He stated further that, in his view, the Berryhills' claim against the bank had no merit, and "I told them I wasn't going to prosecute the action and, if it had to be prosecuted, that they [Berryhills] had to prosecute it." The trustee further testified that "the debtor's affairs were in a jumble," and that no documents were available to support

---

[8] See Appendix.

8410141576

the allegations made by the Berryhills with respect to the "missing $93,000." It is noted, finally, that the trustee testified that:

> The only thing I know about the debtor and his records is that everything I have ever asked for I have not received. And the only reason I have ever been given is I already have them and I know I didn't. . . . And if you ask somebody for something and they won't give it to you and they keep telling you you have it and you know you don't have it, what do you do?

Tr. at pp. 39-40.

At the oral hearing on the motion to vacate, witness after witness testified in support of the bank with only the Berryhills demurring. The motion was denied. The finding of the court was, simply, that notwithstanding the alleged "deposit" at the bank, no serious or viable claim could be made out by the Berryhills. As the court summarized the matter in its Order of Dismissal, "plaintiff [Berryhills] has failed to support its claim by making a more definite statement and by failing to produce documents supporting its claim as ordered by this Court." So much for "evidence."

There is a further lesson to be learned about the Berryhills from the outcome of Little Dixie Supermarkets v. Bank of Hazelhurst. As the trustee and bankruptcy pointed out, the Berryhills' business affairs were in a "jumble." There were few records. More significantly, the Berryhills constantly insisted that records existed which did not. They were producing evidence which, it turned out, was not evidence at all. Surely the Commission must consider all the evidence bearing on the credibility of the Berryhills in its totality, and conclude that the allegations in this case hang on a thin reed indeed.

Finally, dubious "evidence" played a part in another well-known scandal involving the Berryhills, namely, Herbert Berryhill's use of county funds for personal expenses when he was an official of Hinds County District Fire. As reported in press reports at the time, attached to this response, Berryhill initialled a receipt indicating that a tractor repair was required and paid for by the county. The county, in fact, paid; but the tractor was Berryhill's, used solely in his own business. After the press uncovered the

8401014457

story, Berryhill proclaimed his innocence and sued the paper in question for libel in Berryhill v. Mississippi Publishers Corporation (Hinds County Circuit Court, Civil Action No. 22466).9/ Verdict by the jury: in favor of the paper. The verdict on Berryhill could not have been clearer.

e. Alleged Berryhill Payment for Liquor

The Berryhills insist that, among other "services," they purchased liquor for election night. The money, they state, was provided to Congressman Dowdy.

Again, fabrication followed by fabrication, only to be followed by another fabrication. As the affidavits of Congressman Dowdy and Treasurer Darville indicate, all liquor for the Committee was purchased with campaign funds. Their testimony is supported by cancelled checks, Nos. 259 and 496, attached to the Darville affidavit as exhibits. These checks covered all campaign liquor purchases for election night events.

If the Berryhills purchased liquor, on election night or at any other time, in "connection with" the campaign, they did so solely on their own authority, which was not the authority of the Committee.

f. Catfish

Now, the catfish. The Berryhills insist that they provided valuable intermediary services in arranging for, and paying for, 750 pounds of catfish provided by the Country Kitchen, a business operated by Herbert Berryhill's wife. Naturally, the Berryhills maintain that Congressman Dowdy negotiated this catfish acquisition, and that he represented that he would make full payment, if Herbert Berryhill would advance the money. Naturally, a "bill" in the amount of $1,500, allegedly reflecting this transaction, has been attached as an exhibit to the Berryhills' civil complaint.

About this claim, the Committee has no more to say than it did about the allegations relating to "copier supplies." Congressman Dowdy categorically denies that any such negotiation was held with the Berryhills over the acquisition of catfish. Indeed, Congressman Dowdy states that he "can solemnly state under oath" that he did not waste

---

9/ See Appendix.

valuable campaign time "haggling over the price of catfish." The assertion is simply "ludicrous." See Dowdy January 31st affidavit. Treasurer Darville has supplemented Congressman Dowdy's testimony with the sworn assertion that "no bill for any quantity of catfish delivered to the campaign committee has ever been received by me and no demand has ever been placed upon me as treasurer for payment to the Berryhills of any such alleged debt." See Darville affidavit.

Any interest on the Commission's part about the origins of the "bill" for catfish should refer once again to Little Dixie Supermarket v. Hazelhurst, supra and the discussion above in reference to the alleged $351.08 payment for copier supplies.

2. Travel On Corporate Aircraft Owned By The Berryhills And/Or Their Businesses

The Berryhills claim that Congressman Dowdy negotiated a rate for the use of corporate aircraft jointly owned by Berryhill Farms, Inc. and Little Dixie Supermarket. The Berryhills then identify a series of occasions when this aircraft was used, the charges accumulated, and the alleged failure of Congressman Dowdy or the Committee to pay the $4,000 owing for the transportation in question.

In his October 8th affidavit, Congressman Dowdy states that he did, in fact, use the Berryhill corporate plane "on at least two, and possibly three occasions . . . ." He denies, however, that any agreement on charges, such as that detailed by the Berryhills, was ever reached with him. As the Congressman states, "a bill for the plane was requested, and when the bill was submitted, it was promptly paid . . . ." See Dowdy October 8th affidavit. Treasurer Darville concurs that "the Committee has paid every bill submitted to it for air travel by the candidate or authorized campaign personnel." See Darville affidavit.

If the Berryhills billed the Committee at less than the actual charge, or billed them for fewer occasions than the plane was actually used, the fault lies with the Berryhills, not with the campaign. The Committee would always have been prepared to pay the true cost of the transportation used, and indeed their payment of the one bill submitted for this transportation confirms this point. Now, however, with the inflation, exaggeration, and outright falsehood which characterizes all of their claims, the Berryhills are developing new demands for payment of the air transportation.

3401446579

If substantiating documents can be produced, the Committee, will, of course, make all necessary payments to avoid a violation of 2 U.S.C. § 441b. Until such time, however, the Committee will approach this matter with caution in light of the other unsupported allegations made against them by the Berryhills. It awaits further guidance from the Commission.

CONCLUSION

The Committee has demonstrated beyond any doubt that with the qualified exception of corporate plane travel, the allegations underlying the Jacquelin Smith Pierce complaint are based on a source which is not credible. The Berryhills' past practice and the internal contradictions running through the allegations made against the Committee, all point to untrustworthy testimony upon which the Commission cannot base a probable cause to believe finding. If, in fact, expenditures were made by the Berryhills in connection with the campaign, other than those known to the Committee and publicly reported, these were made utterly without authority. It appears more likely, however, that these expenditures were not made, and that the current lawsuit is a fabrication designed solely as a defensive maneuver by parties whose desperate business and financial situation has apparently led them into the practice of false witness.

Accordingly, the Committee requests immediate dismissal of this matter. In the event that the Commission determines that more was owing for corporate plane travel than was actually paid, the Committee is prepared to entertain appropriate evidence and to make payment accordingly. The Committee's failure, however, to pay bills which were never submitted, especially bills tendered by the likes of the Berryhills, does not rise to the level of a significant violation of the Act. Any restitution required can be made promptly and informally, outside the procedures of the enforcement process. The Committee must insist, however, that adequate proof be proffered of the substance of any claim for corporate plane travel, for it will not and cannot pay ransom to the plaintiffs on the basis of raw and unsupported allegations motivated by desparate financial straits and a personal vendetta.

Respectfully submitted,

Robert F. Bauer
Counsel, Dowdy for Congress
Committee

RFB/peg
Attachments
cc: Dwayne Brown

8 4 0 1 4 1 5 2 0

8 4 0 4 0 1 4 4 6 9 1

SEP 23 P4:58

3

PERKINS, COIE, STONE, OLSEN & WILLIAMS

1110 VERMONT AVENUE, N.W., SUITE 1200

WASHINGTON, D.C. 20005

HAND DELIVER

General Counsel's Office
Federal Election Commission
1325 K Street, N.W.

PERKINS, COIE, STONE, OLSEN & WILLIAMS

ANCHORAGE OFFICE
420 "L" STREET
SUITE 301
ANCHORAGE, ALASKA 99501
TELEPHONE: 907-279-8561
TELECOPIER: 907-276-3108

1110 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005
TELEPHONE: 202-887-0030

PLEASE REPLY TO WASHINGTON, D.C. OFFICE

SEATTLE OFFICE
1900 WASHINGTON BUILDING
SEATTLE, WASHINGTON 98101
TELEPHONE: 206-682-8770
TELECOPIER: 206-682-8784
CABLE "PERKINS SEATTLE"
DOM TELEX: 32-0319
INT'L TELEX: 471123

September 16, 1983

HAND DELIVER

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

RE: MUR 1469

Dear Mr. Gross:

This letter serves to confirm our telephone conversation yesterday, in which I requested a brief extension of time for the purpose of filing a brief in response to the General Counsel's brief in the above-captioned matter. As I indicated, the Dowdy for Congress Committee will file a short brief, under the extension which is herewith formally requested, no later than the close of business on Friday, September 23, 1983.

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

Very truly yours,

Bob Bauer

Robert F. Bauer

RFB/peg

8404014462

PERKINS, COIE, STONE, OLSEN & WILLIAMS
1110 VERMONT AVENUE, N. W.
WASHINGTON, D. C. 20005

8404043

HAND DELIVER

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 14, 1983

Alvin M. Binder, Esq.
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Binder:

This is to acknowledge receipt of your letter dated September 6, 1983 and your request for an extension of time to respond to the Commission's Brief. As indicated in our letter to Bobby DeLaughter dated August 25, 1983, the Commission grants an extension of time for 20 days. Therefore, we expect your reply Brief on or before September 26, 1983.

We also acknowledge the inconsistent statement found in the third paragraph of our August 25 letter. In fact, your Brief will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8404014459 84

RECEIVED AT THE FEC
GCC #179
83 SEP 9 A9:37

LAW OFFICES
BINDER, KNAPP & MILNER
511 EAST PEARL STREET
P. O. BOX 28
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER

MICHAEL L. KNAPP
LISA BINDER MILNER

TELEPHONE
948-8000
AREA CODE 60

September 6, 1983

SEP 9 A11:56

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Steele:

Regarding the above file, your letter of August 25, 1983, indicates in paragraph two that after considering the evidence available to the Commission, your office is prepared to recommend that the Commission find probable cause to believe a violation has occurred. In the last sentence of paragraph three, after advising that we can file briefs, you indicate that the briefs will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred. I do believe that there is an inconsistency here. In any event, I am filing a written request for an extension of time in which to file a brief.

Mr. DeLaughter has left this firm and I will be handling the Berryhills' business from here on. I also notice that the letter of August 25 is addressed to Bobby B. DeLaughter, in care of Luckett, Luckett, Luckett and Thompson. Bobby DeLaughter was previously in my law firm known as Binder, Kirksey & DeLaughter and he left the firm on July 1 to go into business for himself. Please address all future correspondence to me.

In reference to file MUR 1469 indicating that there would be a recommendation of no probable cause to believe a violation has occurred concerning Herbert and Lowery Berryhill, we will not reply to this letter.

8 4 0 0 1 4 1 6 9 5

Thanking you for your kind attention to our request for additional time in which to reply, I remain

Sincerely,

BINDER, KNAPP, MILNER & KEYES

Alvin M. Binder

AMB:ncb

cc Mr. Herbert Berryhill

8440144536

BINDER, KNAPP & MILNER
511 EAST PEARL STREET
P. O. BOX 55
JACKSON, MISSISSIPPI 39205

8 4 0 4 0 0 1 1 3 7

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D. C. 20463

Acct 759

Response Brief

ROBERT S. MURPHREE
TRUSTEE IN BANKRUPTCY
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
P. O. Box 370
Jackson, Mississippi 39205

August 29, 1983

SEP 6 4:22

Secretary, Federal Election Commission
Washington, D.C. 30463

Re: Little Dixie Supermarkets, Inc., Congressman Wayne Dowdy, Berryhill Farms, MUR 1469

Dear Sir:

This letter will serve as the responsive brief of the Trustee in Bankruptcy of Little Supermarkets, Inc. to the brief of the General Counsel that I received this morning.

As Trustee in Bankruptcy of Little Dixie Supermarkets, Inc. I have no personal knowledge of the facts or findings discussed in the General Counsel's brief. However in previous correspondence to the Federal Election Commission I have repeatedly emphasized to the General Counsel that all of my dealings with the Berryhill family as trustee in bankruptcy have been unsatisfactory and I have an extremely poor opinion of their creditability. Therefore as a firm believer in fair play it causes me concern that Congressman Dowdy or his campaign may be harmed as a result of the apparent vendetta the Berryhill family seems to be intent on pursuing against Congressman Dowdy and his campaign.

In addition, the woman who filed the Complaint against Congressman Dowdy once had her office next to mine and to my knowledge she was an avid and vocal supporter of the apponent Congressman Dowdy beat in each of his last two elections. So it appears to me these complaints stem more from partisan politics and personnel animosity than from any desire to protect the integrity of the electorial process.

Perhaps it would be in order for the Federal Election Commission to make a determined effort to find out who in fact did own the airplane in issue in this matter. I note with interest that in sworn schedules filed with the United States Bankruptcy Court for the Southern District of Mississippi on September 14, 1981 Lowery Berryhill stated that the aircraft was owned by Little Dixie Supermarkets, Inc. No where in these schedules do I find any mention of a contention that Berryhill Farms, Inc. owned any part of this aircraft.

8401414598

Since Little Dixie Supermarkets, Inc. has been in bankruptcy for almost two (2) years now it appears to me that the Dowdy Campaign's reluctance to disburse any funds to the Berryhills in absence of proper documentation would be a prudent concern. As trustee in bankruptcy I would be reluctant to accept funds from the Dowdy Campaign for payment for the use of this airplane if the only substantiation of the amount tendered would be derived from one of the Berryhill family members. In my dear one experience with the Berryhills I have found that relying on their figures or information is most imprudent.

If you need anymore information from me please let me know.

Yours truly,

Robert S. Murphree,
Trustee in Bankruptcy

RSM/dh

8404014459

ROBERT S. MURPHREE
ATTORNEY AT LAW
P.O. BOX 370
JACKSON, MISSISSIPPI 39205

Secretary, Federal Election Commission
Washington, D.C. 30463

8401450

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: August 25, 1983

SUBJECT: MUR 1469 - Memo & Briefs

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	X
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	X	Status Sheets	[ ]
Sensitive	X		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8404014452 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/JODY C. RANSOM jcr

DATE: AUGUST 26, 1983

SUBJECT: GENERAL COUNSEL'S BRIEF - MUR 1469

The attached documents are circulated for your information.

Attachments:
Memo, Brief and Letter

8404014452 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Robert F. Bauer, Esquire
Perkins, Coie, Stone, Olsen & Williams
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

Based on a complaint filed with the Commission on September 13, 1982, the Commission determined on January 5, 1983, that there was reason to believe your client, the Dowdy for Congress Committee, had violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation on this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe as to violations found in 2 U.S.C. §§ 434b, 441b and 11 C.F.R. § 114.9(e). The Office of General Counsel is also prepared to recommend that the Commission find no probable cause to believe that a violation of 2 U.S.C. § 441a(f), and 11 C.F.R. § 110.4(c)(2) had occurred. The Commission may or may not approve the General Counsel's Recommendation.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

9404014465 3

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8404014455 24

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Bobby B. DeLaughter, Esquire
Luckett, Luckett, Luckett & Thompson
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. DeLaughter:

Based on a complaint filed with the Commission on September 13, 1982, the Commission determined on January 5, 1983, that there was reason to believe your clients, Herbert Berryhill and Lowery Berryhill, had violated 2 U.S.C. § 441a(a)(1)(A), and 11 C.F.R. § 110.4(c)(1), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation on this matter.

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

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

3 9 4 0 1 4 4 5 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Robert S. Murphree, Esquire
First Magnolia Federal Building
Suite 402
P.O. Box 370
Jackson, Mississippi

Re: MUR 1469

Dear Mr. Murphree:

Based on a complaint filed with the Commission on September 13, 1982, the Commission determined on January 5, 1983, that there was reason to believe that Little Dixie Supermarket, Inc. had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation on this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

9401446326

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8404014427

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Bobby B. DeLaughter, Esquire
Luckett, Luckett, Luckett & Thompson
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. DeLaughter:

Based on a complaint filed with the Commission on September 13, 1982, and information supplied by you, the Commission determined on January 5, 1983, that there was reason to believe that your client, Berryhill Farms, Inc., violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

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

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

8404014528

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8404014459

Docket
1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/JODY C. RANSOM jcr

DATE: AUGUST 26, 1983

SUBJECT: GENERAL COUNSEL'S BRIEF - MUR 1469

The attached documents are circulated for your information.

Attachments:
Memo, Brief and Letter

8404014470

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

83 AUG 25 P 2: 50

August 25, 1983

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1469

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of these briefs and letters notifying the Respondents of the General Counsel's intent to recommend to the Commission findings of probable cause and no probable cause to believe were mailed on August 25, 1983. Following receipt of the Respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments
1. Briefs
2. Letters to Respondents

8404014471

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Dowdy for Congress Committee	)	MUR 1469
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil suit filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The civil suit seeks a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., provided to Congressman Dowdy's special election campaign of 1981.

The allegations of the complaint filed with the Commission are that: 1) Herbert Berryhill and Lowery Berryhill made cash contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 2) Herbert Berryhill and Lowery Berryhill made contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 3) the Dowdy for Congress Committee

8401447202

failed to report the receipt of the contributions from Herbert Berryhill and Lowery Berryhill; and 4) Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

Herbert Berryhill, Lowery Berryhill, Berryhill Farms, Inc., and the Trustee in Bankruptcy of Little Dixie Supermarket, Inc., all filed responses to the complaint. On January 5, 1983, the Commission found reason to believe that Herbert Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Lowery Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Berryhill Farms, Inc., violated 2 U.S.C. § 441b, that Little Dixie Supermarket, Inc., violated 2 U.S.C. § 441b, and that the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2).

On January 18, 1983, the Commission received a response to the reason to believe finding from Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1983. The Dowdy for Congress Committee submitted with its response two affidavits from Congressman Dowdy, two affidavits from Congressman Dowdy's wife, Susan Dowdy, and an affidavit from the

8404014473

treasurer of the Dowdy for Congress Committee, Robert H. Darville. The Darville affidavit included a number of exhibits. Additionally, the Dowdy for Congress Committee submitted papers from three civil actions involving the Berryhills.

II. FACTUAL AND LEGAL ANALYSIS

This case primarily involves a factual rather than a legal question. It evolves out of a civil suit filed by the Berryhills against Congressman Dowdy in which the Berryhills allege that Congressman Dowdy owes them money as a result of services provided to Congressman Dowdy's campaign. The Berryhills in affirming the allegations contained in the civil suit admit to facts which for purposes of the complaint filed with the Commission constitute violations of the Act by both the Berryhills and the Dowdy for Congress Committee. That is, the Berryhills admit to making excessive cash contributions, excessive contributions, and a corporate contribution. No affidavits or supporting materials were submitted by the Berryhills to substantiate these allegations. The Dowdy for Congress Committee denies that it received such illegal contributions. Affidavits and other documents were submitted by the Dowdy for Congress Committee in support of its response.

As to the receipt of cash contributions and excessive contributions by the Dowdy for Congress Committee, the Office of General Counsel recommends that the Commission find no probable cause to believe that a violation of the Act has occurred.

8 4 0 4 0 1 4 4 7 7 4

The Berryhills, in their response to the complaint filed with the Commission, reaffirm the allegations contained in the civil suit. These allegations are self-incriminating against the Berryhills as they appear to be violations of the Act. However, aside from this fact, there are no affidavits or independent evidence submitted by the Berryhills or obtained from others to substantiate the truth of what is asserted in the complaint. The Dowdy for Congress Committee, in its response to the complaint filed with the Commission, submitted affidavits and other documents, however, which contradict the allegations of the complaint which support the Committee's position that no violation of the Act occurred with regard to the receipt of contributions from the Berryhills.

With regard to use of the corporate airplane, the Office of General Counsel recommends that the Commission find probable cause to believe that a violation of the Act has occurred. The Dowdy for Congress Committee admits that the airplane was used and that payment for such use was never made.

A discussion of each allegation follows. First, the Berryhills claim that they loaned Congressman Dowdy $18,000 in cash. The Dowdy for Congress Committee reports indicate that Herbert Berryhill loaned the Dowdy campaign $1,000. However, Congressman Dowdy and Committee Treasurer Darville deny in their affidavits that $18,000 in cash was lent to the campaign by the Berryhills. There is no substantiated evidence that such cash payments were ever made.

8 4 0 4 0 1 4 4 7 0 5

Second, the Berryhills state that a campaign worker for Congressman Dowdy cashed four personal checks with the Berryhills totalling $5,900 and that the checks were no good. Congressman Dowdy and Committee Treasurer Darville deny in their affidavits that any person associated with the campaign had authority to make expenditures for the Committee by cashing personal checks. They also state that all authority for making expenditures was vested with treasurer Darville. Further, it is asserted that there is no evidence that the person or persons who cashed the checks were associated with the Dowdy Campaign or that as a result of the transactions any cash was ever received by the Committee or spent in connection with its activities.

Third, the Berryhills maintain that payments of $1,241.88 were made for hotel accommodations used by Congressman Dowdy, his staff, and press representatives on June 22, 1981 and on July 7, 1981. Supposedly, these accommodations were charged on Lowery Berryhill's credit card. The civil suit alleges that Lowery Berryhill authorized Susan Dowdy to sign Lowery Berryhill's name and in fact she did sign his name to all such billings. Congressman Dowdy states in his affidavit that at no time did the Berryhills provide hotel accommodations for him or his campaign. Further, Congressman Dowdy's wife, Susan Dowdy, states in her affidavit that Lowery or Herbert Berryhill never directed her to sign Lowery Berryhill's name to any document or credit card nor did she ever sign his name to any document or credit card.

8404014476

Fourth, the Berryhills claim that at the request of Congressman Dowdy they paid the salaries of seven campaign workers, such sum totalling $5,174. Congressman Dowdy states in his affidavit that he never met five of the seven campaign workers who were reportedly paid. Further, he states that he never requested or authorized the Berryhills to pay these individuals. Also, Campaign Treasurer Darville states in his affidavit that if such individuals were paid he never authorized the Berryhills or any other person to pay them.

Fifth, the Berryhills allege that they paid $351.08 for copier supplies used by the Dowdy for Congress Committee. Congressman Dowdy and the Committee Treasurer deny in their affidavits that the Berryhills paid for copier supplies for the campaign. They further state that the campaign did not even have a copier at any of its headquarters so that in fact there was no need for copier supplies.

Sixth, the Berryhills claim that they purchased liquor in the amount of $800 for election night events. Congressman Dowdy and Campaign Treasurer Darville in their affidavits state that at no time did the Berryhills have authority to purchase liquor on behalf of the Dowdy for Congress Committee. Further, they indicate that all liquor purchased for election night activities was paid for with campaign funds as is evidenced by cancelled checks attached to Darville's affidavit.

Seventh, the Berryhills state that Congressman Dowdy negotiated for the purchase of 750 pounds of catfish totalling

8404147

$1,500 from Country Kitchen, a business operated by the wife of Herbert Berryhill. Congessman Dowdy denies in his affidavit that he ever purchased any catfish from Country Kitchen.

Finally, the Berryhills, through Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., which jointly own a corporate airplane, allege that Congressman Dowdy failed to pay $4,000 for the use of such plane resulting in a corporate contribution to the Dowdy for Congress Committee. Congressman Dowdy admits in his affidavit that he used the Berryhill corporate plane two or three times. He further states that he did not negotiate or agree to a specific charge for the plane.

Committee Treasurer Darville states in his affidavit that the Dowdy for Congress Committee has paid all bills submitted to it for air travel. He goes on to state that with regard to the Berryhills, "[n]o bill has ever been received and no demand has ever been made to the Committee for payment of any flight time or waiting time and absent credible and substantial documentation, such an expenditure is believed to be improper and inappropriate, and I know of no such authority to extend such payment." In fact, the Dowdy for Congress Committee, in its response to the Commission's reason to believe finding, does not state that it ever paid a bill in any amount to the Berryhills for use of the corporate plane. The Berryhills in their reply to the reason to believe finding state that the Dowdy for Congress Committee paid approximately $600 for pilot and plane expenses. The Office of

8 4 0 4 0 1 4 1 7 0 8

General Counsel could not find a specific itemization of this payment on the reports filed by the Dowdy for Congress Committee. In any event, the Dowdy for Congress Committee has violated 2 U.S.C. § 434(b) for not reporting either the debt owed for use of the corporate airplane or the payment of $600.

The Dowdy for Congress Committee states that if substantiating documents can be produced by the Berryhills it is prepared to pay Berryhill Farms, Inc., and Little Dixie Supermarket, Inc., for use of the airplane. However, there is presently a dispute between the Berryhills and the Dowdy for Congress Committee as to how many times the airplane was used and, therefore, as to what amount is actually owed to the Berryhills by the Dowdy for Congress Committee.

2 U.S.C. §441b prohibits corporations from making contributions to federal elections. Use of a corporate airplane for transportation by a candidate constitutes an illegal contribution in violation of 2 U.S.C. § 441b unless such use is paid for in compliance with 11 C.F.R. § 114.9(e). 11 C.F.R. § 114.9(e) requires that:

> [a] candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization--
>
> (i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare;
> (ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

8401447 9

Regardless of the statement of the Dowdy for Congress Committee that it will pay for the use of the corporate airplane once the Berryhills submit a substantiated bill, 11 C.F.R. § 114.9(e) has not been complied with, as it requires payment in advance of the use of the airplane. In fact, approximately two years have passed since the airplane was used and payment still has not been made. Accordingly, the Dowdy for Congress Committee has violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) by accepting a corporate contribution.

In sum, except for the unsubstantiated allegations of the complaint, the investigation has produced no evidence that the Dowdy for Congress Committee received cash contributions from Herbert Berryhill and Lowery Berryhill in excess of the limits of 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(2). Also, except for the unsubstantiated allegations of the complaint, the investigation has produced no evidence which indicates that the Dowdy for Congress Committee received from Herbert Berryhill and Lowery Berryhill contributions in excess of the limits of 2 U.S.C. § 441a(a). If such contributions were not received it follows that the Dowdy for Congress did not fail to report their receipt.

Finally, as the Dowdy for Congress Committee did not pay in advance for use of the corporate airplane and in fact has never paid for use of the airplane, a violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) has occurred.

8104014710

III. **RECOMMENDATION**

The Office of General Counsel recommends that the Commission:

1. Find no probable cause to believe the Dowdy for Congress Committee violated 2 U.S.C. § 441a(f), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(2); and

2. Find probable cause to believe the Dowdy for Congress Committee violated 2 U.S.C. § 441b, 2 U.S.C. § 434(b), and 11 C.F.R. § 114.9(e).

25 August 1983
Date

Charles N. Steele
General Counsel

8404014471 1

failed to report the receipt of the contributions from Herbert Berryhill and Lowery Berryhill; and 4) Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

Herbert Berryhill, Lowery Berryhill, Berryhill Farms, Inc., and the Trustee in Bankruptcy of Little Dixie Supermarket, Inc., all filed responses to the complaint. On January 5, 1983, the Commission found reason to believe that Herbert Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Lowery Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Berryhill Farms, Inc., violated 2 U.S.C. § 441b, that Little Dixie Supermarket, Inc., violated 2 U.S.C. § 441b, and that the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2).

On January 18, 1983, the Commission received a response to the reason to believe finding from Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1983. The Dowdy for Congress Committee submitted with its response two affidavits from Congressman Dowdy, two affidavits from Congressman Dowdy's wife, Susan Dowdy, and an affidavit from the

9401447 12

treasurer of the Dowdy for Congress Committee, Robert H. Darville. The Darville affidavit included a number of exhibits. Additionally, the Dowdy for Congress Committee submitted papers from three civil actions involving the Berryhills.

II. FACTUAL AND LEGAL ANALYSIS

This case primarily involves a factual rather than a legal question. It evolves out of a civil suit filed by the Berryhills against Congressman Dowdy in which the Berryhills allege that Congressman Dowdy owes them money as a result of services provided to Congressman Dowdy's campaign. The Berryhills in affirming the allegations contained in the civil suit admit to facts which for purposes of the complaint filed with the Commission constitute violations of the Act by both the Berryhills and the Dowdy for Congress Committee. That is, the Berryhills admit to making excessive cash contributions, excessive contributions, and a corporate contribution. No affidavits or supporting materials were submitted by the Berryhills to substantiate these allegations. The Dowdy for Congress Committee denies that it received such illegal contributions. Affidavits and other documents were submitted by the Dowdy for Congress Committee in support of its response.

The Berryhills allege, through Berryhill Farms, Inc., and Little Dixie Supermarket, Inc., which jointly own a corporate airplane, that Congressman Dowdy failed to pay $4,000 for the use of such plane resulting in a corporate contribution to the Dowdy for Congress Committee. As this allegation involves Berryhill

8404014471 3

Farms, Inc., and Little Dixie Supermarket, Inc., it is considered in the briefs provided to them.

As to the Berryhills allegation that they made cash contributions and excessive contributions to the Dowdy for Congress Committee, the Office of General Counsel recommends that the Commission find no probable cause to believe that a violation of the Act has occurred. The Berryhills, in their response to the complaint filed with the Commission, reaffirm the allegations contained in the civil suit. These allegations are self-incriminating against the Berryhills as they appear to be violations of the Act. However, aside from this fact, there are no affidavits or independent evidence submitted by the Berryhills or obtained from others to substantiate the truth of what is asserted in the complaint. The Dowdy for Congress Committee, in its response to the complaint filed with the Commission, submitted affidavits and other documents, however, which contradict the allegations of the complaint which support the Committee's position that no violation of the Act occurred with regard to the making of contributions by the Berryhills.

A discussion of each allegation follows. First, the Berryhills claim that they loaned Congressman Dowdy $18,000 in cash. The Dowdy for Congress Committee reports indicate that Herbery Berryhill loaned the Dowdy campaign $1,000. However, Congressman Dowdy and Committee Treasurer Darville deny in their

8 4 0 4 0 1 4 4 7 1 4

Congressman Dowdy and Committee Treasurer Darville deny in their affidavits that $18,000 in cash was given or lent to the campaign by the Berryhills. There is no substantiated evidence that such cash payments were ever made.

Second, the Berryhills state that a campaign worker for Congressman Dowdy cashed four personal checks with the Berryhills totalling $5,900 and that the checks were no good. Congressman Dowdy and Committee Treasurer Darville deny in their affidavits that any person associated with the campaign had authority to make expenditures for the Committee by cashing personal checks. They also state that all authority for making expenditures was vested with treasurer Darville. Further, it is asserted that there is no evidence that the person or persons who cashed the checks were associated with the Dowdy Campaign or that as a result of the transactions any cash was ever received by the Committee or spent in connection with its activities.

Third, the Berryhills maintain that payments of $1,241.88 were made for hotel accommodations used by Congressman Dowdy, his staff, and press representatives on June 22, 1981 and on July 7, 1981. Supposedly, these accommodations were charged on Lowery Berryhill's credit card. The civil suit alleges that Lowery Berryhill authorized Susan Dowdy to sign Lowery Berryhill's name and in fact she did sign his name to all such billings. Congressman Dowdy states in his affidavit that at no time did the Berryhills provide hotel accommodations for him or his campaign.

8404014715

affidavit that Lowery or Herbert Berryhill never directed her to sign Lowery Berryhill's name to any document or credit card nor did she ever sign his name to any document or credit card.

Fourth, the Berryhills claim that at the request of Congressman Dowdy they paid the salaries of seven campaign workers, such sum totalling $5,174. Congressman Dowdy states in his affidavit that he never met five of the seven campaign workers who were reportedly paid. Further, he states that he never requested or authorized the Berryhills to pay these individuals. Also, Campaign Treasurer Darville states in his affidavit that if such individuals were paid he never authorized the Berryhills or any other person to pay them.

Fifth, the Berryhills allege that they paid $351.08 for copier supplies used by the Dowdy for Congress Committee. Congressman Dowdy and the Committee Treasurer deny in their affidavits that the Berryhills paid for copier supplies for the campaign. They further state that the campaign did not even have a copier at any of its headquarters so that in fact there was no need for copier supplies.

Sixth, the Berryhills claim that they purchased liquor in the amount of $800 for election night events. Congressman Dowdy and Campaign Treasurer Darville in their affidavits state that at no time did the Berryhills have authority to purchase liquor on behalf of the Dowdy for Congress Committee. Further, they indicate that all liquor purchased for election night activities

8404147 6

was paid for with campaign funds as is evidenced by cancelled checks attached to Darville's affidavit.

Seventh, the Berryhills state that Congressman Dowdy negotiated for the purchase of 750 pounds of catfish totalling $1,500 from Country Kitchen, a business operated by the wife of Herbert Berryhill. Congressman Dowdy denies in his affidavit that he ever purchased any catfish from Country Kitchen.

In sum, except for the unsubstantiated allegations of the complaint, the investigation has produced no evidence that Lowery Berryhill made cash contributions to the Dowdy for Congress Committee in excess of the limits of 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1). Also, except for the unsubstantiated allegations of the complaint, the investigation has produced no evidence that Lowery Berryhill made contributions to the Dowdy for Congress Committee in excess of the limits of 2 U.S.C. § 441a(a).

8404014717

III. RECOMMENDATION

The Office of General Counsel recommends that the Commission find no probable cause to believe Lowery Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1).

25 August 1983
Date

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Herbert Berryhill	)	MUR 1469
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil suit filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The civil suit seeks a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., provided to Congressman Dowdy's special election campaign of 1981.

The allegations of the complaint filed with the Commission are that: 1) Herbert Berryhill and Lowery Berryhill made cash contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 2) Herbert Berryhill and Lowery Berryhill made contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 3) the Dowdy for Congress Committee

8 4 0 4 0 1 4 7 1 8

failed to report the receipt of the contributions from Herbert Berryhill and Lowery Berryhill; and 4) Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

Herbert Berryhill, Lowery Berryhill, Berryhill Farms, Inc., and the Trustee in Bankruptcy of Little Dixie Supermarket, Inc. all filed responses to the complaint. On January 5, 1983, the Commission found reason to believe that Herbert Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Lowery Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Berryhill Farms, Inc., violated 2 U.S.C. § 441b, that Little Dixie Supermarket, Inc., violated 2 U.S.C. § 441b, and that the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2).

On January 18, 1983, the Commission received a response to the reason to believe finding from Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1983. The Dowdy for Congress Committee submitted with its response two affidavits from Congressman Dowdy, two affidavits from Congressman Dowdy's wife, Susan Dowdy, and an affidavit from the

3 4 0 4 0 1 4 4 7 1 6

treasurer of the Dowdy for Congress Committee, Robert H. Darville. The Darville affidavit included a number of exhibits. Additionally, the Dowdy for Congress Committee submitted papers from three civil actions involving the Berryhills.

II. FACTUAL AND LEGAL ANALYSIS

This case primarily involves a factual rather than a legal question. It evolves out of a civil suit filed by the Berryhills against Congressman Dowdy in which the Berryhills allege that Congressman Dowdy owes them money as a result of services provided to Congressman Dowdy's campaign. The Berryhills in affirming the allegations contained in the civil suit admit to facts which for purposes of the complaint filed with the Commission constitute violations of the Act by both the Berryhills and the Dowdy for Congress Committee. That is, the Berryhills admit to making excessive cash contributions, excessive contributions, and a corporate contribution. No affidavits or supporting materials were submitted by the Berryhills to substantiate these allegations. The Dowdy for Congress Committee denies that it received such illegal contributions. Affidavits and other documents were submitted by the Dowdy for Congress Committee in support of its response.

The Berryhills allege, through Berryhill Farms, Inc., and Little Dixie Supermarket, Inc., which jointly own a corporate airplane, that Congressman Dowdy failed to pay $4,000 for the use of such plane resulting in a corporate contribution to the Dowdy for Congress Committee. As this allegation involves Berryhill

8404014470

Farms, Inc., and Little Dixie Supermarket, Inc., it is considered in the briefs provided to them.

As to the Berryhills allegation that they made cash contributions and excessive contributions to the Dowdy for Congress Committee, the Office of General Counsel recommends that the Commission find no probable cause to believe that a violation of the Act has occurred. The Berryhills, in their response to the complaint filed with the Commission, reaffirm the allegations contained in the civil suit. These allegations are self-incriminating against the Berryhills as they appear to be violations of the Act. However, aside from this fact, there are no affidavits or independent evidence submitted by the Berryhills or obtained from others to substantiate the truth of what is asserted in the complaint. The Dowdy for Congress Committee, in its response to the complaint filed with the Commission, submitted affidavits and other documents, however, which contradict the allegations of the complaint and which, in part, support the Committee's position that no violation of the Act occurred with regard to the making of contributions by the Berryhills.

A discussion of each allegation follows. First, the Berryhills claim that they loaned Congressman Dowdy $18,000 in cash. The Dowdy for Congress Committee reports indicate that Herbert Berryhill loaned the Dowdy campaign $1,000. However,

8404014717

affidavits that $18,000 in cash was given or lent to the campaign by the Berryhills. There is no substantiated evidence that such cash payments were ever made.

Second, the Berryhills state that a campaign worker for Congressman Dowdy cashed four personal checks with the Berryhills totalling $5,900 and that the checks were no good. Congressman Dowdy and Committee Treasurer Darville deny in their affidavits that any person associated with the campaign had authority to make expenditures for the Committee by cashing personal checks. They also state that all authority for making expenditures was vested with treasurer Darville. Further, it is asserted that there is no evidence that the person or persons who cashed the checks were associated with the Dowdy Campaign or that as a result of the transactions any cash was ever received by the Committee or spent in connection with its activities.

Third, the Berryhills maintain that payments of $1,241.88 were made for hotel accommodations used by Congressman Dowdy, his staff, and press representatives on June 22, 1981 and on July 7, 1981. Supposedly, these accommodations were charged on Lowery Berryhill's credit card. The civil suit alleges that Lowery Berryhill authorized Susan Dowdy to sign Lowery Berryhill's name and in fact she did sign his name to all such billings. Congressman Dowdy states in his affidavit that at no time did the Berryhills provide hotel accommodations for him or his campaign. Further, Congressman Dowdy's wife, Susan Dowdy, states in her

8404014472

Further, Congressman Dowdy's wife, Susan Dowdy, states in her affidavit that Lowery or Herbert Berryhill never directed her to sign Lowery Berryhill's name to any document or credit card nor did she ever sign his name to any document or credit card.

Fourth, the Berryhills claim that at the request of Congressman Dowdy they paid the salaries of seven campaign workers, such sum totalling $5,174. Congressman Dowdy states in his affidavit that he never met five of the seven campaign workers who were reportedly paid. Further, he states that he never requested or authorized the Berryhills to pay these individuals. Also, Campaign Treasurer Darville states in his affidavit that if such individuals were paid he never authorized the Berryhills or any other person to pay them.

Fifth, the Berryhills allege that they paid $351.08 for copier supplies used by the Dowdy for Congress Committee. Congressman Dowdy and the Committee Treasurer deny in their affidavits that the Berryhills paid for copier supplies for the campaign. They further state that the campaign did not even have a copier at any of its headquarters so that in fact there was no need for copier supplies.

Sixth, the Berryhills claim that they purchased liquor in the amount of $800 for election night events. Congressman Dowdy and Campaign Treasurer Darville in their affidavits state that at no time did the Berryhills have authority to purchase liquor on behalf of the Dowdy for Congress Committee. Further, they

8404014473

indicate that all liquor purchased for election night activities was paid for with campaign funds as is evidenced by cancelled checks attached to Darville's affidavit.

Seventh, the Berryhills state that Congressman Dowdy negotiated for the purchase of 750 pounds of catfish totalling $1,500 from Country Kitchen, a business operated by the wife of Herbert Berryhill. Congressman Dowdy denies in his affidavit that he ever purchased any catfish from Country Kitchen.

In sum, except for the unsubstantiated allegations of the complaint, the investigation has produced no evidence that Herbert Berryhill made cash contributions to the Dowdy for Congress Committee in excess of the limits of 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1). Also, except for the unsubstantiated allegations of the complaint, the investigation has produced no evidence that Herbert Berryhill made contributions to the Dowdy for Congress Committee in excess of the limits of 2 U.S.C. § 441a(a).

8404041724

III. RECOMMENDATION

The Office of General Counsel recommends that the Commission find no probable cause to believe Herbert Berryhill violated 2 U.S.C. § 441a(a), 2 U.S.C. § 441g and 11 C.F.R. § 110.4(c)(1).

28 August 1983
Date

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Little Dixie Supermarket, Inc.	)	MUR 1469
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil suit filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The civil suit seeks a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., provided to Congressman Dowdy's special election campaign of 1981.

The allegation of the complaint filed with the Commission which deals with use of a corporate airplane is that Little Dixie Supermarket, Inc.,*/ and Berryhill Farms, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

---

*/ Little Dixie Supermarket, Inc., is in bankruptcy.

8404014725

The Trustee in Bankruptcy of Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., filed responses to the complaint. On January 5, 1983, the Commission found with regard to use of the corporate airplane that Little Dixie Supermarket, Inc., Berryhill Farms, Inc., and the Dowdy for Congress Committee violated 2 U.S.C. § 441b.

On January 18, 1983, the Commission received a response to the reason to believe finding from Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1983.

8401447026

II. FACTUAL AND LEGAL ANALYSIS

This case evolves out of a civil suit filed by the Berryhills against Congressman Dowdy in which the Berryhills allege that Congressman Dowdy owes them money as a result of services provided to Congressman Dowdy's campaign. The Berryhills in affirming the allegations contained in the civil suit state that Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided a corporate airplane to the Dowdy for Congress Committee the use of which was never paid for constituting an illegal corporate contribution. No affidavits or supporting materials were submitted by the Berryhills to substantiate this allegation. The Dowdy for Congress Committee does not deny that the plane was used but states that it is and always has been prepared to pay the true cost of the transportation once that cost is substantiated. Accordingly, the

Dowdy for Congress Committee denies that it received an illegal corporate contribution. Affidavits were submitted by the Dowdy for Congress Committee in support of its response. The Office of General Counsel recommends that the Commission find probable cause to believe that a violation of the Act has occurred.

The Berryhills, through Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., which jointly own a corporate airplane, alleged that Congressman Dowdy has failed to pay $4,000 for the use of such plane resulting in a corporate contribution to the Dowdy for Congress Committee. Congressman Dowdy admits in his affidavit that he used the Berryhill corporate plane two or three times. He further states that he did not negotiate or agree to a specific charge for the plane.

Committee Treasurer Darville states in his affidavit that the Dowdy for Congress Committee has paid all bills submitted to it for air travel. He goes on to state that with regard to the Berryhills, "[n]o bill has ever been received and no demand has ever been made to the Committee for payment of any flight time or waiting time and absent credible and substantial documentation, such an expenditure is believed to be improper and inappropriate, and I know of no such authority to extend such payment." In fact, the Dowdy for Congress Committee, in its response to the Commission's reason to believe finding, does not state that it ever paid a bill in any amount to the Berryhills for use of the corporate plane. The Berryhills in their reply to the reason to

8401417

believe finding state that the Dowdy for Congress Committee paid approximately $600 for pilot and plane expenses. The Office of General Counsel could not find a specific itemization of this payment on the reports filed by the Dowdy for Congress Committee.

The Dowdy for Congress Committee states that if substantiating documents can be produced by the Berryhills it is prepared to pay Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., for use of the airplane. However, there is presently a dispute between the Berryhills and the Dowdy for Congress Committee as to how many times the airplane was used and, therefore, as to what amount is actually owed to the Berryhills by the Dowdy for Congress Committee.

2 U.S.C. §441b prohibits corporations from making contributions to federal elections. Use of a corporate airplane for transportation by a candidate constitutes an illegal contribution in violation of 2 U.S.C. § 441b unless such use is paid for in compliance with 11 C.F.R. § 114.9(e). 11 C.F.R. § 114.9(e) requires that:

> [a] candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization--
>
> (i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare;
> (ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

3 4 0 4 0 1 4 1 7 3 8

Regardless of the statement of the Dowdy for Congress Committee that it will pay for the use of the corporate airplane once the Berryhills submit a substantiated bill, 11 C.F.R. § 114.9(e) has not been complied with, as it requires payment in advance of the use of the airplane. In fact, approximately two years have gone by since the airplane was used and the payment still has not been made. Accordingly, Little Dixie Supermarket, Inc. has violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) by making a corporate contribution.

III. RECOMMENDATION

The Office of General Counsel recommends that the Commission find probable cause to believe Little Dixie Supermarket, Inc., violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e).

25 August 1983
Date

Charles N. Steele
General Counsel

8 4 0 1 4 4 7 2 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Berryhill Farms, Inc.	)	MUR 1469
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil suit filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The civil suit seeks a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., provided to Congressman Dowdy's special election campaign of 1981.

The allegation of the complaint filed with the Commission which deals with use of a corporate airplane is that Berryhill Farms, Inc., and Little Dixie Supermarket, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

8401447730

Berryhill Farms, Inc., and the Trustee in Bankruptcy of Little Dixie Supermarket, Inc., filed responses to the complaint. On January 5, 1983, the Commission found with regard to use of the corporate airplane that Berryhill Farms, Inc., Little Dixie Supermarket, Inc., and the Dowdy for Congress Committee violated 2 U.S.C. § 441b.

On January 18, 1983, the Commission received a response to the reason to believe finding from Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1983.

II. FACTUAL AND LEGAL ANALYSIS

This case evolves out of a civil suit filed by the Berryhills against Congressman Dowdy in which the Berryhills allege that Congressman Dowdy owes them money as a result of services provided to Congressman Dowdy's campaign. The Berryhills in affirming the allegations contained in the civil suit state that Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided a corporate airplane to the Dowdy for Congress Committee the use of which was never paid for constituting an illegal corporate contribution. No affidavits or supporting materials were submitted by the Berryhills to substantiate this allegation. The Dowdy for Congress Committee does not deny that the plane was used but states that it is and always has been prepared to pay the true cost of the transportation once that cost is substantiated. Accordingly,

8401447

the Dowdy for Congress Committee denies that it received an illegal corporate contribution. Affidavits were submitted by the Dowdy for Congress Committee in support of its response. The Office of General Counsel recommends that the Commission find probable cause to believe that a violation of the Act has occurred.

The Berryhills, through Berryhill Farms, Inc., and Little Dixie Supermarket, Inc., which jointly own a corporate airplane, alleged that Congressman Dowdy has failed to pay $4,000 for the use of such plane resulting in a corporate contribution to the Dowdy for Congress Committee. Congressman Dowdy admits in his affidavit that he used the Berryhill corporate plane two or three times. He further states that he did not negotiate or agree to a specific charge for the plane.

Committee Treasurer Darville states in his affidavit that the Dowdy for Congress Committee has paid all bills submitted to it for air travel. He goes on to state that with regard to the Berryhills, "[n]o bill has ever been received and no demand has ever been made to the Committee for payment of any flight time or waiting time and absent credible and substantial documentation, such an expenditure is believed to be improper and inappropriate, and I know of no such authority to extend such payment." In fact, the Dowdy for Congress Committee, in its response to the Commission's reason to believe finding, does not state that it ever paid a bill in any amount to the Berryhills for use of the

8404014473 2

corporate plane. The Berryhills in their reply to the reason to believe finding state that the Dowdy for Congress Committee paid approximately $600 for pilot and plane expenses. The Office of General Counsel could not find a specific itemization of this payment on the reports filed by the Dowdy for Congress Committee.

The Dowdy for Congress Committee states that if substantiating documents can be produced by the Berryhills it is prepared to pay Berryhill Farms, Inc., and Little Dixie Supermarket, Inc., for use of the airplane. However, there is presently a dispute between the Berryhills and the Dowdy for Congress Committee as to how many times the airplane was used and, therefore, as to what amount is actually owed to the Berryhills by the Dowdy for Congress Committee.

2 U.S.C. §441b prohibits corporations from making contributions to federal elections. Use of a corporate airplane for transportation by a candidate constitutes an illegal contribution in violation of 2 U.S.C. § 441b unless such use is paid for in compliance with 11 C.F.R. § 114.9(e). 11 C.F.R. § 114.9(e) requires that:

> [a] candidate, candidate's agent, or person traveling on behalf of a candidate who uses a airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization--
>
> (i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare;
>
> (ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

8404014733

Regardless of the statement of the Dowdy for Congress Committee that it will pay for the use of the corporate airplane once the Berryhills submit a substantiated bill, 11 C.F.R. § 114.9(e) has not been complied with, as it requires payment in advance of the use of the airplane. In fact, approximately two years have gone by since the airplane was used and payment still has not been made. Accordingly, Berryhill Farms, Inc., has violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e) by making a corporate contribution.

III. RECOMMENDATION

The Office of General Counsel recommends that the Commission find probable cause to believe Berryhills Farms, Inc., violated 2 U.S.C. § 441b and 11 C.F.R. § 114.9(e).

25 August 1983
Date

Charles N. Steele
General Counsel

8404014474

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Robert F. Bauer, Esquire
Perkins, Coie, Stone, Olsen & Williams
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

Based on a complaint filed with the Commission on September 13, 1982, the Commission determined on January 5, 1983, that there was reason to believe your client, the Dowdy for Congress Committee, had violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation on this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe as to violations found in 2 U.S.C. §§ 434b, 441b and 11 C.F.R. § 114.9(e). The Office of General Counsel is also prepared to recommend that the Commission find no probable cause to believe that a violation of 2 U.S.C. § 441a(f), and 11 C.F.R. § 110.4(c)(2) had occurred. The Commission may or may not approve the General Counsel's Recommendation.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

8404014735

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8404014473 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Bobby B. DeLaughter, Esquire
Luckett, Luckett, Luckett & Thompson
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. DeLaughter:

Based on a complaint filed with the Commission on September 13, 1982, the Commission determined on January 5, 1983, that there was reason to believe your clients, Herbert Berryhill and Lowery Berryhill, had violated 2 U.S.C. § 441a(a)(1)(A), and 11 C.F.R. § 110.4(c)(1), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation on this matter.

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

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8401417

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Lowery Berryhill	)	MUR 1469
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil suit filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The civil suit seeks a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., provided to Congressman Dowdy's special election campaign of 1981.

The allegations of the complaint filed with the Commission are that: 1) Herbert Berryhill and Lowery Berryhill made cash contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 2) Herbert Berryhill and Lowery Berryhill made contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 3) the Dowdy for Congress Committee

8401718

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Robert S. Murphree, Esquire
First Magnolia Federal Building
Suite 402
P.O. Box 370
Jackson, Mississippi

Re: MUR 1469

Dear Mr. Murphree:

Based on a complaint filed with the Commission on September 13, 1982, the Commission determined on January 5, 1983, that there was reason to believe that Little Dixie Supermarket, Inc. had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation on this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

3401447376

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8401014470

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1983

Bobby B. DeLaughter, Esquire
Luckett, Luckett, Luckett & Thompson
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. DeLaughter:

Based on a complaint filed with the Commission on September 13, 1982, and information supplied by you, the Commission determined on January 5, 1983, that there was reason to believe that your client, Berryhill Farms, Inc., violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

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

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

8404014471 1

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

Should you have any questions, please contact Duane A. Brown, at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8404014447412

KAG

12 DAY PRE-BRIEF REPORT

Page 6

MUR # 1469

Staff Member Brown

Comments:

8404014407 13

approve ✓

object _____

no comment _____

initials _____

conference date/time _____

KAG

PRE-BRIEF REPORT

MUR: 1469

STAFF: Duane A. Brown

DATE: 5-3-83

TIME OF TRANSMITTAL: 9:30

EXPIRATION OF 72 HOUR COMMENT PERIOD: 5-6-83

1) STATEMENT OF FACTS

Jacqueline Smith Pierce ("Complainant"), a resident of Jackson, Mississippi, filed a complaint with the Commission against Congressman Charles Wayne Dowdy for alleged violations of the Act. Allegations in the complaint are based upon information derived from a civil complaint filed in a Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and an entity known as Berryhill Farms, Inc. The plaintiffs in the civil action seek a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services the plaintiffs provided the Congressman during the special election campaign of 1981. The allegations found in the complaint indicate that Herbert and Lowery Berryhill made excessive contributions and excessive cash contributions to the Dowdy campaign in violation of 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1) respectively; and that Berryhill Farms, Inc., and another entity, Little Dixie Supermarket, Inc., ("Little Dixie") violated 2 U.S.C. § 441b by permitting use of a jointly owned aircraft but failing to charge commercially reasonable rates. The allegations also indicate that the Dowdy for Congress

8404014714

Committee ("the Committee") violated 2 U.S.C. § 434(b) for its failure to report the receipt of alleged contributions from the Berryhills; 2 U.S.C. § 441a(f) for the alleged acceptance of excessive contributions from the Berryhills; 2 U.S.C. § 441b for using a jointly owned corporate aircraft but failing to pay commercially reasonable rates; and 11 C.F.R. § 110.4(c)(2) for the alleged acceptance of excessive cash contributions. The Commission found reason to believe as to the above potential violations on January 5, 1983. The Berryhills and Berryhill Farms, Inc., to date have failed to submit any substantive documentation or evidence to substantiate their claim.

9401447 15

2) ISSUE DEVELOPMENT

There has been no new identification of reason to believe findings or issues that have developed during the investigation not contemplated at the reason to believe stage.

3) PROMINENT ISSUES

This case contains several significant and novel issues which, although probably not impacting on the law, will require extensive discussion and detail. The foremost major issue confronting us is the issue relating to the diverse and contradictory allegations of fact.

The supposed violations perpetrated by the Berryhills, Berryhill Farms and Little Dixie (whose primary officers are the Berryhills) were brought to our attention, albeit indirectly, by

the Berryhills in the form of their court complaint against Congressman Dowdy. They argue in the court complaint that they made excessive contributions and excessive cash contributions to the Dowdy campaign. They also state they loaned Dowdy the use of their corporate aircraft, and, knowingly, did not charge commercially reasonable rates - all of which are obvious declarations against their interests and violations of the Act. On the other hand, a substantial amount of information has been submitted by the Dowdy committee in the form of affidavits, depositions and previous court testimony which appears to sufficiently pierce the factual allegations as propounded by the Berryhills. The Dowdy Committee categorically denies ever receiving contributions, in cash or otherwise, from the Berryhills. In addition, the Dowdy Committee argues that all monies have been paid for the committee's use of the Berryhill's corporate plane, and, if any debts are outstanding, the Dowdy Committee is prepared to pay them upon presentation of appropriate invoices. The dilemma therefore is ascertaining the validity of the arguments as set forth by both parties.

Finally, Little Dixie, which jointly owns the aircraft with Berryhill Farms is now bankrupt. If probable cause were found, the question of concern is what procedure should be used in proceeding against a bankrupt corporation which is now in the hands of a trustee? A glance at the bankruptcy law indicates that no legal action is permitted against a trustee - although - Federal government liens on property for money owed or penalties

8 4 0 4 0 1 4 4 1 7 1 6

have taken priority over other lienholders in most instances. At the time the supposed violation occurred, Little Dixie was solvent. The issue of whether there is sufficient justification to use our resources in becoming a creditor in bankruptcy must be considered.

3) DISPOSITION

Except for the issue regarding the use of the corporate aircraft, the Dowdy Committee has prepared what seems to be a good case attacking the veracity of the Berryhills. The question which should be considered regarding the issue of the corporate plane is whether the committee had or should have had reasonable knowledge of the fact that it was being undercharged for the use of the corporate aircraft. No information has been presented by either side which would give us reason to believe that the committee knew of the fact that it was being undercharged when it used the corporate aircraft.

As a result, we are prepared to recommend that no probable cause to believe be found against either the Berryhills, Berryhill Farms, Inc., Little Dixie Supermarket or the Dowdy Committee on any of the allegations.

Finally, since it appears the Berryhills may have fabricated the factual allegations contained in the complaint, a question is raised as to whether this matter should be referred to the Department of Justice for violation of 18 U.S.C. § 1001. Although our initial reaction is that the Berryhills have probable caused this agency to use an excessive amount of time

8401447

and resources in processing this case, whether those same resources should be used to develop the case further for referral to Justice is questionable. Although, the allegations of the Berryhills do not appear truthful, we are not recommending a referral to DOJ.

9401447 18

12 DAY PRE-BRIEF REPORT

LMN

Page 6

MUR # 1469

Staff Member Braun

Comments:

I assume that the respondents evidence is very strong and resolves most doubts.

I ~~was~~ think that the bankruptcy of the Company would ~~not~~ be a factor in considering action after PCTB but not whether we find PCTB.

Finally, I hope we did an independent investigation and did not just rely on ~~the~~ ~~as~~ facts alleged in other cases.

approve _____

object _____ conference date/time _____

no comment _____

initials LMN

8404014471 9

DOCKET

PRE-BRIEF REPORT

MUR: 1469

STAFF: Duane A. Brown

DATE: 5-3-83

TIME OF TRANSMITTAL: 9:30

EXPIRATION OF 72 HOUR COMMENT PERIOD: 5-6-83

1) **STATEMENT OF FACTS**

Jacqueline Smith Pierce ("Complainant"), a resident of Jackson, Mississippi, filed a complaint with the Commission against Congressman Charles Wayne Dowdy for alleged violations of the Act. Allegations in the complaint are based upon information derived from a civil complaint filed in a Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and an entity known as Berryhill Farms, Inc. The plaintiffs in the civil action seek a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services the plaintiffs provided the Congressman during the special election campaign of 1981. The allegations found in the complaint indicate that Herbert and Lowery Berryhill made excessive contributions and excessive cash contributions to the Dowdy campaign in violation of 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1) respectively; and that Berryhill Farms, Inc., and another entity, Little Dixie Supermarket, Inc., ("Little Dixie") violated 2 U.S.C. § 441b by permitting use of a jointly owned aircraft but failing to charge commercially reasonable rates. The allegations also indicate that the Dowdy for Congress -

8404014475O

Committee ("the Committee") violated 2 U.S.C. § 434(b) for its failure to report the receipt of alleged contributions from the Berryhills; 2 U.S.C. § 441a(f) for the alleged acceptance of excessive contributions from the Berryhills; 2 U.S.C. § 441b for using a jointly owned corporate aircraft but failing to pay commercially reasonable rates; and 11 C.F.R. § 110.4(c)(2) for the alleged acceptance of excessive cash contributions. The Commission found reason to believe as to the above potential violations on January 5, 1983. The Berryhills and Berryhill Farms, Inc., to date have failed to submit any substantive documentation or evidence to substantiate their claim.

2) ISSUE DEVELOPMENT

There has been no new identification of reason to believe findings or issues that have developed during the investigation not contemplated at the reason to believe stage.

3) PROMINENT ISSUES

This case contains several significant and novel issues which, although probably not impacting on the law, will require extensive discussion and detail. The foremost major issue confronting us is the issue relating to the diverse and contradictory allegations of fact.

The supposed violations perpetrated by the Berryhills, Berryhill Farms and Little Dixie (whose primary officers are the Berryhills) were brought to our attention, albeit indirectly, by

8401447

the Berryhills in the form of their court complaint against Congressman Dowdy. They argue in the court complaint that they made excessive contributions and excessive cash contributions to the Dowdy campaign. They also state they loaned Dowdy the use of their corporate aircraft, and, knowingly, did not charge commercially reasonable rates - all of which are obvious declarations against their interests and violations of the Act. On the other hand, a substantial amount of information has been submitted by the Dowdy committee in the form of affidavits, depositions and previous court testimony which appears to sufficiently pierce the factual allegations as propounded by the Berryhills. The Dowdy Committee categorically denies ever receiving contributions, in cash or otherwise, from the Berryhills. In addition, the Dowdy Committee argues that all monies have been paid for the committee's use of the Berryhill's corporate plane, and, if any debts are outstanding, the Dowdy Committee is prepared to pay them upon presentation of appropriate invoices. The dilemma therefore is ascertaining the validity of the arguments as set forth by both parties.

Finally, Little Dixie, which jointly owns the aircraft with Berryhill Farms is now bankrupt. If probable cause were found, the question of concern is what procedure should be used in proceeding against a bankrupt corporation which is now in the hands of a trustee? A glance at the bankruptcy law indicates that no legal action is permitted against a trustee - although - Federal government liens on property for money owed or penalties

8 4 0 4 0 1 4 4 7 5 2

have taken priority over other lienholders in most instances. At the time the supposed violation occurred, Little Dixie was solvent. The issue of whether there is sufficient justification to use our resources in becoming a creditor in bankruptcy must be considered.

3) DISPOSITION

Except for the issue regarding the use of the corporate aircraft, the Dowdy Committee has prepared what seems to be a good case attacking the veracity of the Berryhills. The question which should be considered regarding the issue of the corporate plan is whether the committee had or should have had reasonable knowledge of the fact that it was being undercharged for the use of the corporate aircraft. No information has been presented by either side which would give us reason to believe that the committee knew of the fact that it was being undercharged when it used the corporate aircraft.

As a result, we are prepared to recommend that no probable cause to believe be found against either the Berryhills, Berryhill Farms, Inc., Little Dixie Supermarket or the Dowdy Committee on any of the allegations.

Finally, since it appears the Berryhills may have fabricated the factual allegations contained in the complaint, a question is raised as to whether this matter should be referred to the Department of Justice for violation of 18 U.S.C. § 1001. Although our initial reaction is that the Berryhills have probable caused this agency to use an excessive amount of time

8401447

and resources in processing this case, whether those same resources should be used to develop the case further for referral to Justice is questionable. Although, the allegations of the Berryhills do not appear truthful, we are not recommending a referral to DOJ.

8404014474

12 DAY PRE-BRIEF REPORT

Page _____

MUR # _____

Staff Member _____

Comments:

8404014475

approve _____

object _____ conference date/time _____

no comment _____

initials _____

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE MWE

FROM: MARJORIE W. EMMONS/JODY C. RANSOM JCR

DATE: APRIL 27, 1983

SUBJECT: MUR 1469 - Comprehensive Investigative Report #1 signed April 25, 1983

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, April 26, 1983.

There were no objections to the Comprehensive Investigative Report at the time of the deadline.

8401417736

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: April 25, 1983

SUBJECT: MUR 1469 - Comp Inv Rpt #1

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	[✓]
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[✓]	Litigation	[ ]
Sensitive	[✓]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8 4 0 4 0 1 4 4 7 7

SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

83 APR 25 P4: 30

In the Matter of	)	
	)	
Dowdy for Congress Committee	)	
Herbert Berryhill	)	
Lowery Berryhill	)	MUR 1469
Berryhill Farms, Inc., and	)	
Little Dixie Supermarket, Inc.	)	

COMPREHENSIVE INVESTIGATIVE REPORT # 1

On September 10, 1982, a complaint was filed against Congressman Charles Wayne Dowdy by Jacqueline Smith Pierce. The complaint was based upon information derived from a civil complaint filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. The allegations of the complaint filed with the Commission are that: 1) Herbert Berryhill and Lowery Berryhill made cash contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 2) Herbert Berryhill and Lowery Berryhill made contributions in excess of the lawful limits and that the Dowdy for Congress Committee accepted such contributions; 3) the Dowdy for Congress Committee failed to report the receipt of the contributions from Herbert Berryhill and Lowery Berryhill; and 4) Little Dixie Supermarket, Inc., and Berryhill Farms, Inc., provided use of an airplane and the Dowdy for Congress Committee used such plane without paying commercially reasonable rates causing the giving and receipt of an illegal corporate contribution.

8404014478

The Trustee in Bankruptcy of Little Dixie Supermarket, Inc., Herbert Berryhill, Lowery Berryhill, and Berryhill Farms, Inc., all filed responses to the complaint. These responses were submitted to the Commission as attachments to the General Counsel's Report of December 23, 1982. The Dowdy for Congress Committee did not submit a reply. On January 5, 1983, the Commission found reason to believe that Herbert Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Lowery Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1), that Berryhill Farms, Inc., violated 2 U.S.C. § 441b, that Little Dixie Supermarket, Inc., violated 2 U.S.C. § 441b, and that the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. 110.4(c)(2).

On January 18, 1983, the Commission received a response to the reason to believe finding from Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. A response from the Dowdy for Congress Committee was received on February 2, 1982. The responses are contradictory. The Berryhills admit to facts which may constitute excessive contributions and excessive cash contributions to the Dowdy for Congress Committee. The Dowdy for Congress Committee denies that such contributions were received from the Berryhills. As to use of the corporate airplane, Berryhill Farms, Inc., claims that it has only received partial payment for such use, Little Dixie Supermarket, Inc.,

8401447 9

which is in bankruptcy, made no reply, and the Dowdy for Congress Committee states that it has paid all bills which it received for use of the airplane.

The Office of General Counsel has now completed its review of this matter. A brief setting forth the factual and legal issues of the case will be sent to the Commission within two weeks.

Charles N. Steele
General Counsel

April 25, 1983
Date

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

8404014476

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1983

HAND DELIVERED

Robert Bauer, Esquire
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

This is to confirm our telephone conversation of today in which you promised to submit a response to the Commission's reason to believe notification, on behalf of your client Dowdy for Congress Committee, no later than Wednesday, February 2, 1983.

Sincerely,

Duane A. Brown
Attorney

8404014476 1

203853
RECEIVED BY THE FEC
Gen # 9384
83 JAN 24 P 2:30

LAW OFFICES
BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
WILLIAM B. KIRKSEY
BOBBY B. DeLAUGHTER

LISA BINDER MILNER

TELEPHONE
948-5800
AREA CODE 601

January 18, 1983

83 JAN 24 P 4:10

Honorable Duane A. Brown
Attorney
Federal Election Commission
Washington, D. C. 20463

RE: MUR 1469

8404014475 2

Dear Mr. Brown:

Following our recent telephone conversation, I conferred with my clients regarding the additional information sought by the Commission.

First, the Berryhills do admit the allegations of the Complaint filed herein. Their response previously provided to you was an explanation that although the allegations are admitted, there were certain extenuating circumstances which we felt should be considered.

Secondly, you have indicated that more information was needed regarding the airplane of Berryhill Farms of Terry, Inc. It is my understanding from the Berryhills that Mr. Dowdy paid approximately $600.00 for one pilot, Bob Durrow, and all other expenses regarding the plane, including pilot charges which were provided by the corporation, as set out in the civil suit of which you have a copy.

I hope this adequately covers the information you need, and your cooperation is greatly appreciated.

Should you need any further information, or have any suggestion as to the next course of action, please do not hesitate to call.

With kindest personal regards, we remain

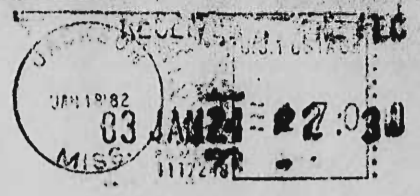
Sincerely,

BINDER, KIRKSEY & DeLAUGHTER

Bobby B. DeLaughter

BBD:ls

BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205



CERTIFIED
P34 0956068
MAIL

Honorable Duane A. Brown
Attorney
Federal Election Commission
Washington, D. C. 20463

Gcc# 9314

RECEIVED
OFFICE OF THE
SECRETARY

ROBERT S. MURPHREE
Attorney at Law
Suite 402 First Mississippi Federal Bldg.
Jackson, Mississippi 39205
(601) 353-0811

83 JAN 12 PM 1:10

January 10, 1983

83 JAN 12 P1:47

Mr. Danny L. McDonald
Federal Elections Commission
Washington, D. C. 20463

Re: MUR1469

Dear Mr. McDonald:

I received your letter of January 6, 1983 and I appreciate the same. Since this is an unusual situation I am in somewhat of a delimma on how to proceed. Accordingly I would appreciate an extra 20 days from the Commission in which to submit whatever response I deem to be appropriate.

Please let me know if this is agreeable with you.

Yours truly,

Robert S. Murphree

RSM/dh

9404014475 4

ROBERT S. MURPHREE
ATTORNEY AT LAW
P.O. BOX 370
JACKSON, MISSISSIPPI 39205

8404014175

JACKSON, MS 392
1 PM
10 JAN
1983

Mr. Danny L. McDonald
Federal Elections Commission
Washington, D. C. 20463

RECEIVED
FEC
83 JAN 12 AM 11:08

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 6, 1983

Robert Bauer, Esquire
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

The Federal Election Commission notified your client, the Dowdy for Congress Committee on September 24, 1982, of a complaint which alleges that the Committee violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint the Commission, on January 5, 1983, determined that there is reason to believe that your client has violated certain sections of the Act. Specifically, it appears that Wayne Dowdy and the Dowdy for Congress Committee accepted excessive contributions and excessive cash contributions in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.4(c)(2) respectively. In addition, it appears that your client failed to report the receipt of these contributions in violation of 2 U.S.C. § 434(b). Finally, it appears that your client accepted an illegal corporate contribution by making use of aircraft jointly owned by Little Dixie Supermarket, Inc., and Berryhill Farms Inc. of Terry, but failed to pay commercially reasonable rates.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

8401447566

This matter will remain 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 matter to be made public.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at 523-5071.

Sincerely,

Danny L. McDonald

DANNY L. McDONALD
Chairman

Enclosure
Procedures

8404014497

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 6, 1983

Alvin Binder, Esquire
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Binder:

The Federal Election Commission notified you by letter under date of October 29, 1982, of a complaint which alleges that your clients, Herbert Berryhill, Lowery Berryhill and Berryhill Farms Inc. of Terry violated certain sections of the Federal Election Campaign Act of 1971, as amended "the Act". A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on January 5, 1983, determined that there is reason to believe your clients have violated certain sections of the Act. Specifically, it appears that Herbert and Lowery Berryhill made excessive contributions to the campaign of Wayne Dowdy in violation of 2 U.S.C. § 441a(a)(1)(A) and made excessive cash contributions to the Dowdy campaign in violation of 11 C.F.R. § 110.4(c)(1). It also appears that your client, Berryhill Farms Inc., of Terry violated 2 U.S.C. § 441b by allowing use of its corporate plane but failing to charge commercially reasonable rates.

Your response to the Commission's initital notification of this complaint did not provide complete information regarding the matters in question. You may submit any additional factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please file any such response within ten days of your receipt of this notification.

3401447568

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain 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 matter to be made public.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-4071.

Sincerely,

Danny L. McDonald

DANNY L. McDONALD
Chairman

Enclosure
Procedures

3 4 0 4 0 1 4 4 7 5 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 6, 1983

Robert S. Murphree, Esquire
Suite 402
First Magnolia Federal Building
P.O. Box 370
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Murphree:

The Federal Election Commission notified you by letter dated October 29, 1982, of a complaint which alleges that Little Dixie Supermarket, Inc., ("Little Dixie") has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. We acknowledge receipt of your explanation of this matter which was dated November 3, 1982.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on January 5, 1983, determined that there is reason to believe Little Dixie has violated 2 U.S.C. § 441b, a provision of the Act.

We recognize the fact that you are the Trustee in Bankruptcy for Little Dixie. Nevertheless, Little Dixie has committed a violation of the Act and the Commission intends to proceed in this matter pursuant to 2 U.S.C. § 437g. We would also appreciate a courtesy copy of any communications which you might send to the former Directors of Little Dixie regarding this matter.

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such response within ten days of your receipt of this notification.

8401447 0

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against Little Dixie, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless the Commission is notified in writing that the matter is to be made public. If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071.

Sincerely,

Danny L. McDonald

DANNY L. McDONALD
Chairman

Enclosure
Procedures

8404014471

December 23, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kaysen

SUBJECT: MUR 1463

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

Attachment

cc: Brown

8 4 0 4 0 1 4 4 7 7 2

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

82 DEC 23 A10: 33

In the Matter of)
)
Dowdy for Congress Committee) MUR 1469

GENERAL COUNSEL'S REPORT

I. Background

Jacqueline Smith Pierce ("complainant"), a resident of Jackson, Mississippi, filed a complaint dated September 10, 1982 with the Commission against Congressman Charles Wayne Dowdy for alleged violations of the Act (Attachment I). The complaint was received by the Commission on September 10, 1982. Allegations in the complaint are based upon information derived from a civil complaint filed in Mississippi Circuit Court against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and a company known as Berryhill Farms, Inc. 1/ The plaintiffs in the civil action seek a monetary judgment against Congressman Dowdy for debts the Congressman allegedly incurred based on services the plaintiffs provided the Congressman during the special election campaign of 1981.

A copy of the complaint was sent to the Dowdy for Congress Committee on September 21, 1982. On October 29, 1982 copies of

8 4 0 4 0 1 4 4 7 7 3

1/ The Commission also received a copy of the civil complaint from Congressman Dowdy by letter dated September 8, 1982 (Attachment II). Bob Bauer, counsel for the Dowdy Committee, stated to General Counsel staff on October 6, 1982 that the Dowdy letter was not to be considered as a response to the complaint.

the complaint were sent to Herbert Berryhill, Lowery Berryhill, and Little Dixie Supermarket, Inc. A copy of the complaint was sent to Berryhill Farms, Inc. of Terry on November 10, 1982. 2/ Although no written response has been received from the Dowdy for Congress Committee, counsel for the respondent, met with OGC staff on October 6, 1982 to discuss the case. The Trustee in Bankruptcy of Little Dixie Supermarket, Inc., responded in November 8, 1982 (Attachment III). On November 16, Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. of Terry filed responses. (Attachment IV).

8401447774

II. Factual and Legal Analysis

The complainant avers that Congressman Dowdy received cash contributions in excess of that which is allowed by the Act. Specifically, the complainant refers to the civil complaint where one of the pleadings alleges that Herbert Berryhill gave Congressman Dowdy "$18,000.00 in cold cash" given supposedly as a loan. The complainant also alleges that Congressman Dowdy received $800.00 in cash from Berryhill for the purchase of

---

2/ General Counsel staff was informed by the Secretary of State's office that Berryhill Farms, Inc., was located in Dublin, Mississippi. Based upon the response by counsel for Berryhill Farms Inc. of Dublin and a second contact with the Secretary of State's office, staff determined that two Berryhill Farms Inc., existed in Mississippi. The correct respondent, Berryhill Farms Inc., of Terry was notified of the complaint on November 10, 1982.

alcoholic beverages. If it is true that Congressman Dowdy received in excess of $100.00 in cash from Berryhill, a violation of 11 C.F.R. § 110.4(c)(1) by Berryhill may be found. Also, if Dowdy accepted a cash contribution over $100.00 and did not return the excess over the $100.00, he may have violated 11 C.F.R. § 110.4(c)(2). If, as the complaint alleges, Berryhill loaned Dowdy $18,000.00 whether in cash or otherwise, Berryhill may be in violation of 2 U.S.C. § 441a(a)(1)(A) for making an excessive contribution to a federal candidate. Likewise, the Dowdy for Congress Committee would have violated 2 U.S.C. § 441a(f) for receipt of an excessive contribution.

The complaint continues by alleging that Congressman Dowdy accepted additional excessive contributions from the Berryhills in violation of the limitation found in 2 U.S.C. § 441a(a). Specifically, respondent states that: 1) Lowery Berryhill made a $5,900.00 loan to the Dowdy campaign; 2) Herbert Berryhill advanced $1,500.00 to the Dowdy campaign for expenses incurred at the Country Kitchen; 3/ 3) Lowery Berryhill paid for hotel accommodations in the amount of $1,241.88; 4) Lowery Berryhill paid for copier supplies in the amount of $351.08; and, 5) the Berryhills paid campaign workers in the amount of $5,174.00.

Complainant also states that Berryhill Farms, Inc., of Terry and Little Dixie Supermarket, Inc., jointly owning a private

---

3/ The Country Kitchen is owned and operated by Herbert Berryhill's wife.

3 4 0 4 0 1 4 4 7 7 5

plane, provided below the commercially reasonable rate aircraft and pilot services to Dowdy. If this allegation is found to be true, not only would Dowdy be implicated for accepting possible corporate contributions, but Berryhill Farms Inc., of Terry and Little Dixie Supermarket Inc., would be implicated for making possible corporate contributions.

Complainant concludes her complaint by alleging that Congressman Dowdy failed to report all of the above in his reports as required by 2 U.S.C. § 434.

Counsel for Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. of Terry responded to the Commission's notification on November 16, 1982. Each of the three respondents submitted affidavits essentially reiterating much of the civil complaint, affirming the facts found therein and denying any improper acts or violation of the Federal Election law. The response by Berryhill Farms however, failed to respond to the allegation that the corporation permitted use of its jet by Wayne Dowdy and failed to charge commercially reasonable rates as set forth in 11 C.F.R. § 114.9(e). Finally, counsel cites AFL-CIO v. FEC, 628 F.2d 97 (D.C. Cir.1980) as a defense to his clients being found in violation of the Act. Counsel argues that there should be no finding against his clients since there is, "no evidence of [d]efiance or knowing conscious and deliberate flaunting of the Act." He further indicates that the Berryhills considered their activity to be within the Act. He concludes his

9 4 0 4 0 1 4 4 7 7 6

statement by citing FEC v. NEA, 457 F.Supp. 1102, 1112 (D.C.D.C. 1978) and asserting that no civil penalty should be assessed since, "the violation is not in the nature of [an] intentional disregard of the Act.

Neither case cited by counsel is dispositive of the issues set forth in the Commission's notifications. Moreover, the Commission has never alleged that either respondent exercised an intentional or willful disregard of the Act in committing the activities found in their civil complaint. Accordingly, it appears that Herbert and Lowery Berryhill have violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1) by making excessive contributions to the Dowdy campaign and excessive cash contributions to Wayne Dowdy. It also appears that Berryhill Farms Inc., of Terry violated 2 U.S.C. § 441b by providing the Dowdy campaign with use of its aircraft but failing to charge commercially reasonable rates.

The Trustee in Bankruptcy ("the Trustee") for Little Dixie Supermarket, Inc., ("Little Dixie") replied to the notification of complaint on November 8, 1982. It is alleged in the complaint that Little Dixie and Berryhill Farms jointly furnished Wayne Dowdy and the Dowdy Committee with the use of an airplane for campaign related purposes without being compensated at commercially reasonable rates. The Trustee avers that if there is any violation of the Act, Herbert, Cliff and Lowery Berryhill -all of whom exercised active management of the corporation - should be held solely responsible. The Trustee concludes by

8 4 0 4 0 1 4 1 7 7

attacking the veracity and credibility of the Berryhills as being unreliable and dishonest. The Trustee does not provide an explanation nor does he appear to have any knowledge regarding the Dowdy campaign's use of the aircraft partly owned by Little Dixie. Accordingly, it is recommended that the Commission find that Little Dixie violated 2 U.S.C. § 441b by providing Wayne Dowdy and the Dowdy campaign with use of its aircraft but failing to charge reasonable commercial rates.

Congressman Wayne Dowdy and Robert Darville, Treasurer of the Dowdy committee received the Commission's letter of notification on September 24, 1982. Although Robert Bauer, counsel for the Dowdy Committee met with Commission staff on October 6, 1982 to discuss the merits of the case, he did indicate that our meeting would be memorialized in a formal written response several days later. To date, no written response has been received from Bob Bauer on behalf of the Dowdy Committee. Accordingly it appears that Wayne Dowdy and the Dowdy for Congress Committee accepted excessive contributions from Herbert and Lowery Berryhill in violation of 2 U.S.C. § 441a(f); accepted a corporate contribution by making use of a corporate plane but failing to pay commercially reasonable rates in violation of 2 U.S.C. § 441b and accepted an excessive cash contribution in violation of 11 C.F.R. § 110.4(c)(2). In addition, Wayne Dowdy and the Dowdy for Congress Committee violated 2 U.S.C. § 434(b) by failing to report the receipt of the contributions from Herbert and Lowery Berryhill.

8401447 8

III. Recommendations

The Office of General Counsel recommends that the Commission:

1. find reason to believe Herbert Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1);

2. find reason to believe Lowery Berryhill violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.4(c)(1);

3. find reason to believe Berryhill Farms Inc., of Terry violated 2 U.S.C. § 441b;

4. find reason to believe Little Dixie Supermarket, Inc. violated 2 U.S.C. § 441b;

5. find reason to believe the Dowdy for Congress Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b, and 11 C.F.R. § 110.4(c)(2); and,

6. approve the attached letters.

8 4 0 4 0 1 4 4 7 7 9

Charles N. Steele
General Counsel

December 22, 1992
Date

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

ATTACHMENTS
1. Complaint
2. Letter from Wayne Dowdy
3. Robert Murphree Letter
4. Alvin Binder Letter and Affidavits
5. Letter to Alvin Binder, Esquire
6. Letter to Robert Murphree, Esquire
7. Letter to Robert Bauer, Esquire

Jacqueline Smith Pierce
ATTORNEY AT LAW
PLAZA BUILDING
120 NORTH CONGRESS ST.
TELEPHONE: 352-8401
After hours: 956-7854
P.O. BOX-12294
JACKSON, MISSISSIPPI 39211

ATTACHMENT I

September 10, 1982

(1)

RECEIVED AT THE FEC
Lcc # 8448
82 SEP 13 A10:57
82 SEP 13 P1:50

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

Gentlemen or Ladies:

Please find enclosed a Complaint to be filed with the Federal Election Commission in accordance with those procedures set forth in 2 USC 437g, 437d(a) and 11 CFR Sec. 111.

If you have questions or comments regarding this Complaint, please let me know and I shall be glad to furnish you any information which I may possess.

Thank you for this service.

Yours sincerely,

Jacqueline Smith Pierce

Jacqueline Smith Pierce

jsp/s
Attachment

8404044730

8 0 4 0 1 4 4 7 8

RECEIVED AT THE FEC

82 SEP 13 A10:57

UNITED STATES OF AMERICA (2)

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

the Complaint of Jacqueline Smith Pierce for the Initiation of Compliance Matters in regard to the Election of Charles Wayne Dowdy to the federal office of Representative to the Fourth Congressional District, United States Congress

COMPLAINT

Jacqueline Smith Pierce, whose address is 5512 Concord, Jackson, Ms. 39211 (P.O. Box 12294) and who is hereinafter referred to as "complainant" presents this Complaint for the purpose of initiating compliance matters because of a possible violation of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et seq.), and because of her desire for voters to learn the truth of the allegations recently filed against Congressman Charles Wayne Dowdy so that they may vote based on informed judgment in the November election.

The Federal Election Commission has jurisdiction under the aforesaid mentioned act, hereinafter referred to as "the Act."

The name of the person who is alleged to have committed violations under the Act is the Representative of the Fourth Congressional District, Congressman Charles Wayne Dowdy, whose residence address in Mississippi is Route 3, Box 221, Summit, Mississippi 39666, and whose mailing address in Washington, D.C. is 1631 Longworth House Office Building, Washington, D.C. 20515.

(3)

Allegations in this complaint are based upon the information in the Complaint of Herbert Berryhill and Lowery Berryhill, adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi, which complaint was filed in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on September 7, 1982, and on an article in the Jackson Daily News dated September 8, 1982, entitled "Ex-backers sue Dowdy for $38,000 they claim he Owes." Copies of the aforesaid Complaint filed in the Circuit Court and the news article are attached hereto and incorporated herein and made a part of this complaint as Exhibits "A" and "B."

In accordance with the information in the attached Exhibits heretofore mentioned, complainant believes that the Federal Election Commission has reason to initiate a compliance matter to determine whether or not Congressman Wayne Dowdy, hereinafter referred to as Respondent, is and has been in violation of the Federal Election Campaign Act of 1971, as amended. In support of this belief, complainant excerpts the following facts from the aforesaid Exhibits "A" and "B."

1. Respondent received cash contributions in excess of that allowed in the Act. According to 11 CFR Sec. 110.4(c)(2) and 2 USC 441g, it is illegal for any person to make a cash contribution in excess of $100; and any candidate receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor. In Section XIII of the Complaint attached hereto as Exhibit "A" Respondent obtained $18,000 in "cold cash" from Herbert Berryhill, which amount was supposed to be a loan. According to Mr. Berryhill, this amount has never been repaid. In Section XIV of the Complaint, Mr. Berryhill alleges that Respondent received the sum of $800 in cash to use for the purchase of alcoholic beverages.

(4)

This sum of $800 has not yet been repaid. The Act provides that the term "contribution" includes a loan, and a loan which is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 CFR Sec. 100.7 (a)(1)(B) (2 U.S.C. 431(8).

2. Respondent received contributions in excess of $1000 which amounts were in violation of 2 USC 441(a). The Complaint attached hereto as Exhibit "A" alleges numerous instances of loans which have not been repaid and which were in excess of the limits of the Act, specifically, as follows:

A. Section VIII of the Complaint alleges that Lowery Berryhill made a loan of $5900 to Respondent which has not been repaid.

B. Section IX of the Complaint alleges that Herbert Berryhill paid The Country Kitchen the sum of $1500 and that Respondent was supposed to reimburse Mr. Berryhill this sum but that this sum has never been repaid. The sum of $1500 was for 750 pounds of catfish ordered by Respondent.

C. Section X of the Complaint states that Lowery Berryhill provided Respondent with hotel accommodations with the understanding that he would be reimbursed for said charges which totaled $1,241.88, but that Lowery Berryhill has not been reimbursed.

D. Section XI of the Complaint lists the sum of $4000 as owing to Berryhill Farms, Inc. for aircraft and pilot services, which sum has not been repaid.

E. Section XII of the Complaint states that Respondent owes Lowery Berryhill $351.08 for certain copier supplies.

F. Section XV of the Complaint states that the Berryhills paid campaign workers the sum of $5,174, which

(5)

amount was supposed to be a loan to Respondent but that this amount has not been paid.

3. Respondent received contributions from a corporation in violation of 1 USC 441b (4)(a) which prohibits corporations from making a contribution or expenditure to a Federal election. In Section XI of the Complaint, it is alleged that Berryhill Farms, Inc. and Little Dixie Supermarket, Inc. owned a twin engine airplane jointly and that this airplane was furnished to Respondent and his staff, together with pilot services. Berryhill Farms, Inc. claims that Respondent owes the amount of $4000 to this corporation.

4. Respondent failed to report the contributions and expenditures according to the requirements of the Act. Certain reports by candidates and political committees are required by 2 USC 434. According to Section XIII of the Complaint attached hereto, Respondent has not filed the required information to show that the loan of $18,000 was made to Respondent from Herbert Berryhill. According to the Complaint, Respondent used the $18,000 for campaign expenses and personally made cash disbursements for radio spots the day before the election. Moreover, according to Section XIII of the Complaint, a campaign worker allegedly received compensation in the sum of $15,500 but in truth the amount was spent for the campaign.

WHEREFORE, in view of the allegations made in the attached Complaint marked as Exhibit "A" and in the Jackson Daily News article marked as Exhibit "B," Complainant believes that there are reasonable grounds for the Federal Election Commission to make an investigation of this matter, and Complainant prays that the Federal Election Commission

(6)

will investigate this matter and take appropriate action in view of the Complaint and the findings thereon.

Dated September 16th 1982.

Jacqueline Smith Pierce

Jacqueline Smith Pierce
P.O. Box 12294
Jackson, Ms. 39211
5512 Concord St.
(601) 352-8401 or 956-7854

(7)

AFFIDAVIT

COUNTY OF HINDS

STATE OF MISSISSIPPI

Jacqueline Smith Pierce, of 5512 Concord Drive, Jackson, Mississippi, appeared before me and being duly sworn, deposed and says:

1. That she is a citizen of the Fourth Congressional District of Mississippi and a qualified voter of Hinds County, Mississippi.

2. That she believes that she cannot vote intelligently in the November election unless the charges against Congressman Wayne Dowdy are resolved and the truth of the matter published.

3. That she is authorized to make this affidavit in accordance with procedures set forth in 11 CFR 111.4(a)(b) and (c).

4. That she is aware that this complaint is subject to the statutes governing perjury and to 18 USC 1001.

5. That the matters set forth in the above and foregoing Complaint to the Federal Election Commission are true and correct to the best of her information and belief.

Jacqueline Smith Pierce

Jacqueline Smith Pierce

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of September, 1982.

Charlotte Hawkins

NOTARY

MY COMMISSION EXPIRES:

2/21/85

8404014477

(8)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

SEP 7 1982
WM. E. McKINLEY

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

Exhibit "A"

(9)

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

(10)

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, a campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

(12)

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

(13)

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

(15)

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

(16)

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

(19)

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

Mississippi

Wednesday B

• September 8, 1982

JACKSON DAILY NEWS

Exhibit "B"

1-4179

Ex-backers sue Dowdy for $38,000 they claim he owes

By JEFF EDWARDS
JACKSON DAILY NEWS Staff Writer

The courts will now decide if Rep. Wayne Dowdy owes two former campaign workers almost $38,000 for services and loans the past supporters say they provided during Dowdy's campaign last year for the 4th Congressional District seat.

Herbert Berryhill, a former Hinds County supervisor, and his son Lowery, operators of Berryhill Farms Inc. of Terry, have filed suit in Hinds Circuit Court for $37,966.96. The figure includes an alleged $18,000 cash loan and services such as air transportation, food, alcoholic beverages and staff salaries the Berryhills claim Dowdy will not repay.

Dowdy has denied owing the Berryhills any money, but Berryhill claimed last month he had proof of the expenditures.

JoAnn Klein, Dowdy's press secretary, said Tuesday the Democratic representative had no further comments on the matter.

"He's made his position clear on it," she said.

Lowery Berryhill said Tuesday he "really can't have any comment" on the matter due to the upcoming trial. Berryhill said he did not have a copy of the lawsuit, but it did include additional items "we had overlooked" from an earlier claim.

In July, while threatening to file suit, Berryhill said the representative owed his family $32,600.

"We're just going to have to wait for the trial. I hope it will be very soon," Berryhill said.

He said he would not have taken the case to court if he did not think he was going to win.

In the suit, Berryhill and his father, Herbert, a former Hinds County supervisor, claim they provided Dowdy with "large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeured defendant (Dowdy) from town to town throughout the district."

During Dowdy's campaign, Lowery Berryhill worked at the representative's state campaign headquarters on Capitol Street in Jackson.

The Berryhills claim Dowdy owes $6,900 in cash given to the campaign, $1,500 for 750 pounds of catfish, $1,241.88 for hotel accommodations, $4,000 for use of the Berryhill plane and commercial pilots, $351.08 for copier supplies, an $18,000 cash loan, $800 for alcoholic beverages for the victory party and $5,174 for campaign workers' salaries.

The suit says that Dowdy owes Herbert Berryhill $25,400, Lowery Berryhill $2,392.96, and Berryhill Farms Inc. $10,174.

The $18,000 in cash, which Berryhill claims his family gave to the campaign, was not reported on Federal Election Campaign reports as required by law, the suit claims.

"Defendant Dowdy told plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the FEC to show that the aforesaid $18,000 as provided to him by said plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done," the suit states.

"This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid...," the suit claims.

According to the lawsuit, Dowdy sought an introduction with Berryhill and his sons as he travelled to the Country Kitchen Restaurant in Byram, owned by Mrs. Herbert Berryhill.

At the restaurant, Dowdy "presented his desires to be elected, his programs, his hopes and ambitions" to the Berryhills, and they, "believing him to be an honest man of his word, were totally mesmerized by the defendant Dowdy."

On May 24, 1981, the Berryhills entered Dowdy's campaign where they worked "tirelessly" for Dowdy's election.

In the lawsuit, the Berryhills claim several of Dowdy's campaign workers were paid a total of $5,174.

One of the campaign workers named in the suit, who did not wish to be identified, said he only worked for Dowdy one afternoon and was not paid the money the Berryhills claim he received.

Campaign workers who received money, according to the lawsuit, are: Ray Barfield, $1,500; Tom Knight, $1,500; Stephen Jones, $1,000; Olga Lynn Jones, $280; Melvin Howell, $307; Dennis Reese, $307; and Beverly Whitehead, $280.

Berryhill first made his claims and threatened a lawsuit in July. The family is represented by attorney Alvin Binder.

Berryhill said Dowdy agreed to pay off the money within 12 months after the election in July of 1981. As late as July of this year, Berryhill said he thought Dowdy would repay the money.

(20)

202763

WAYNE
Dowdy
UNITED STATES CONGRESS

RECEIVED AT THE FEC
Bcc# 8402
82 SEP 16 P 1:57

82 SEP 15 P 3:49

(21)

ATTACHMENT II

September 8, 1982

Mr. Charles N. Steele
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20563

Dear Mr. Steele:

I would like to request the Commission's attention to matters which have been raised regarding campaign receipts and expenditures for the special Congressional election held in Mississippi on July 7, 1981.

Your files will reflect that various complaints were filed by the Mississippi Republican Party concerning my campaign's receipts and disbursements, and that the Commission found no violation after its review of the previous complaint by the Mississippi Republican Party.

Enclosed is a copy of a complaint in a lawsuit filed this week in Hinds County, Mississippi Circuit Court, which sets out the most recent allegations. We request an expedited review of the matters contained in this lawsuit.

I also wish to bring to your attention certain matters which are not revealed in the lawsuit. I first met the Berryhills during the 1981 campaign. Each was involved in the campaign only as a volunteer, and neither had any official capacity whatsoever. After the campaign, Mr. Herbert Berryhill insisted that his son, Lowery Berryhill, be given a job on my staff. I investigated the background of Lowery Berryhill and found that there was pending a suit filed by Berryhill claiming that a Mississippi bank owed Berryhill $91,000, due to the bank's alleged misplacement of a deposit made by Berryhill. I have since learned that the Berryhills lost the lawsuit. I also found that the Berryhills had taken bankruptcy on their businesses and had been involved in many lawsuits. For these and other reasons, I notified Mr. Herbert Berryhill that Lowery Berryhill could not be on my staff.

8401449

(22)

I do not owe any amount whatsoever to either Herbert Berryhill, Lowery Berryhill, or Berryhill Farms, Inc., or any other such person.

I do not intend to pay money that I do not owe.

Now that this matter has been brought to court, I ask that you look into the entire matter. I have instructed my accountant, campaign treasurer, and all other persons involved to cooperate fully.

Respectfully,

WAYNE DOWDY
Member of Congress

Enclosure

84004144871

ATTACHMENT II 203277

RECEIVED FEC
82 NOV 8 A10:45

Case 6884

(23)

ROBERT S. MURPHREE
Attorney at Law
Suite 402 First Magnolia Federal Bldg.
P.O. Box 370
Jackson, Mississippi 39205
(601) 353-0311

November 3, 1982

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

Re: Little Dixie Supermarkets, Inc., Terry, Mississippi; MUR1469

Dear Sir:

In my capacity as Trustee in Bankruptcy of Little Dixie Supermarkets, Inc. I received your letter dated October 29, 1982 addressed to Mr. Herbert Lowery Berryhill. This letter was mailed to Post Office Box 10, Terry, Mississippi 39170 and was forwarded to me as the Trustee in Bankruptcy, the proper official to receive the corporation's mail.

At the same time I received an envelope addressed to Mr. Lowery Berryhill, which I forwarded to his counsel unopened.

I really do not know what the Federal Election Commission wants the debtor to do since it is in bankruptcy. At all times relevant to the actions described in this Complaint the corporation's officers were Herbert Berryhill and the members of his family, including Lowery Berryhill, who are also the plaintiff's in the civil action filed in the Circuit Court of Hinds County, Mississippi which was attached as Exhibit A to the Complaint on file before the Federal Election Commission. Herbert, Cliff and Lowery Berryhill also exercised active management of the corporation and any violations of Federal Law of the corporation may have committed would have been done by and through these people.

I noted with great interest the fact that Mrs. Pierce filed a Complaint with the Federal Election Commission about a matter that she admittedly has no knowledge of whatsoever other than what she read in the newspaper and in this lawsuit. I have never met Congressman Dowdy but it is startling to me that such serious charges can be made against the United States Congressman based merely on allegations contained in another matter.

8404014492

(24)

In the course of my administration of the bankruptcy of Little Dixie Supermarkets, Inc. I have found that much of the information given to me by the Berryhill family was unreliable and for that reason this charge concerns me all the more. In fact the Berryhill family has made many allegations of dishonesty against me in my capacity as bankruptcy trustee. I don't pretend to tell you how to handle your job but before you preceed very far with this investigation I would suggest that you check the background of the people making these allegations against the Congressman.

Yours truly,

Robert S. Murphree

RSM/dh
cc: Honorable Wayne Dowdy
United States Congressman
P. O. Box 569
Jackson, Mississippi 39205

8404014449073

ATTACHMENT III

LAW OFFICES
BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
WILLIAM B. KIRKSEY
BOBBY B. DeLAUGHTER

LISA BINDER MILNER

November 11, 1982

FEC
Cc48954
82 NOV 16 P12:27
SEC
(25)

MILLARD M. BUSH (1968)
TELEPHONE
948-5000
AREA CODE 601

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Enclosed herewith you will find the sworn responses of our clients, Herbert Berryhill and Lowery Berryhill, in the above-referenced matter.

I think that you will find, in conducting your investigation, that in the context of this case and the statutory framework of the Federal Election Commission Act, it is clear that a "knowing and willful" violation of the Act is simply not present here.

In the case of American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) vs. Federal Election Commission, 628 F.2d 97 (D.C. Cir. 1980), the Court held that:

> "Given the statutory context, a 'willful' violation must necessarily connote 'defiance' or such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act." 628 F.2d at 101.

In the matter under review, as in the aforesaid case, "there is not only no finding but also no evidence of such 'defiance' or 'knowing, conscious, and deliberate flaunting' of the Act." In fact, every indication is that the Berryhills considered themselves, just as the AFL-CIO, to be in compliance with the Act. The fact that Lowery Berryhill reported, in June of 1982, the dealings complained of to the FEC, should be as persuasive evidence of a lack of intent to violate the Act's prohibitions, as was the fact in the aforesaid case that the AFL-CIO was routinely reporting prohibited inter-fund transfers to the very agency charged with enforcement of the Act. 628 F.2d at 101.

8401014974

(26)

The District Court, in Federal Election Commission vs. National Education Association, 457 F.Supp. 1102, 1112 (D.C.D. 1978), held that no civil penalty, whatever, is warranted where the violation is not in the nature of intentional disregard of the Act. There was no such intentional disregard by the Berryhills, and we submit that no penalty, civil or otherwise, is warranted, and certainly not one that is substantial.

With kindest personal regards, we remain

Sincerely,

BINDER, KIRKSEY & DeLAUGHTER

Alvin M. Binder

AMB:ncb

Enclosures

cc Honorable Kenneth A. Gross
Associate General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

84004144825

40401443

82 NOV 16 PM 2:27

(27)

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

THE COMPLAINT OF JACQUELINE SMITH PIERCE FOR THE INITIATION OF COMPLIANCE MATTERS IN REGARD TO THE ELECTION OF CHARLES WAYNE DOWDY TO THE FEDERAL OFFICE OF REPRESENTATIVE TO THE FOURTH CONGRESSIONAL DISTRICT, UNITED STATES CONGRESS

NO. MUR 1469

RESPONSE OF HERBERT BERRYHILL

COMES NOW Herbert Berryhill and files this his sworn response to the Complaint on file herein as follows, to wit:

1.

All allegations and averments set forth in the lawsuit previously filed against Congressman Wayne Dowdy in Cause No. 28,991, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, a copy of which was attached as Exhibit "A" to the Complaint herein, is true and correct. I would, however, like to take this opportunity to clarify certain matters that are relevant to this inquiry that were not directly germane to the aforesaid suit, hereinafter referred to as "the suit".

2.

As set forth in Paragraph VII of the suit, my son, Lowery, eventually became a full-time worker for the candidate Dowdy in his campaign. We had both been approached by Mr. Dowdy in the Spring of 1981, and on May 24, 1981, we entered his campaign, working tirelessly throughout that endeavor.

8 4 0 4 0 1 4 4 8 7

3.

Just before the first primary which was held on June 23, 1981, Dowdy represented to his closest supporters, including my son and me, that he was out of money; that he had borrowed all that he could borrow from banking institutions; and that if he was going to finish the primary, he would have to look to his friends. It was for this reason and upon Wayne Dowdy's express oral agreement that every dollar loaned or advanced by me would be paid back that I loaned him the funds and services set forth in the suit against him. It was repeatedly represented to my sono and me by Dowdy and his representatives that this was all on the "up and up" and that everything was being considered to be and reported in compliance with the Federal Election Commission Act. I have come to realize that my reliance on these representations was as misplaced as on the Congressman's "word" that he would pay back his debts.

4.

On or about July 12, 1981, the Sunday subsequent to the general election (July 7, 1981), my son and I went to McComb, Mississippi, for a conference with the newly elected Congressman. Dowdy again represented to us that all of our money would be paid back within twelve (12) months, and assured us that appropriate FEC filings would reflect these loans. Dowdy, in fact, made these same representations to us throughout the following year, but in reality never did anything about it.

5.

In June of 1982, Lowery personally went to the office of the Secretary of State of the State of Mississippi to examine Dowdy's campaign reports on file. He found that as of that date in June of 1982, Dowdy had yet to file any appropriate reports regarding the funds received as set forth in our suit against him. He immediately contacted Dowdy's organization and informed

(29)

them that we wanted our money back immediately. He also contacted Ms. Benita Adler of the Federal Election Commission on or about the 30th day of June, 1982, at approximately 4:00 o'clock P. M., and reported to this very agency that there appeared to be a problem which I had been previously assured by an attorney, officer of the Court, and Congressman of the United States of America did not exist.

6.

In the month of July, 1981, I went to see Dowdy in his Congressional office in Jackson, Mississippi, regarding these matters. Dowdy stated that he was having financial problems, being some $80,000.00 in arrears, and again affirmed that the money owed to us would be paid back within the next twelve (12) months.

7.

Prior to the suit being filed on September 7, 1982, my son and I advised Honorable George Phillips, United States Attorney, of all these matters and provided him with copies of all material documents.

8.

On September 7, 1982, since all efforts to get Dowdy to repay our money and file the appropriate FEC reports had proven fruitless, the suit against Dowdy was filed by us. There has been no answer yet filed by Mr. Dowdy, and the case has not been set for trial.

9.

Essentially, for the past year, my family and I did not see any infraction of any law, and certainly had no intention of violating any law, particularly in willful defiance or deliberate flaunting of any such law. On the contrary, we were led to believe that reports would be filed alleging the true facts of these transactions which were done in a legal and proper manner.

(30)

If we had any such intent, Lowery certainly would not have had contacted the FEC, the very agency charged with enforcement of the law. We have stood, and will continue to stand, ready to respond and assist in any way.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

STATE OF MISSISSIPPI

COUNTY OF HINDS:::::

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid and while within my official jurisdiction, the within named Herbert Berryhill, who, being by me first duly sworn, states on his oath that the matters and facts set forth in the foregoing Response are true and correct as therein stated.

Herbert Berryhill
HERBERT BERRYHILL

SWORN TO AND SUBSCRIBED BEFORE ME, this the 12 day of November, 1982.

Nancy Linder
NOTARY PUBLIC

My Commission Expires: 7/14/85

4040144810

(31)

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

THE COMPLAINT OF JACQUELINE SMITH PIERCE FOR THE INITIATION OF COMPLIANCE MATTERS IN REGARD TO THE ELECTION OF CHARLES WAYNE DOWDY TO THE FEDERAL OFFICE OF REPRESENTATIVE TO THE FOURTH CONGRESSIONAL DISTRICT, UNITED STATES CONGRESS

NO. MUR 1469

RESPONSE OF LOWERY BERRYHILL

COMES NOW Lowery Berryhill and files this his sworn response to the Complaint on file herein as follows, to wit:

1.

All allegations and averments set forth in the lawsuit previously filed against Congressman Wayne Dowdy in Cause No. 28,991, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, a copy of which was attached as Exhibit "A" to the Complaint herein, is true and correct. I would, however, like to take this opportunity to clarify certain matters that are relevant to this inquiry that were not directly germane to the aforesaid suit, hereinafter referred to as "the suit".

2.

As set forth in Paragraph VII of the suit, I eventually became a full-time worker for the candidate Dowdy in his campaign. Both my father and I had both been approached by Mr. Dowdy in the Spring of 1981, and on May 24, 1981, we entered his campaign, working tirelessly throughout that endeavor.

(32)

3.

Just before the first primary which was held on June 23, 1981, Dowdy represented to his closest supporters, including my father and me, that he was out of money; that he had borrowed all that he could borrow from banking institutions; and that if he was going to finish the primary, he would have to look to his friends. It was for this reason and upon Wayne Dowdy's express oral agreement that every dollar loaned or advanced by me would be paid back that I loaned him the funds and services set forth in the suit against him. It was repeatedly represented to my father and me by Dowdy and his representatives that this was all on the "up and up" and that everything was being considered to be and reported in compliance with the Federal Election Commission Act. I have come to realize that my reliance on these representations was as misplaced as on the Congressman's "word" that he would pay back his debts.

4.

On or about July 12, 1981, the Sunday subsequent to the general election (July 7, 1981), my father and I went to McComb, Mississippi, for a conference with the newly elected Congressman. Dowdy again represented to us that all of our money would be paid back within twelve (12) months, and assured us that appropriate FEC filings would reflect these loans. Dowdy, in fact, made these same representations to us throughout the following year, but in reality never did anything about it.

5.

I, in June of 1982, personally went to the office of the Secretary of State of the State of Mississippi to examine Dowdy's campaign reports on file. I found that as of that date in June of 1982, Dowdy had yet to file any appropriate reports regarding the funds received as set forth in our suit against him. I immediately contacted Dowdy's organization and informed them that

(33)

we wanted our money back immediately. I also contacted Ms. Benita Adler of the Federal Election Commission on or about the 30th day of June, 1982, at approximately 4:00 o'clock P. M., and reported to this very agency that there appeared to be a problem which I had been previously assured by an attorney, officer of the Court, and Congressman of the United States of America did not exist.

6.

In the month of July, 1981, my father went to see Dowdy in his Congressional office in Jackson, Mississippi, regarding these matters. Dowdy stated that he was having financial problems, being some $80,000.00 in arrears, and again affirmed that the money owed to us would be paid back within the next twelve (12) months.

7.

Prior to the suit being filed on September 7, 1982, my father and I advised Honorable George Phillips, United States Attorney, of all these matters and provided him with copies of all material documents.

8.

On September 7, 1982, since all efforts to get Dowdy to repay our money and file the appropriate FEC reports had proven fruitless, the suit against Dowdy was filed by us. There has been no answer yet filed by Mr. Dowdy, and the case has not been set for trial.

9.

Essentially, for the past year, my family and I did not see any infraction of any law, and certainly had no intention of violating any law, particularly in willful defiance or deliberate flaunting of any such law. On the contrary, we were led to believe that reports would be filed alleging the true facts of these transactions which were done in a legal and proper manner.

(34)

If I had any such intent, I certainly would not have had contacted the FEC, the very agency charged with enforcement of the law. We have stood, and will continue to stand, ready to respond and assist in any way.

Respectfully submitted,

Lowery Berryhill

LOWERY BERRYHILL

STATE OF MISSISSIPPI

COUNTY OF HINDS:::::

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid and while within my official jurisdiction, the within named Lowery Berryhill, who, being by me first duly sworn, states on his oath that the matters and facts set forth in the foregoing Response are true and correct as therein stated.

Lowery Berryhill

LOWERY BERRYHILL

SWORN TO AND SUBSCRIBED BEFORE ME, this the 13 day of November, 1982.

Nancy Bender

NOTARY PUBLIC

My Commission Expires: 7/14/85

40401449

(35)

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

THE COMPLAINT OF JACQUELINE SMITH PIERCE FOR THE INITIATION OF COMPLIANCE MATTERS IN REGARD TO THE ELECTION OF CHARLES WAYNE DOWDY TO THE FEDERAL OFFICE OF REPRESENTATIVE TO THE FOURTH CONGRESSIONAL DISTRICT, UNITED STATES CONGRESS

NO. MUR 1469

RESPONSE OF BERRYHILL FARMS, INC. OF TERRY

COMES NOW Berryhill Farms, Inc. of Terry, by and through the undersigned officer, and files this its sworn response to the Complaint on file herein as follows, to wit:

1.

All allegations and averments set forth in the lawsuit previously filed against Congressman Wayne Dowdy in Cause No. 28,991, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, a copy of which was attached as Exhibit "A" to the Complaint herein, are true and correct. I would, however, like to take this opportunity to clarify certain matters that are relevant to this inquiry that were not directly germane to the aforesaid suit, hereinafter referred to as "the suit".

2.

As set forth in Paragraph VII of the suit, Lowery Berryhill eventually became a full-time worker for the candidate Dowdy in his campaign. Herbert Berryhill, as well as Lowery Berryhill, had both been approached by Mr.Dowdy in the Spring of 1981, and on May 24, 1981, they entered his campaign, working tirelessly throughout that endeavor.

(36)

3.

Just before the first primary which was held on June 23, 1981, Dowdy represented to his closest supporters, including the Berryhills, that he was out of money; that he had borrowed all that he could borrow from banking institutions; and that if he was going to finish the primary, he would have to look to his friends. It was for this reason and upon Wayne Dowdy's express oral agreement that every dollar loaned or advanced by the Berryhills and this corporation would be paid back. The funds and services set forth in the suit were loaned. It was repeatedly represented to the Berryhills by Dowdy and his representatives that this was all on the "up and up" and that everything was being considered to be and reported in compliance with the Federal Election Commission Act. It has become apparent that the Berryhills' reliance on these representations was as misplaced as on the Congressman's "word" that he would pay back his debts.

4.

On or about July 12, 1981, the Sunday subsequent to the general election (July 7, 1981), Lowery Berryhill and Herbert Berryhill went to McComb, Mississippi, for a conference with the newly elected Congressman. Dowdy again represented to them that all of the money loaned by them and this corporation would be paid back within twelve (12) months, and assured them that appropriate FEC filings would reflect these loans. Dowdy, in fact, made these same representations to the Berryhills throughout the following year, but in reality never did anything about it.

5.

Lowery Berryhill, in June of 1982, personally went to the office of the Secretary of State of Mississippi to examine Dowdy's campaign reports on file. He found that as of that date

(37)

in June of 1982, Dowdy had yet to file any appropriate reports regarding the funds received as set forth in the suit against him. Lowery Berryhill immediately contacted Dowdy's organization and informed them that the Berryhills and this corporation wanted the loaned funds back immediately. He also contacted Ms. Benita Adler of the Federal Election Commission on or about the 30th day of June, 1982, at approximately 4:00 o'clock P. M.,and reported to this very agency that there appeared to be a problem which the Berryhills had been previously assured by an attorney, officer of the Court, and Congressman of the United States of America did not exist.

6.

In the month of July, 1981, the Berryhills went to see Dowdy in his Congressional office in Jackson, Mississippi, regarding these matters. Dowdy stated that he was having financial problems, being some $80,000.00 in arrears, and again affirmed that the money owed to the Berryhills and this corporation would be paid back within the next twelve (12) months.

7.

Prior to the suit being filed on September 7, 1982, Lowery Berryhill and Herbert Berryhill advised Honorable George Phillips, United States Attorney, of all of these matters and provided him with copies of all material documents.

8.

On September 7, 1982, since all efforts to get Dowdy to repay the loaned funds and file the appropriate FEC reports had proven fruitless, the suit against Dowdy was filed. There has been no answer yet filed by Mr. Dowdy, and the case has not been set for trial.

9.

Essentially, for the past year, the Berryhills and this corporation, did not see any infraction of any law, and certainly

(38)

had no intention of violating any law, particularly in willful defiance or deliberate flaunting of such law. On the contrary,we were led to believe that reports would be filed alleging the true facts of these transactions which were done in a legal and proper manner. If any such intent existed, Lowery Berryhill certainly would not have contacted the FEC, the very agency charged with enforcement of the law. We have stood,and will continue to stand, ready to respond and assist in any way.

Respectfully submitted,

BERRYHILL FARMS, INC. OF TERRY

BY Herbert Berryhill
Its President

STATE OF MISSISSIPPI

COUNTY OF HINDS:::::

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the aforesaid jurisdiction and while within my official jurisdiction, Herbert Berryhill, personally known to me to be the President of Berryhill Farms, Inc. of Terry, who, being by me first duly sworn, states on his oath that the matters and facts set forth in the foregoing Response are true and correct as therein stated.

Herbert Berryhill
HERBERT BERRYHILL

SWORN TO AND SUBSCRIBED BEFORE ME, this the 12 day of November, 1982.

Notary Public
NOTARY PUBLIC

My Commission Expires: 11-4-85

(39)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Alvin Binder, Esquire
511 East Pearl Street
P.O. Box 25
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Binder:

The Federal Election Commission notified you by letter under date of October 29, 1982, of a complaint which alleges that your clients, Herbert Berryhill, Lowery Berryhill and Berryhill Farms Inc. of Terry violated certain sections of the Federal Election Campaign Act of 1971, as amended "the Act". A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on December , 1982, determined that there is reason to believe your clients have violated certain sections of the Act. Specifically, it appears that Herbert and Lowery Berryhill made excessive contributions to the campaign of Wayne Dowdy in violation of 2 U.S.C. § 441a(a)(1)(A) and made excessive cash contributions to the Dowdy campaign in violation of 11 C.F.R. § 110.4(c)(1). It also appears that your client, Berryhill Farms Inc., of Terry violated 2 U.S.C. § 441b by allowing use of its corporate plane but failing to charge commercially reasonable rates.

Your response to the Commission's initital notification of this complaint did not provide complete information regarding the matters in question. You may submit any additional factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please file any such response within ten days of your receipt of this notification.

8 4 0 4 0 1 4 9 1 8

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain 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 matter to be made public.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-4071.

Sincerely,

Enclosure
Procedures

8401441819

(41)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert S. Murphree, Esquire
Suite 402
First Magnolia Federal Building
P.O. Box 370
Jackson, Mississippi 39205

Re: MUR 1469

Dear Mr. Murphree:

The Federal Election Commission notified you by letter dated October 29, 1982, of a complaint which alleges that Little Dixie Supermarket, Inc., ("Little Dixie") has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. We acknowledge receipt of your explanation of this matter which was dated November 3, 1982.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on December , 1982, determined that there is reason to believe Little Dixie has violated 2 U.S.C. § 441b, a provision of the Act.

We recognize the fact that you are the Trustee in Bankruptcy for Little Dixie. Nevertheless, Little Dixie has committed a violation of the Act and the Commission intends to proceed in this matter pursuant to 2 U.S.C. § 437g. We would also appreciate a courtesy copy of any communications which you might send to the former Directors of Little Dixie regarding this matter.

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such response within ten days of your receipt of this notification.

8401418200

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against Little Dixie, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless the Commission is notified in writing that the matter is to be made public. If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071.

Sincerely,

Enclosure
Procedures

8404014482

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert Bauer, Esquire
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

The Federal Election Commission notified your client, the Dowdy for Congress Committee on September 24, 1982, of a complaint which alleges that the Committee violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint the Commission, on December , 1982, determined that there is reason to believe that your client has violated certain sections of the Act. Specifically, it appears that Wayne Dowdy and the Dowdy for Congress Committee accepted excessive contributions and excessive cash contributions in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.4(c)(2) respectively. In addition, it appears that your client failed to report the receipt of these contributions in violation of 2 U.S.C. § 434(b). Finally, it appears that your client accepted an illegal corporate contribution by making use of aircraft jointly owned by Little Dixie Supermarket, Inc., and Berryhill Farms Inc. of Terry, but failed to pay commercially reasonable rates.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

8401449322

This matter will remain 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 matter to be made public.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at 523-5071.

Sincerely,

Enclosure
Procedures

8404044823

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE

FROM: MARJORIE W. EMMONS/JODY C. RANSOM

DATE: NOVEMBER 10, 1982

SUBJECT: ADDITIONAL OBJECTION - MUR 1469
First General Counsel's Report
dated November 8, 1982

You were previously notified of objections to this matter by Commissioners Harris, Reiche and Aikens.

Commissioner McDonald submitted an additional objection at 4:55, November 10, 1982.

This matter will be discussed in Executive Session on Tuesday, November 16, 1982.

8401448824

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ JAN SAVAGE

DATE: NOVEMBER 10, 1982

SUBJECT: OBJECTION - MUR 1469 First General Counsel's Report dated November 8, 1982

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

Commissioner Aikens submitted an additional objection on November 10, 1982 at 10:03.

This matter will be discussed in executive session on November 16, 1982.

8404014925

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY RANSOM

DATE: NOVEMBER 9, 1982

SUBJECT: OBJECTIONS - MUR 1469 First General Counsel's Report dated November 8, 1982; Received in OCS, 11-8-82, 11:32

The above-named document was circulated to the Commission on November 8, 1982 at 4:00.

Commissioners Harris and Reiche submitted objections to this matter on November 9, 1982.

This matter will be placed on the agenda for the Executive Session of Tuesday, November 16, 1982.

8401448226

November 8, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kagson

SUBJECT: MUR 1469

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

Attachment

cc: Brown

8404044427

Jacqueline Smith Pierce
ATTORNEY AT LAW

PLAZA BUILDING
120 NORTH CONGRESS ST.
TELEPHONE: 352-8401
After hours: 956-7854

P.O. BOX-12294
JACKSON, MISSISSIPPI 39211

ATTACHMENT I

RECEIVED AT THE FEC
Sec # 8448
82 SEP 13 A10:57
82 SEP 13 P1:50

September 10, 1982

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

Gentlemen or Ladies:

Please find enclosed a Complaint to be filed with the Federal Election Commission in accordance with those procedures set forth in 2 USC 437g, 437d(a) and 11 CFR Sec. 111.

If you have questions or comments regarding this Complaint, please let me know and I shall be glad to furnish you any information which I may possess.

Thank you for this service.

Yours sincerely,

Jacqueline Smith Pierce

Jacqueline Smith Pierce

jsp/s
Attachment

8401448

8 4 0 4 0 1 4 4 9 9

RECEIVED AT THE FEC

82 SEP 13 AM 10: 57

UNITED STATES OF AMERICA

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

the Complaint of Jacqueline Smith Pierce for the Initiation of Compliance Matters in regard to the Election of Charles Wayne Dowdy to the federal office of Representative to the Fourth Congressional District, United States Congress

COMPLAINT

Jacqueline Smith Pierce, whose address is 5512 Concord, Jackson, Ms. 39211 (P.O. Box 12294) and who is hereinafter referred to as "complainant" presents this Complaint for the purpose of initiating compliance matters because of a possible violation of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et seq.), and because of her desire for voters to learn the truth of the allegations recently filed against Congressman Charles Wayne Dowdy so that they may vote based on informed judgment in the November election.

The Federal Election Commission has jurisdiction under the aforesaid mentioned act, hereinafter referred to as "the Act."

The name of the person who is alleged to have committed violations under the Act is the Representative of the Fourth Congressional District, Congressman Charles Wayne Dowdy, whose residence address in Mississippi is Route 3, Box 221, Summit, Mississippi 39666, and whose mailing address in Washington, D.C. is 1631 Longworth House Office Building, Washington, D.C. 20515.

Allegations in this complaint are based upon the information in the Complaint of Herbert Berryhill and Lowery Berryhill, adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi, which complaint was filed in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on September 7, 1982, and on an article in the Jackson Daily News dated September 8, 1982, entitled "Ex-backers sue Dowdy for $38,000 they claim he Owes." Copies of the aforesaid Complaint filed in the Circuit Court and the news article are attached hereto and incorporated herein and made a part of this complaint as Exhibits "A" and "B."

In accordance with the information in the attached Exhibits heretofore mentioned, complainant believes that the Federal Election Commission has reason to initiate a compliance matter to determine whether or not Congressman Wayne Dowdy, hereinafter referred to as Respondent, is and has been in violation of the Federal Election Campaign Act of 1971, as amended. In support of this belief, complainant excerpts the following facts from the aforesaid Exhibits "A" and "B."

1. Respondent received cash contributions in excess of that allowed in the Act. According to 11 CFR Sec. 110.4(c)(2) and 2 USC 441g, it is illegal for any person to make a cash contribution in excess of $100; and any candidate receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor. In Section XIII of the Complaint attached hereto as Exhibit "A" Respondent obtained $18,000 in "cold cash" from Herbert Berryhill, which amount was supposed to be a loan. According to Mr. Berryhill, this amount has never been repaid. In Section XIV of the Complaint, Mr. Berryhill alleges that Respondent received the sum of $800 in cash to use for the purchase of alcoholic beverages.

This sum of $800 has not yet been repaid. The Act provides that the term "contribution" includes a loan, and a loan which is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 CFR Sec. 100.7 (a)(1)(B) (2 U.S.C. 431(8).

2. Respondent received contributions in excess of $1000 which amounts were in violation of 2 USC 441a(a). The Complaint attached hereto as Exhibit "A" alleges numerous instances of loans which have not been repaid and which were in excess of the limits of the Act, specifically, as follows:

A. Section VIII of the Complaint alleges that Lowery Berryhill made a loan of $5900 to Respondent which has not been repaid.

B. Section IX of the Complaint alleges that Herbert Berryhill paid The Country Kitchen the sum of $1500 and that Respondent was supposed to reimburse Mr. Berryhill this sum but that this sum has never been repaid. The sum of $1500 was for 750 pounds of catfish ordered by Respondent.

C. Section X of the Complaint states that Lowery Berryhill provided Respondent with hotel accommodations with the understanding that he would be reimbursed for said charges which totaled $1,241.88, but that Lowery Berryhill has not been reimbursed.

D. Section XI of the Complaint lists the sum of $4000 as owing to Berryhill Farms, Inc. for aircraft and pilot services, which sum has not been repaid.

E. Section XII of the Complaint states that Respondent owes Lowery Berryhill $351.08 for certain copier supplies.

F. Section XV of the Complaint states that the Berryhills paid campaign workers the sum of $5,174, which

amount was supposed to be a loan to Respondent but that this amount has not been paid.

3. Respondent received contributions from a corporation in violation of 1 USC 441b (4)(a) which prohibits corporations from making a contribution or expenditure to a Federal election. In Section XI of the Complaint, it is alleged that Berryhill Farms, Inc. and Little Dixie Supermarket, Inc. owned a twin engine airplane jointly and that this airplane was furnished to Respondent and his staff, together with pilot services. Berryhill Farms, Inc. claims that Respondent owes the amount of $4000 to this corporation.

4. Respondent failed to report the contributions and expenditures according to the requirements of the Act. Certain reports by candidates and political committees are required by 2 USC 434. According to Section XIII of the Complaint attached hereto, Respondent has not filed the required information to show that the loan of $18,000 was made to Respondent from Herbert Berryhill. According to the Complaint, Respondent used the $18,000 for campaign expenses and personally made cash disbursements for radio spots the day before the election. Moreover, according to Section XIII of the Complaint, a campaign worker allegedly received compensation in the sum of $15,500 but in truth the amount was spent for the campaign.

WHEREFORE, in view of the allegations made in the attached Complaint marked as Exhibit "A" and in the Jackson Daily News article marked as Exhibit "B," Complainant believes that there are reasonable grounds for the Federal Election Commission to make an investigation of this matter, and Complainant prays that the Federal Election Commission

will investigate this matter and take appropriate action in view of the Complaint and the findings thereon.

Dated September 16th 1982.

Jacqueline Smith Pierce

Jacqueline Smith Pierce
P.O. Box 12294
Jackson, Ms. 39211
5512 Concord St.
(601) 352-8401 or 956-7854

AFFIDAVIT

COUNTY OF HINDS

STATE OF MISSISSIPPI

Jacqueline Smith Pierce, of 5512 Concord Drive, Jackson, Mississippi, appeared before me and being duly sworn, deposed and says:

1. That she is a citizen of the Fourth Congressional District of Mississippi and a qualified voter of Hinds County, Mississippi.

2. That she believes that she cannot vote intelligently in the November election unless the charges against Congressman Wayne Dowdy are resolved and the truth of the matter published.

3. That she is authorized to make this affidavit in accordance with procedures set forth in 11 CFR 111.4(a)(b) and (c).

4. That she is aware that this complaint is subject to the statutes governing perjury and to 18 USC 1001.

5. That the matters set forth in the above and foregoing Complaint to the Federal Election Commission are true and correct to the best of her information and belief.

Jacqueline Smith Pierce

Jacqueline Smith Pierce

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of September, 1982.

Charlotte Hawkins

NOTARY

MY COMMISSION EXPIRES:

2/21/85

8404014499

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

FILED
SEP 7 1982
WM. E. McKINLEY
CIRCUIT CLERK
D. C.

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

Exhibit "A"

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, a campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

12

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

Mississippi

Wednesday B
September 8, 1982

JACKSON DAILY NEWS

Exhibit "B"

Ex-backers sue Dowdy for $38,000 they claim he owes

By JEFF EDWARDS
JACKSON DAILY NEWS Staff Writer

The courts will now decide if Rep. Wayne Dowdy owes two former campaign workers almost $38,000 for services and loans the past supporters say they provided during Dowdy's campaign last year for the 4th Congressional District seat.

Herbert Berryhill, a former Hinds County supervisor, and his son Lowery, operators of Berryhill Farms Inc. of Terry, have filed suit in Hinds Circuit Court for $37,966.96. The figure includes an alleged $18,000 cash loan and services such as air transportation, food, alcoholic beverages and staff salaries the Berryhills claim Dowdy will not repay.

Dowdy has denied owing the Berryhills any money, but Berryhill claimed last month he had proof of the expenditures.

JoAnn Klein, Dowdy's press secretary, said Tuesday the Democratic representative had no further comments on the matter.

"He's made his position clear on it," she said.

Lowery Berryhill said Tuesday he "really can't have any comment" on the matter due to the upcoming trial. Berryhill said he did not have a copy of the lawsuit, but it did include additional items "we had overlooked" from an earlier claim.

In July, while threatening to file suit, Berryhill said the representative owed his family $32,600.

"We're just going to have to wait for the trial. I hope it will be very soon," Berryhill said.

He said he would not have taken the case to court if he did not think he was going to win.

In the suit, Berryhill and his father, Herbert, a former Hinds County supervisor, claim they provided Dowdy with "large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeured defendant (Dowdy) from town to town throughout the district."

During Dowdy's campaign, Lowery Berryhill worked at the representative's state campaign headquarters on Capitol Street in Jackson.

The Berryhills claim Dowdy owes $6,900 in cash given to the campaign, $1,500 for 750 pounds of catfish, $1,241.88 for hotel accommodations, $4,000 for use of the Berryhill plane and commercial pilots, $351.08 for copier supplies, an $18,000 cash loan, $800 for alcoholic beverages for the victory party and $5,174 for campaign workers' salaries.

The suit says that Dowdy owes Herbert Berryhill $25,400, Lowery Berryhill $2,392.96, and Berryhill Farms Inc. $10,174.

The $18,000 in cash, which Berryhill claims his family gave to the campaign, was not reported on Federal Election Campaign reports as required by law, the suit claims.

"Defendant Dowdy told plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the FEC to show that the aforesaid $18,000 as provided to him by said plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done," the suit states.

"This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid...," the suit claims.

According to the lawsuit, Dowdy sought an introduction with Berryhill and his sons as he travelled to the Country Kitchen Restaurant in Byram, owned by Mrs. Herbert Berryhill.

At the restaurant, Dowdy "presented his desires to be elected, his programs, his hopes and ambitions" to the Berryhills, and they, "believing him to be an honest man of his word, were totally mesmerized by the defendant Dowdy."

On May 24, 1981, the Berryhills entered Dowdy's campaign where they worked "tirelessly" for Dowdy's election.

In the lawsuit, the Berryhills claim several of Dowdy's campaign workers were paid a total of $5,174.

One of the campaign workers named in the suit, who did not wish to be identified, said he only worked for Dowdy one afternoon and was not paid the money the Berryhills claim he received.

Campaign workers who received money, according to the lawsuit, are: Ray Barfield, $1,500; Tom Knight, $1,500; Stephen Jones, $1,000; Olga Lynn Jones, $280; Melvin Howell, $307; Dennis Reese, $307; and Beverly Whitehead, $280.

Berryhill first made his claims and threatened a lawsuit in July. The family is represented by attorney Alvin Binder.

Berryhill said Dowdy agreed to pay off the money within 12 months after the election in July of 1981. As late as July of this year, Berryhill said he thought Dowdy would repay the money.

ATTACHMENT II

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

8404144918

Robert Bauer, Esquire
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

Re: MUR 1469

Dear Mr. Bauer:

The Federal Election Commission notified you on September 21, 1982, of a complaint which alleges that your client had violated certain sections of the Federal Election Campiagn Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on November , 1982, determined that there is reason to believe that your client has violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b and 11 C.F.R. § 110.4(c)(2).

As of this date, we have received no written response from you in connection with this matter. The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain 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 matter to be made public.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at 523-5071.

Sincerely,

Enclosures
Procedures

8401449

ATTACHMENT III

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Congressman Charles Wayne Dowdy
1631 Longworth House Office Building
Washington, D.C. 10515

Re: MUR 1469

Dear Congressman Dowdy:

This is to advise you that on November , 1982, the Federal Election Commission found reason to believe that your committee, the Dowdy for Congress Committee has violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(f), 2 U.S.C.§ 441b and 11 C.F.R. § 110.4(c)(2).

While the Committee Treasurer is responsible for the acceptance of contributions made to a Federal committee we believe that you, as the candidate, should be made aware of this development. A copy of our letter to your committee's attorney, is enclosed.

Under 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) this matter will remain confidential unless the Committee notifies the Commission in writing that it wishes the investigation to be made public.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071. We have numbered this matter MUR 1469.

Sincerely,

Enclosure
Letter to Bob Bauer

8401448350

203364

RECEIVED AT THE FEC
Cc H 8954
82 NOV 16 P12:27

LAW OFFICES
BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
WILLIAM B. KIRKSEY
BOBBY B. DeLAUGHTER

LISA BINDER MILNER

MILLARD M. BUSH (1968)
TELEPHONE
AREA CODE 601

November 11, 1982

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Enclosed herewith you will find the sworn responses of our clients, Herbert Berryhill and Lowery Berryhill, in the above-referenced matter.

I think that you will find, in conducting your investigation, that in the context of this case and the statutory framework of the Federal Election Commission Act, it is clear that a "knowing and willful" violation of the Act is simply not present here.

In the case of American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) vs. Federal Election Commission, 628 F.2d 97 (D.C. Cir. 1980), the Court held that:

> "Given the statutory context, a 'willful' violation must necessarily connote 'defiance' or such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act." 628 F.2d at 101.

In the matter under review, as in the aforesaid case, "there is not only no finding but also no evidence of such 'defiance' or 'knowing, conscious, and deliberate flaunting' of the Act." In fact, every indication is that the Berryhills considered themselves, just as the AFL-CIO, to be in compliance with the Act. The fact that Lowery Berryhill reported, in June of 1982, the dealings complained of to the FEC, should be as persuasive evidence of a lack of intent to violate the Act's prohibitions, as was the fact in the aforesaid case that the AFL-CIO was routinely reporting prohibited inter-fund transfers to the very agency charged with enforcement of the Act. 628 F.2d at 101.

The District Court, in Federal Election Commission vs. National Education Association, 457 F.Supp. 1102, 1112 (D.C.D. 1978), held that no civil penalty, whatever, is warranted where the violation is not in the nature of intentional disregard of the Act. There was no such intentional disregard by the Berryhills, and we submit that no penalty, civil or otherwise, is warranted, and certainly not one that is substantial.

With kindest personal regards, we remain

Sincerely,

BINDER, KIRKSEY & DeLAUGHTER

Alvin M. Binder

AMB:ncb

Enclosures

cc Honorable Kenneth A. Gross
Associate General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

8404044332

40404448 5

RECEIVED AT THE FEC

02 NOV 18 P12:27

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

THE COMPLAINT OF JACQUELINE SMITH PIERCE FOR THE INITIATION OF COMPLIANCE MATTERS IN REGARD TO THE ELECTION OF CHARLES WAYNE DOWDY TO THE FEDERAL OFFICE OF REPRESENTATIVE TO THE FOURTH CONGRESSIONAL DISTRICT, UNITED STATES CONGRESS

NO. MUR 1469

RESPONSE OF HERBERT BERRYHILL

COMES NOW Herbert Berryhill and files this his sworn response to the Complaint on file herein as follows, to wit:

1.

All allegations and averments set forth in the lawsuit previously filed against Congressman Wayne Dowdy in Cause No. 28,991, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, a copy of which was attached as Exhibit "A" to the Complaint herein, is true and correct. I would, however, like to take this opportunity to clarify certain matters that are relevant to this inquiry that were not directly germane to the aforesaid suit, hereinafter referred to as "the suit".

2.

As set forth in Paragraph VII of the suit, my son, Lowery, eventually became a full-time worker for the candidate Dowdy in his campaign. We had both been approached by Mr. Dowdy in the Spring of 1981, and on May 24, 1981, we entered his campaign, working tirelessly throughout that endeavor.

3.

Just before the first primary which was held on June 23, 1981, Dowdy represented to his closest supporters, including my son and me, that he was out of money; that he had borrowed all that he could borrow from banking institutions; and that if he was going to finish the primary, he would have to look to his friends. It was for this reason and upon Wayne Dowdy's express oral agreement that every dollar loaned or advanced by me would be paid back that I loaned him the funds and services set forth in the suit against him. It was repeatedly represented to my sono and me by Dowdy and his representatives that this was all on the "up and up" and that everything was being considered to be and reported in compliance with the Federal Election Commission Act. I have come to realize that my reliance on these representations was as misplaced as on the Congressman's "word" that he would pay back his debts.

4.

On or about July 12, 1981, the Sunday subsequent to the general election (July 7, 1981), my son and I went to McComb, Mississippi, for a conference with the newly elected Congressman. Dowdy again represented to us that all of our money would be paid back within twelve (12) months, and assured us that appropriate FEC filings would reflect these loans. Dowdy, in fact, made these same representations to us throughout the following year, but in reality never did anything about it.

5.

In June of 1982, Lowery personally went to the office of the Secretary of State of the State of Mississippi to examine Dowdy's campaign reports on file. He found that as of that date in June of 1982, Dowdy had yet to file any appropriate reports regarding the funds received as set forth in our suit against him. He immediately contacted Dowdy's organization and informed

them that we wanted our money back immediately. He also contacted Ms. Benita Adler of the Federal Election Commission on or about the 30th day of June, 1982, at approximately 4:00 o'clock P. M., and reported to this very agency that there appeared to be a problem which I had been previously assured by an attorney, officer of the Court, and Congressman of the United States of America did not exist.

6.

In the month of July, 1981, I went to see Dowdy in his Congressional office in Jackson, Mississippi, regarding these matters. Dowdy stated that he was having financial problems, being some $80,000.00 in arrears, and again affirmed that the money owed to us would be paid back within the next twelve (12) months.

7.

Prior to the suit being filed on September 7, 1982, my son and I advised Honorable George Phillips, United States Attorney, of all these matters and provided him with copies of all material documents.

8.

On September 7, 1982, since all efforts to get Dowdy to repay our money and file the appropriate FEC reports had proven fruitless, the suit against Dowdy was filed by us. There has been no answer yet filed by Mr. Dowdy, and the case has not been set for trial.

9.

Essentially, for the past year, my family and I did not see any infraction of any law, and certainly had no intention of violating any law, particularly in willful defiance or deliberate flaunting of any such law. On the contrary, we were led to believe that reports would be filed alleging the true facts of these transactions which were done in a legal and proper manner.

If we had any such intent, Lowery certainly would not have had contacted the FEC, the very agency charged with enforcement of the law. We have stood, and will continue to stand, ready to respond and assist in any way.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

STATE OF MISSISSIPPI

COUNTY OF HINDS:::::

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid and while within my official jurisdiction, the within named Herbert Berryhill, who, being by me first duly sworn, states on his oath that the matters and facts set forth in the foregoing Response are true and correct as therein stated.

Herbert Berryhill
HERBERT BERRYHILL

SWORN TO AND SUBSCRIBED BEFORE ME, this the 12 day of November, 1982.

Nancy Binder
NOTARY PUBLIC

My Commission Expires: 7/14/85

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

THE COMPLAINT OF JACQUELINE SMITH PIERCE FOR THE INITIATION OF COMPLIANCE MATTERS IN REGARD TO THE ELECTION OF CHARLES WAYNE DOWDY TO THE FEDERAL OFFICE OF REPRESENTATIVE TO THE FOURTH CONGRESSIONAL DISTRICT, UNITED STATES CONGRESS

NO. MUR 1469

RESPONSE OF LOWERY BERRYHILL

COMES NOW Lowery Berryhill and files this his sworn response to the Complaint on file herein as follows, to wit:

1.

All allegations and averments set forth in the lawsuit previously filed against Congressman Wayne Dowdy in Cause No. 28,991, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, a copy of which was attached as Exhibit "A" to the Complaint herein, is true and correct. I would, however, like to take this opportunity to clarify certain matters that are relevant to this inquiry that were not directly germane to the aforesaid suit, hereinafter referred to as "the suit".

2.

As set forth in Paragraph VII of the suit, I eventually became a full-time worker for the candidate Dowdy in his campaign. Both my father and I had both been approached by Mr. Dowdy in the Spring of 1981, and on May 24, 1981, we entered his campaign, working tirelessly throughout that endeavor.

3.

Just before the first primary which was held on June 23, 1981, Dowdy represented to his closest supporters, including my father and me, that he was out of money; that he had borrowed all that he could borrow from banking institutions; and that if he was going to finish the primary, he would have to look to his friends. It was for this reason and upon Wayne Dowdy's express oral agreement that every dollar loaned or advanced by me would be paid back that I loaned him the funds and services set forth in the suit against him. It was repeatedly represented to my father and me by Dowdy and his representatives that this was all on the "up and up" and that everything was being considered to be and reported in compliance with the Federal Election Commission Act. I have come to realize that my reliance on these representations was as misplaced as on the Congressman's "word" that he would pay back his debts.

4.

On or about July 12, 1981, the Sunday subsequent to the general election (July 7, 1981), my father and I went to McComb, Mississippi, for a conference with the newly elected Congressman. Dowdy again represented to us that all of our money would be paid back within twelve (12) months, and assured us that appropriate FEC filings would reflect these loans. Dowdy, in fact, made these same representations to us throughout the following year, but in reality never did anything about it.

5.

I, in June of 1982, personally went to the office of the Secretary of State of the State of Mississippi to examine Dowdy's campaign reports on file. I found that as of that date in June of 1982, Dowdy had yet to file any appropriate reports regarding the funds received as set forth in our suit against him. I immediately contacted Dowdy's organization and informed them that

we wanted our money back immediately. I also contacted Ms. Benita Adler of the Federal Election Commission on or about the 30th day of June, 1982, at approximately 4:00 o'clock P. M., and reported to this very agency that there appeared to be a problem which I had been previously assured by an attorney, officer of the Court, and Congressman of the United States of America did not exist.

6.

In the month of July, 1981, my father went to see Dowdy in his Congressional office in Jackson, Mississippi, regarding these matters. Dowdy stated that he was having financial problems, being some $80,000.00 in arrears, and again affirmed that the money owed to us would be paid back within the next twelve (12) months.

7.

Prior to the suit being filed on September 7, 1982, my father and I advised Honorable George Phillips, United States Attorney, of all these matters and provided him with copies of all material documents.

8.

On September 7, 1982, since all efforts to get Dowdy to repay our money and file the appropriate FEC reports had proven fruitless, the suit against Dowdy was filed by us. There has been no answer yet filed by Mr. Dowdy, and the case has not been set for trial.

9.

Essentially, for the past year, my family and I did not see any infraction of any law, and certainly had no intention of violating any law, particularly in willful defiance or deliberate flaunting of any such law. On the contrary, we were led to believe that reports would be filed alleging the true facts of these transactions which were done in a legal and proper manner.

If I had any such intent, I certainly would not have had contacted the FEC, the very agency charged with enforcement of the law. We have stood, and will continue to stand, ready to respond and assist in any way.

Respectfully submitted,

Lowery Berryhill
LOWERY BERRYHILL

STATE OF MISSISSIPPI

COUNTY OF HINDS:::::

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid and while within my official jurisdiction, the within named Lowery Berryhill, who, being by me first duly sworn, states on his oath that the matters and facts set forth in the foregoing Response are true and correct as therein stated.

Lowery Berryhill
LOWERY BERRYHILL

SWORN TO AND SUBSCRIBED BEFORE ME, this the 12 day of November, 1982.

Nancy Bender
NOTARY PUBLIC

My Commission Expires: 7/4/85

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

THE COMPLAINT OF JACQUELINE SMITH PIERCE FOR THE INITIATION OF COMPLIANCE MATTERS IN REGARD TO THE ELECTION OF CHARLES WAYNE DOWDY TO THE FEDERAL OFFICE OF REPRESENTATIVE TO THE FOURTH CONGRESSIONAL DISTRICT, UNITED STATES CONGRESS

NO. MUR 1469

RESPONSE OF BERRYHILL FARMS, INC. OF TERRY

COMES NOW Berryhill Farms, Inc. of Terry, by and through the undersigned officer, and files this its sworn response to the Complaint on file herein as follows, to wit:

1.

All allegations and averments set forth in the lawsuit previously filed against Congressman Wayne Dowdy in Cause No. 28,991, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, a copy of which was attached as Exhibit "A" to the Complaint herein, are true and correct. I would, however, like to take this opportunity to clarify certain matters that are relevant to this inquiry that were not directly germane to the aforesaid suit, hereinafter referred to as "the suit".

2.

As set forth in Paragraph VII of the suit, Lowery Berryhill eventually became a full-time worker for the candidate Dowdy in his campaign. Herbert Berryhill, as well as Lowery Berryhill, had both been approached by Mr.Dowdy in the Spring of 1981, and on May 24, 1981, they entered his campaign, working tirelessly throughout that endeavor.

3.

Just before the first primary which was held on June 23, 1981, Dowdy represented to his closest supporters, including the Berryhills, that he was out of money; that he had borrowed all that he could borrow from banking institutions; and that if he was going to finish the primary, he would have to look to his friends. It was for this reason and upon Wayne Dowdy's express oral agreement that every dollar loaned or advanced by the Berryhills and this corporation would be paid back. The funds and services set forth in the suit were loaned. It was repeatedly represented to the Berryhills by Dowdy and his representatives that this was all on the "up and up" and that everything was being considered to be and reported in compliance with the Federal Election Commission Act. It has become apparent that the Berryhills' reliance on these representations was as misplaced as on the Congressman's "word" that he would pay back his debts.

4.

On or about July 12, 1981, the Sunday subsequent to the general election (July 7, 1981), Lowery Berryhill and Herbert Berryhill went to McComb, Mississippi, for a conference with the newly elected Congressman. Dowdy again represented to them that all of the money loaned by them and this corporation would be paid back within twelve (12) months, and assured them that appropriate FEC filings would reflect these loans. Dowdy, in fact, made these same representations to the Berryhills throughout the following year, but in reality never did anything about it.

5.

Lowery Berryhill, in June of 1982, personally went to the office of the Secretary of State of Mississippi to examine Dowdy's campaign reports on file. He found that as of that date

in June of 1982, Dowdy had yet to file any appropriate reports regarding the funds received as set forth in the suit against him. Lowery Berryhill immediately contacted Dowdy's organization and informed them that the Berryhills and this corporation wanted the loaned funds back immediately. He also contacted Ms. Benita Adler of the Federal Election Commission on or about the 30th day of June, 1982, at approximately 4:00 o'clock P. M.,and reported to this very agency that there appeared to be a problem which the Berryhills had been previously assured by an attorney, officer of the Court, and Congressman of the United States of America did not exist.

6.

In the month of July, 1981, the Berryhills went to see Dowdy in his Congressional office in Jackson, Mississippi, regarding these matters. Dowdy stated that he was having financial problems, being some $80,000.00 in arrears, and again affirmed that the money owed to the Berryhills and this corporation would be paid back within the next twelve (12) months.

7.

Prior to the suit being filed on September 7, 1982, Lowery Berryhill and Herbert Berryhill advised Honorable George Phillips, United States Attorney, of all of these matters and provided him with copies of all material documents.

8.

On September 7, 1982, since all efforts to get Dowdy to repay the loaned funds and file the appropriate FEC reports had proven fruitless, the suit against Dowdy was filed. There has been no answer yet filed by Mr. Dowdy, and the case has not been set for trial.

9.

Essentially, for the past year, the Berryhills and this corporation, did not see any infraction of any law, and certainly

had no intention of violating any law, particularly in willful defiance or deliberate flaunting of such law. On the contrary,we were led to believe that reports would be filed alleging the true facts of these transactions which were done in a legal and proper manner. If any such intent existed, Lowery Berryhill certainly would not have contacted the FEC, the very agency charged with enforcement of the law. We have stood,and will continue to stand, ready to respond and assist in any way.

Respectfully submitted,

BERRYHILL FARMS, INC. OF TERRY

BY Herbert Berryhill
Its President

STATE OF MISSISSIPPI

COUNTY OF HINDS:::::

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the aforesaid jurisdiction and while within my official jurisdiction, Herbert Berryhill, personally known to me to be the President of Berryhill Farms, Inc. of Terry, who, being by me first duly sworn, states on his oath that the matters and facts set forth in the foregoing Response are true and correct as therein stated.

Herbert Berryhill
HERBERT BERRYHILL

SWORN TO AND SUBSCRIBED BEFORE ME, this the 12 day of November, 1982.

Nancy Brodie
NOTARY PUBLIC

My Commission Expires: 1/14/85

8 4 0 4 0 1 4 4 8 6 5

aughter

BINDER, KIRKSEY & DE LAUGHTER
511 EAST PEARL STREET
P O BOX 25
JACKSON, MS 39205

TO:

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

RETURN POSTAGE GUARANTEED

203343

RECEIVED AT THE FEC
Ccc# 8932
82 NOV 15 P2:05

LAW OFFICES
BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
WILLIAM B. KIRKSEY
BOBBY B. DeLAUGHTER

LISA BINDER MILNER

MILLARD M. BUSH (1988)
TELEPHONE
948-8800
AREA CODE 601

November 11, 1982

82 NOV 15 P3:11

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Enclosed herewith you will find the sworn responses of our clients, Herbert Berryhill and Lowery Berryhill, in the above-referenced matter.

I think that you will find, in conducting your investigation, that in the context of this case and the statutory framework of the Federal Election Commission Act, it is clear that a "knowing and willful" violation of the Act is simply not present here.

In the case of American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) vs. Federal Election Commission, 628 F.2d 97 (D.C. Cir. 1980), the Court held that:

> "Given the statutory context, a 'willful' violation must necessarily connote 'defiance' or such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act." 628 F.2d at 101.

In the matter under review, as in the aforesaid case, "there is not only no finding but also no evidence of such 'defiance' or 'knowing, conscious, and deliberate flaunting' of the Act." In fact, every indication is that the Berryhills considered themselves, just as the AFL-CIO, to be in compliance with the Act. The fact that Lowery Berryhill reported, in June of 1982, the dealings complained of to the FEC, should be as persuasive evidence of a lack of intent to violate the Act's prohibitions, as was the fact in the aforesaid case that the AFL-CIO was routinely reporting prohibited inter-fund transfers to the very agency charged with enforcement of the Act. 628 F.2d at 101.

8 4 0 4 0 1 4 4 9 5 6

The District Court, in Federal Election Commission vs. National Education Association, 457 F.Supp. 1102, 1112 (D.C.D. 1978), held that no civil penalty, whatever, is warranted where the violation is not in the nature of intentional disregard of the Act. There was no such intentional disregard by the Berryhills, and we submit that no penalty, civil or otherwise, is warranted, and certainly not one that is substantial.

With kindest personal regards, we remain

Sincerely,

BINDER, KIRKSEY & DeLAUGHTER

Alvin M. Binder

AMB:ncb

Enclosures

cc Honorable Kenneth A. Gross
Associate General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

8404014848 57

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 10, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Berryhill Farms, Inc. of Terry
c/o Herbert L. Berryhill
P.O. Box 186
Terry, Mississippi 39170

Re: MUR 1469

Dear Mr. Berryhill:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that the corporation, Berryhill Farms, Inc. of Terry, has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") by permitting use of its corporate jet by Charles Wayne Dowdy but failing to charge commercially reasonable rates. A copy of the complaint is enclosed. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

You were not previously notified since the complaint was filed against Congressman Wayne Dowdy and the Dowdy for Congress Committee. However, a review of the allegations contained in the complaint indicates that the activities complained of also relate to Berryhill Farms, Inc. and may result in violations of the Act. Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against the corporation in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

8401448

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

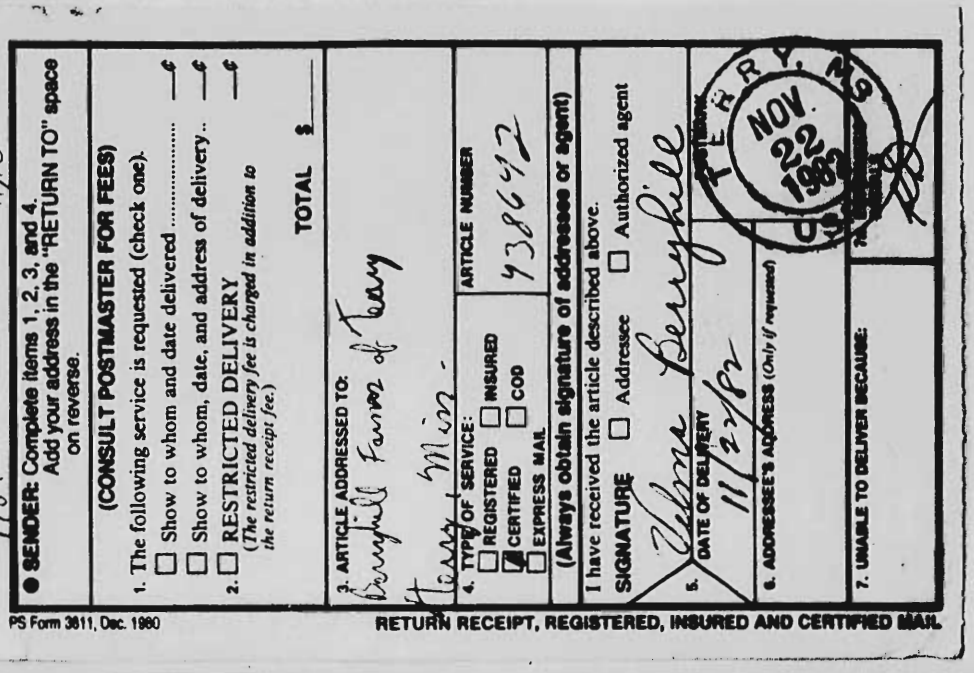
If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement



8401014489

BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

84040497

RECEIVED
FEC MAIL CENTER
92 NOV 15 P 2:05

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

203213

RECEIVED AT THE FEC
Ca # 8902
82 NOV 9 P12:57

LAW OFFICES
BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
WILLIAM B. KIRKSEY
BOBBY B. DeLAUGHTER

LISA BINDER MILNER

MILLARD M. BUSH (1968)
TELEPHONE
948-8800
AREA CODE 601

November 3, 1982

12:Pd 6 AON 2

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Pursuant to your respective letters directed to Lowery Berryhill and Herbert Berryhill under date of October 29, 1982, referenced above matter, we are enclosing Statement of Designation of Counsel with respect to these two individuals.

We are also directing your attention to the fact that the mailing addresses of both Berryhills are incorrect and we have stated on the Designation of Counsel forms the correct addresses and post office box numbers of these two gentlemen. Would you please have your files corrected?

We will have a proper response to these matters filed with you within the fifteen day period of time and you shall hear further from us on this matter.

Thanking you, I remain

Sincerely,

BINDER, KIRKSEY & DeLAUGHTER

Alvin M. Binder

AMB:ncb

Enclosures

cc Honorable Kenneth A. Gross
Associate General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

3 1 0 4 0 1 4 4 9 7 1

STATEMENT OF DESIGNATION OF COUNSEL

NAME OF COUNSEL: ALVIN M. BINDER

ADDRESS: P. O. BOX 25
JACKSON, MISSISSIPPI 39205

TELEPHONE: (601) 948-8800

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8404014497 2

November 3, 1982
Date

Signature LOWERY BERRHILLL

NAME: LOWERY BERRYHILL

ADDRESS: P. O. BOX 369
TERRY, MISSISSIPPI 39170

HOME PHONE: (601) 878-5324

BUSINESS PHONE: (601) 372-7927

STATEMENT OF DESIGNATION OF COUNSEL

NAME OF COUNSEL: ALVIN M. BINDER

ADDRESS: P. O. BOX 25
JACKSON, MISSISSIPPI 39205

TELEPHONE: (601) 948-8800

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8404014497 3

November 3, 1982
Date

Herbert Berryhill
Signature HERBERT BERRYHILL

NAME: HERBERT BERRYHILL

ADDRESS: P. O. BOX 186
TERRY, MISSISSIPPI 39170

HOME PHONE: (601) 878-5893

BUSINESS PHONE: (601) 372-7927

BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

RECEI... FEC
2 NOV 9 ... 57

CERTIFIED
P34 0956110
MAIL

3 4 0 4 4 0 7

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

203282 RECEIVED AT THE FEC
Gen # 8889
82 NOV 8 A10:44

LUCKETT, LUCKETT, LUCKETT, & THOMPSON
ATTORNEYS AT LAW
A PROFESSIONAL ASSOCIATION
143 YAZOO AVENUE
P. O. BOX 306
CLARKSDALE, MISSISSIPPI 38614-0306
TELEPHONE 601 - 624-2591

WILLIAM O. LUCKETT
KAY FARESE LUCKETT
WILLIAM O. LUCKETT, JR.
WALTER W. THOMPSON
W. KURT HENKE
IAN T. BING, of counsel

November 4, 1982

82 NOV 8 P1:54

Binder, Kirksey & DeLaughter
Post Office Box 25
Jackson, MS 39205

Re: Herbert Berryhill, et al, Plaintiffs
vs.
Charles Wayne Dowdy, Defendant
Circuit Court First Judicial District
Hinds County, Mississippi
Cause No: 28,991

AND

In the Matter of the Complaint of
Jacqueline Smith Pierce for the
Initiation of Compliance Matters
in Regard to the Election of Charles
Wayne Dowdy to the Federal Office
of Representative to the Fourth
Congressional District, United
States congress
United States of America Before the
Federal Election Commission, Cause
No. MUR 1469

Gentlemen:

Our valued client, Berryhill Farms, Inc., has brought to us for reply a letter from the Federal Election Commission, dated October 29, 1982, signed by Kenneth A. Gross, Associate General Counsel. Accompanying said letter was a photocopy of the Complaint as styled above, apparently now pending in the Circuit Court of the First Judicial District of Hinds County, Mississippi; a copy of the Complaint now pending before the Federal Election Commission bearing the number as shown above; a copy of a letter from Jacqueline Smith Pierce, dated September 10, 1982; a copy of an affidavit from Jacqueline Smith Pierce, dated September 12, 1982; and a photocopy of an article which appeared in the Wednesday, September 8, 1982, edition of the Jackson Daily News.

8404144875

The Mississippi corporation, Berryhill Farms, Inc., was granted its charter by the Secretary of State of Mississippi on March 26, 1964.

Through error and inadvertence the Secretary of State's office granted a charter to another Barryhill Farms, Inc. on February 6, 1978. When this second charter bearing the same corporate name was brought to the attention of the Secretary of State's office, efforts were made to change the name of the second Berryhill Farms, Inc. corporate name and, finally, on August 3, 1982, the name of Berryhill Farms, Inc., which was chartered on February 6, 1978, was officially changed in the Secretary of State's office of Mississippi to "Berryhill Farms, Inc. of Terry."

Berryhill Farms, Inc., the Mississippi corporation chartered on March 26, 1964, obviously had no part in any action giving rise to the complaints now pending in the Circuit Court of Hinds County, Mississippi, and before the Federal Election Commission.

We are therefore sending copies of this letter to all interested parties, or their attorneys, whose names we have with the urgent request that all pleadings be immediately amended to reflect the correct corporate name.

It is inconceivable to us how the Jackson Daily News, in its article, could use the correct corporate name when the various attorneys could not do so.

We would appreciate a prompt reply from each of you to whom this letter is being sent.

Yours very truly,

LUCKETT, LUCKETT,
LUCKETT & THOMPSON, P.A.

Original Signed By
WILLIAM O. LUCKETT

WILLIAM O. LUCKETT

8404014498 76

Binder, Kirksey & DeLaughter
November 4, 1982

WOL:dw
cc: Mr. Charles N. Steele, General Counsel
Ms. Jacqueline Smith Pierce
Mr. Ray Bailey
Mr. Ben Piazza
Mr. Paul Berryhill
Mr. Gus D. Berryhill

8401418477

LUCKETT, LUCKETT, LUCKETT & THOMPSON
ATTORNEYS AT LAW
A PROFESSIONAL ASSOCIATION
143 YAZOO AVENUE
P. O. BOX 306
CLARKSDALE, MISSISSIPPI 38614

RECEIVED AT THE FEC
82 NOV 8 A10:44

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

84040437

203277

RECEIVED AT THE FEC
Ccn 8884
82 NOV 8 A10:46

ROBERT S. MURPHREE
Attorney at Law
Suite 402 First Magnolia Federal Bldg.
P.O. Box 370
Jackson, Mississippi 39205
(601) 353-0311

November 3, 1982

82 NOV 8 P1:48

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

Re: Little Dixie Supermarkets, Inc., Terry, Mississippi;
MUR1469

Dear Sir:

In my capacity as Trustee in Bankruptcy of Little Dixie Supermarkets, Inc. I received your letter dated October 29, 1982 addressed to Mr. Herbert Lowery Berryhill. This letter was mailed to Post Office Box 10, Terry, Mississippi 39170 and was forwarded to me as the Trustee in Bankruptcy, the proper official to receive the corporation's mail.

At the same time I received an envelope addressed to Mr. Lowery Berryhill, which I forwarded to his counsel unopened.

I really do not know what the Federal Election Commission wants the debtor to do since it is in bankruptcy. At all times relevant to the actions described in this Complaint the corporation's officers were Herbert Berryhill and the members of his family, including Lowery Berryhill, who are also the plaintiff's in the civil action filed in the Circuit Court of Hinds County, Mississippi which was attached as Exhibit A to the Complaint on file before the Federal Election Commission. Herbert, Cliff and Lowery Berryhill also exercised active management of the corporation and any violations of Federal Law of the corporation may have committed would have been done by and through these people.

I noted with great interest the fact that Mrs. Pierce filed a Complaint with the Federal Election Commission about a matter that she admittedly has no knowledge of whatsoever other than what she read in the newspaper and in this lawsuit. I have never met Congressman Dowdy but it is startling to me that such serious charges can be made against the United States Congressman based merely on allegations contained in another matter.

8404044879

In the course of my administration of the bankruptcy of Little Dixie Supermarkets, Inc. I have found that much of the information given to me by the Berryhill family was unreliable and for that reason this charge concerns me all the more. In fact the Berryhill family has made many allegations of dishonesty against me in my capacity as bankruptcy trustee. I don't pretend to tell you how to handle your job but before you preceed very far with this investigation I would suggest that you check the background of the people making these allegations against the Congressman.

Yours truly,

Robert S. Murphree

RSM/dh
cc: Honorable Wayne Dowdy
United States Congressman
P. O. Box 569
Jackson, Mississippi 39205

8400144220

ROBERT S. MURPHREE
ATTORNEY AT LAW
P.O. BOX 370
JACKSON, MISSISSIPPI 39205

RECEIVED
82 NOV 8

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

8410018

203273

RECEIVED AT THE FEC
C 4 8 8 8 0
82 NOV 8 A10:20

LAW OFFICES
BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 55
JACKSON, MISSISSIPPI 39205

ALVIN M. BINDER
WILLIAM B. KIRKSEY
BOBBY B. DeLAUGHTER

LISA BINDER MILNER

November 3, 1982

MILLARD M. BUSH (1908)
TELEPHONE
948-5800
AREA CODE 601

2 NOV 1:39

Honorable Duane A. Brown
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1469

Dear Mr. Brown:

Pursuant to your respective letters directed to Lowery Berryhill and Herbert Berryhill under date of October 29, 1982, referenced above matter, we are enclosing Statement of Designation of Counsel with respect to these two individuals.

We are also directing your attention to the fact that the mailing addresses of both Berryhills are incorrect and we have stated on the Designation of Counsel forms the correct addresses and post office box numbers of these two gentlemen. Would you please have your files corrected?

We will have a proper response to these matters filed with you within the fifteen day period of time and you shall hear further from us on this matter.

Thanking you, I remain

Sincerely,

BINDER, KIRKSEY & DeLAUGHTER

Alvin M. Binder

AMB:ncb

Enclosures

cc Honorable Kenneth A. Gross
Associate General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

R 4 0 4 0 1 4 4 9 8 2

BINDER, KIRKSEY & DeLAUGHTER
511 EAST PEARL STREET
P. O. BOX 25
JACKSON, MISSISSIPPI 39205

RECEIVED AT THE FEC
JACKSON MISS. NOV 8 82 10:28
U.S. POSTAGE 20¢

8404014433

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lowery Berryhill
Cherry Grove Road
P.O. Box 10
Terry, Mississippi 39170

Re: MUR 1469

Dear Mr. Berryhill:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that you have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") by making excessive contributions to the campaign of Charles Wayne Dowdy. A copy of the complaint is enclosed. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

You were not previously notified since the complaint was filed against Congressman Wayne Dowdy and the Dowdy for Congress Committee. However, a review of the allegations contained in the complaint indicates that the activities complained of also relate to you and may result in violations of the Act by you. Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

8440144994

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

8404014495

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Herbert Berryhill
Cherry Grove Road
P.O. Box 10
Terry, Mississippi 39170

Re: MUR 1469

Dear Mr. Berryhill:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that you have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") by making excessive contributions to the campaign of Charles Wayne Dowdy. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

You were not previously notified since the complaint was filed against Congressman Wayne Dowdy and the Dowdy for Congress Committee. However, a review of the allegations contained in the complaint indicates that the activities complained of also relate to you and may result in violations of the Act by you. Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

8401446

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

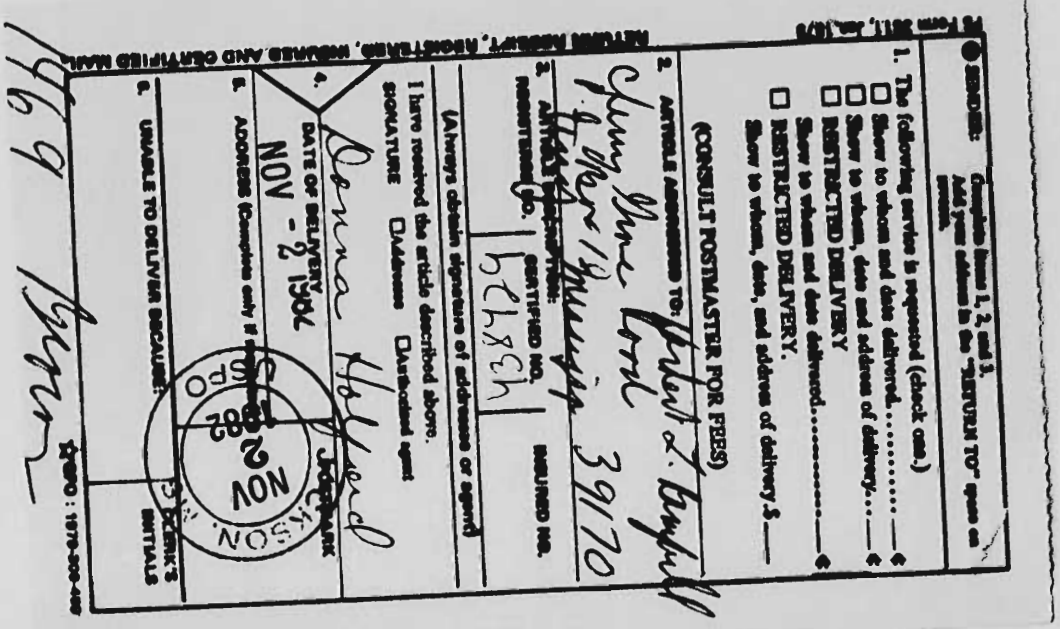
If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement



8401014427

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Little Dixie Supermarket, Inc.
c/o Herbert Lowery Berryhill
Cherry Grove Road
P.O. Box 10
Terry, Mississippi 39170

Re: MUR 1469

Dear Mr. Berryhill:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that the corporation, Little Dixie Supermarket, Inc., has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") by permitting use of its corporate jet by Charles W. Dowdy but failing to charge commercially reasonable rates. A copy of the complaint is enclosed. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

You were not previously notified since the complaint was filed against Congressman Wayne Dowdy and the Dowdy for Congress Committee. However, a review of the allegations contained in the complaint indicates that the activities complained of also relate to Little Dixie Supermarket, Inc. and may result in violations of the Act. Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against the corporation in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

8401418

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

8401441999

8400144920

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Paul R. Banfield
P O Box 3284
Dublin, MS 38739

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	8 Ch 8 Ch	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐Addressee ☐Authorized agent

4. Richard Robinson
DATE OF DELIVERY

POSTMARK: DUBLIN MS NOV 1 1982

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS M.D

☆GPO : 1979-300-469

41.9 Brown

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Berryhill Farms, Inc.
c/o Paul L. Berryhill
P.O. Box 3204
Dublin, Mississippi 38739

Re: MUR 1469

Dear Mr. Berryhill:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that the corporation, Berryhill Farms, Inc., has violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") by permitting use of its corporate jet by Charles Wayne Dowdy but failing to charge commercially reasonable rates. A copy of the complaint is enclosed. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

You were not previously notified since the complaint was filed against Congressman Wayne Dowdy and the Dowdy for Congress Committee. However, a review of the allegations contained in the complaint indicates that the activities complained of also relate to Berryhill Farms, Inc. and may result in violations of the Act. Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against the corporation in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

8404044921

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

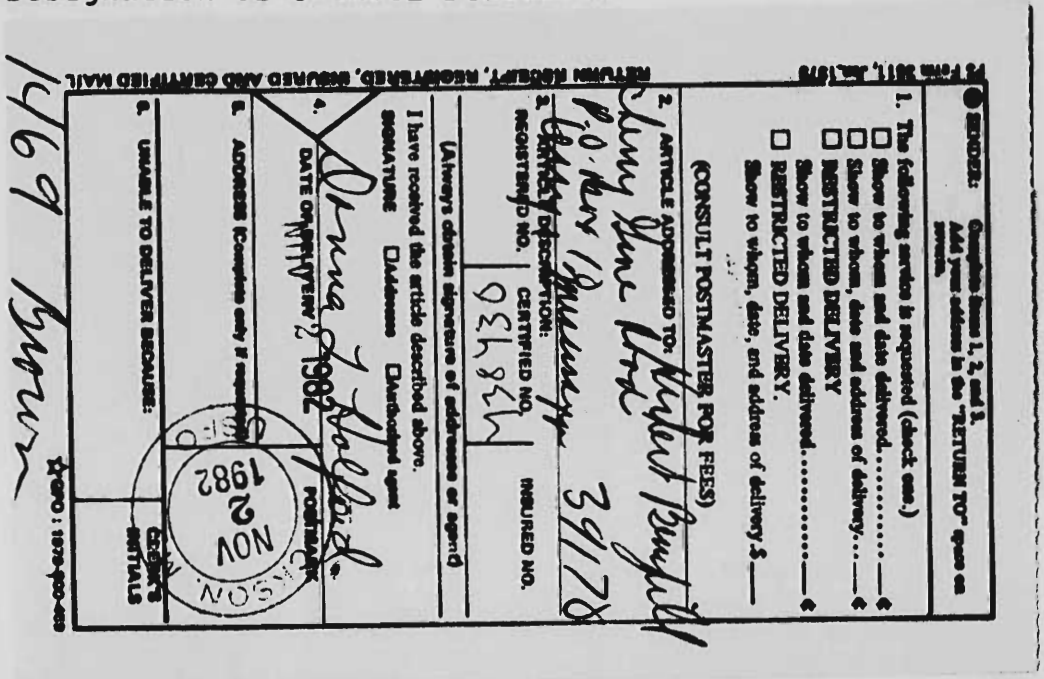
If you have any questions, please contact Duane A. Brown, the attorney assigned this matter at (202)523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wayne Dowdy for Congress
Robert H. Darville, Treasurer
915 Delaware Avenue
McComb, MS 39648

Re: MUR 1469

Dear Mr. Darville:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statemennt authorizing such counsel to receive any notifications and other communications from the Commission.

3 4 0 4 0 1 4 1 8 2 3

If you have any questions, please contact Duane Brown, the staff member assigned to this matter at (202) 523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9401014424

1461 9/21

PS Form 3811, Dec. 1980

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☐ Show to whom and date delivered ..... ¢
☐ Show to whom, date, and address of delivery .. ¢
2. ☐ RESTRICTED DELIVERY ¢
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL $

3. ARTICLE ADDRESSED TO:
Dowdy for Congress
McComb, MS 39648

4. TYPE OF SERVICE:
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER
438225

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
Robert H Dowdy Jr

5. DATE OF DELIVERY
SEP 24 1982

POSTMARK
SEP 24 1982
MS

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS
MAH

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 21, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Congressman Charles Wayne Dowdy
1631 Longworth House Office Building
Washington, D.C. 20515

Re: MUR 1469

Dear Congressman Dowdy:

This letter is to notify you that on September 13, 1982, the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1469. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. For your information, we have recieved your letter of September 8, 1982.

This matter will remain 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 matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statemennt authorizing such counsel to receive any notifications and other communications from the Commission.

8 4 0 4 0 1 4 9 2 5

If you have any questions, please contact Duane Brown, the staff member assigned to this matter at (202) 523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

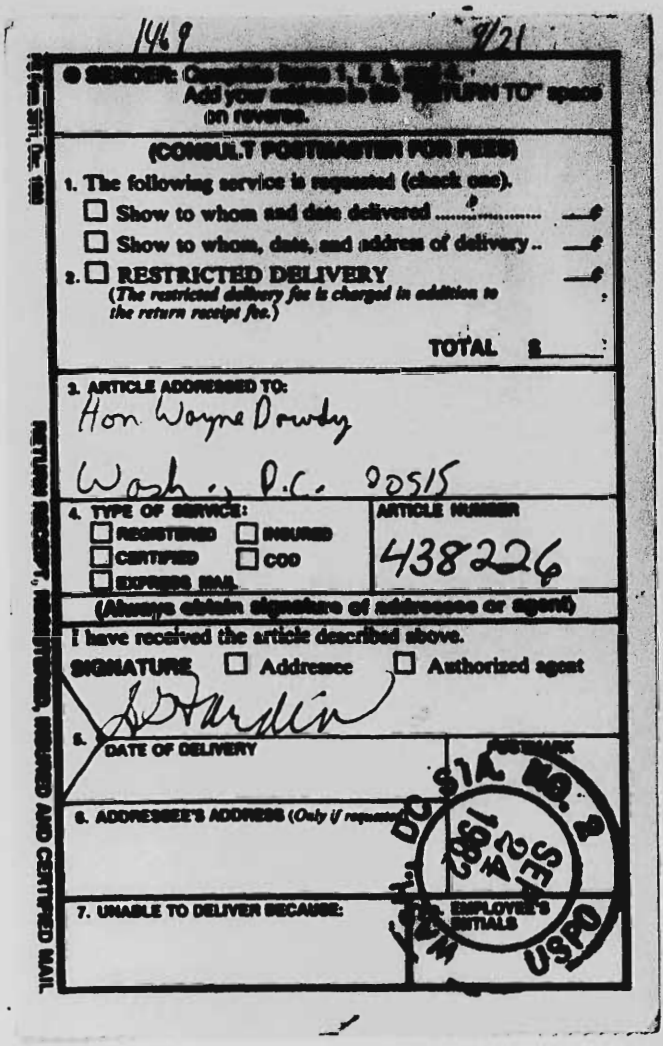
Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

3 4 0 4 0 1 4 4 8 2 6



U.S. Department of Justice

RECEIVED AT THE FEC
8603
OCT 5 P12:

GEMcD:CCD:
186-017-41

Washington, D.C. 20530

1 OCT 1982

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

Re: Congressman Wayne Dowdy

Dear Mr. Steele:

This office has received a complaint to the effect that Congressman Wayne Dowdy of Mississippi received and accepted several large contributions from two local businessmen in connection with his election to Congress during a special election held last year. We understand that this matter is also under study by your office.

We have carefully reviewed the record in this matter, and have determined that it is not an appropriate one for potential criminal prosecution under 2 U.S.C. 437g(d). Accordingly, this is to inform you that the Department of Justice does not anticipate taking any further action in this matter.

Sincerely,

Gerald E. McDowell, Chief
Public Integrity Section
Criminal Division

By:
CRAIG C. DONSANTO, Director
Election Crimes Branch
Public Integrity Section

8404147

U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300
CRM/PIS

RECEIVED AT THE FEC

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF JUSTICE
JUS-431

84040148

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

42

Jacqueline Smith Pierce
ATTORNEY AT LAW

PLAZA BUILDING
120 NORTH CONGRESS ST.
TELEPHONE: 352-8401
After hours: 956-7854

P.O. BOX-12284
JACKSON, MISSISSIPPI 39211

RECEIVED AT THE FEC
Lcc# 8448
82 SEP 13 A10:57
82 SEP 13 P1:50

September 10, 1982

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

Gentlemen or Ladies:

Please find enclosed a Complaint to be filed with the Federal Election Commission in accordance with those procedures set forth in 2 USC 437g, 437d(a) and 11 CFR Sec. 111.

If you have questions or comments regarding this Complaint, please let me know and I shall be glad to furnish you any information which I may possess.

Thank you for this service.

Yours sincerely,

Jacqueline Smith Pierce

Jacqueline Smith Pierce

jsp/s
Attachment

8404014479

8 4 0 4 0 1 4 4 9 6

RECEIVED AT THE FEC

82 SEP 13 A10:57

UNITED STATES OF AMERICA

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

the Complaint of Jacqueline Smith Pierce for the Initiation of Compliance Matters in regard to the Election of Charles Wayne Dowdy to the federal office of Representative to the Fourth Congressional District, United States Congress

COMPLAINT

Jacqueline Smith Pierce, whose address is 5512 Concord, Jackson, Ms. 39211 (P.O. Box 12294) and who is hereinafter referred to as "complainant" presents this Complaint for the purpose of initiating compliance matters because of a possible violation of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et seq.), and because of her desire for voters to learn the truth of the allegations recently filed against Congressman Charles Wayne Dowdy so that they may vote based on informed judgment in the November election.

The Federal Election Commission has jurisdiction under the aforesaid mentioned act, hereinafter referred to as "the Act."

The name of the person who is alleged to have committed violations under the Act is the Representative of the Fourth Congressional District, Congressman Charles Wayne Dowdy, whose residence address in Mississippi is Route 3, Box 221, Summit, Mississippi 39666, and whose mailing address in Washington, D.C. is 1631 Longworth House Office Building, Washington, D.C. 20515.

Allegations in this complaint are based upon the information in the Complaint of Herbert Berryhill and Lowery Berryhill, adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi, which complaint was filed in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on September 7, 1982, and on an article in the Jackson Daily News dated September 8, 1982, entitled "Ex-backers sue Dowdy for $38,000 they claim he Owes." Copies of the aforesaid Complaint filed in the Circuit Court and the news article are attached hereto and incorporated herein and made a part of this complaint as Exhibits "A" and "B."

In accordance with the information in the attached Exhibits heretofore mentioned, complainant believes that the Federal Election Commission has reason to initiate a compliance matter to determine whether or not Congressman Wayne Dowdy, hereinafter referred to as Respondent, is and has been in violation of the Federal Election Campaign Act of 1971, as amended. In support of this belief, complainant excerpts the following facts from the aforesaid Exhibits "A" and "B."

1. Respondent received cash contributions in excess of that allowed in the Act. According to 11 CFR Sec. 110.4(c)(2) and 2 USC 441g, it is illegal for any person to make a cash contribution in excess of $100; and any candidate receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor. In Section XIII of the Complaint attached hereto as Exhibit "A" Respondent obtained $18,000 in "cold cash" from Herbert Berryhill, which amount was supposed to be a loan. According to Mr. Berryhill, this amount has never been repaid. In Section XIV of the Complaint, Mr. Berryhill alleges that Respondent received the sum of $800 in cash to use for the purchase of alcoholic beverages.

This sum of $800 has not yet been repaid. The Act provides that the term "contribution" includes a loan, and a loan which is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 CFR Sec. 100.7 (a)(1)(B) (2 U.S.C. 431(8).

2. Respondent received contributions in excess of $1000 which amounts were in violation of 2 USC 441(a). The Complaint attached hereto as Exhibit "A" alleges numerous instances of loans which have not been repaid and which were in excess of the limits of the Act, specifically, as follows:

A. Section Vlll of the Complaint alleges that Lowery Berryhill made a loan of $5900 to Respondent which has not been repaid.

B. Section lX of the Complaint alleges that Herbert Berryhill paid The Country Kitchen the sum of $1500 and that Respondent was supposed to reimburse Mr. Berryhill this sum but that this sum has never been repaid. The sum of $1500 was for 750 pounds of catfish ordered by Respondent.

C. Section X of the Complaint states that Lowery Berryhill provided Respondent with hotel accommodations with the understanding that he would be reimbursed for said charges which totaled $1,241.88, but that Lowery Berryhill has not been reimbursed.

D. Section Xl of the Complaint lists the sum of $4000 as owing to Berryhill Farms, Inc. for aircraft and pilot services, which sum has not been repaid.

E. Section Xll of the Complaint states that Respondent owes Lowery Berryhill $351.08 for certain copier supplies.

F. Section XV of the Complaint states that the Berryhills paid campaign workers the sum of $5,174, which

amount was supposed to be a loan to Respondent but that this amount has not been paid.

3. Respondent received contributions from a corporation in violation of 1 USC 441b (4)(a) which prohibits corporations from making a contribution or expenditure to a Federal election. In Section XI of the Complaint, it is alleged that Berryhill Farms, Inc. and Little Dixie Supermarket, Inc. owned a twin engine airplane jointly and that this airplane was furnished to Respondent and his staff, together with pilot services. Berryhill Farms, Inc. claims that Respondent owes the amount of $4000 to this corporation.

4. Respondent failed to report the contributions and expenditures according to the requirements of the Act. Certain reports by candidates and political committees are required by 2 USC 434. According to Section XIII of the Complaint attached hereto, Respondent has not filed the required information to show that the loan of $18,000 was made to Respondent from Herbert Berryhill. According to the Complaint, Respondent used the $18,000 for campaign expenses and personally made cash disbursements for radio spots the day before the election. Moreover, according to Section XIII of the Complaint, a campaign worker allegedly received compensation in the sum of $15,500 but in truth the amount was spent for the campaign.

WHEREFORE, in view of the allegations made in the attached Complaint marked as Exhibit "A" and in the Jackson Daily News article marked as Exhibit "B," Complainant believes that there are reasonable grounds for the Federal Election Commission to make an investigation of this matter, and Complainant prays that the Federal Election Commission

8 0 4 0 1 4 4 9 0 4

will investigate this matter and take appropriate action in view of the Complaint and the findings thereon.

Dated September 16th 1982.

Jacqueline Smith Pierce

Jacqueline Smith Pierce

Jacqueline Smith Pierce
P.O. Box 12294
Jackson, Ms. 39211
5512 Concord St.
(601) 352-8401 or 956-7854

AFFIDAVIT

COUNTY OF HINDS

STATE OF MISSISSIPPI

Jacqueline Smith Pierce, of 5512 Concord Drive, Jackson, Mississippi, appeared before me and being duly sworn, deposed and says:

1. That she is a citizen of the Fourth Congressional District of Mississippi and a qualified voter of Hinds County, Mississippi.

2. That she believes that she cannot vote intelligently in the November election unless the charges against Congressman Wayne Dowdy are resolved and the truth of the matter published.

3. That she is authorized to make this affidavit in accordance with procedures set forth in 11 CFR 111.4(a)(b) and (c).

4. That she is aware that this complaint is subject to the statutes governing perjury and to 18 USC 1001.

5. That the matters set forth in the above and foregoing Complaint to the Federal Election Commission are true and correct to the best of her information and belief.

Jacqueline Smith Pierce

Jacqueline Smith Pierce

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of September, 1982.

Charlotte Hawkins

NOTARY

MY COMMISSION EXPIRES:

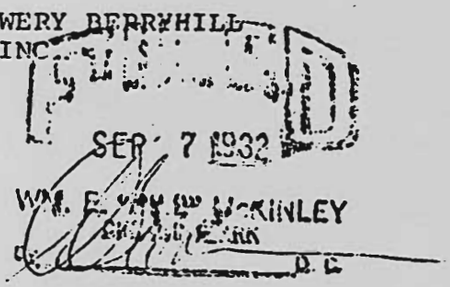
2/21/85

8404014490

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS



VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

Exhibit "A"

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, a campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

Mississippi

Wednesday B
• September 8, 1982

JACKSON DAILY NEWS

Exhibit "B"

Ex-backers sue Dowdy for $38,000 they claim he owes

By JEFF EDWARDS
JACKSON DAILY NEWS Staff Writer

The courts will now decide if Rep. Wayne Dowdy owes two former campaign workers almost $38,000 for services and loans the past supporters say they provided during Dowdy's campaign last year for the 4th Congressional District seat.

Herbert Berryhill, a former Hinds County supervisor, and his son Lowery, operators of Berryhill Farms Inc. of Terry, have filed suit in Hinds Circuit Court for $37,966.96. The figure includes an alleged $18,000 cash loan and services such as air transportation, food, alcoholic beverages and staff salaries the Berryhills claim Dowdy will not repay.

Dowdy has denied owing the Berryhills any money, but Berryhill claimed last month he had proof of the expenditures.

JoAnn Klein, Dowdy's press secretary, said Tuesday the Democratic representative had no further comments on the matter.

"He's made his position clear on it," she said.

Lowery Berryhill said Tuesday he "really can't have any comment" on the matter due to the upcoming trial. Berryhill said he did not have a copy of the lawsuit, but it did include additional items "we had overlooked" from an earlier claim.

In July, while threatening to file suit, Berryhill said the representative owed his family $32,600.

"We're just going to have to wait for the trial. I hope it will be very soon," Berryhill said.

He said he would not have taken the case to court if he did not think he was going to win.

In the suit, Berryhill and his father, Herbert, a former Hinds County supervisor, claim they provided Dowdy with "large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeured defendant (Dowdy) from town to town throughout the district."

During Dowdy's campaign, Lowery Berryhill worked at the representative's state campaign headquarters on Capitol Street in Jackson.

The Berryhills claim Dowdy owes $5,900 in cash given to the campaign, $1,500 for 750 pounds of catfish, $1,241.88 for hotel accommodations, $4,000 for use of the Berryhill plane and commercial pilots, $351.08 for copier supplies, an $18,000 cash loan, $800 for alcoholic beverages for the victory party and $5,174 for campaign workers' salaries.

The suit says that Dowdy owes Herbert Berryhill $25,400, Lowery Berryhill $2,392.96, and Berryhill Farms Inc. $10,174.

The $18,000 in cash, which Berryhill claims his family gave to the campaign, was not reported on Federal Election Campaign reports as required by law, the suit claims.

"Defendant Dowdy told plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the FEC to show that the aforesaid $18,000 as provided to him by said plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done," the suit states.

"This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid...," the suit claims.

According to the lawsuit, Dowdy sought an introduction with Berryhill and his sons as he travelled to the Country Kitchen Restaurant in Byram, owned by Mrs. Herbert Berryhill.

At the restaurant, Dowdy "presented his desires to be elected, his programs, his hopes and ambitions" to the Berryhills, and they, "believing him to be an honest man of his word, were totally mesmerized by the defendant Dowdy."

On May 24, 1981, the Berryhills entered Dowdy's campaign where they worked "tirelessly" for Dowdy's election.

In the lawsuit, the Berryhills claim several of Dowdy's campaign workers were paid a total of $5,174.

One of the campaign workers named in the suit, who did not wish to be identified, said he only worked for Dowdy one afternoon and was not paid the money the Berryhills claim he received.

Campaign workers who received money, according to the lawsuit, are: Ray Barfield, $1,500; Tom Knight, $1,500; Stephen Jones, $1,000; Olga Lynn Jones, $280; Melvin Howell, $307; Dennis Reese, $307; and Beverly Whitehead, $280.

Berryhill first made his claims and threatened a lawsuit in July. The family is represented by attorney Alvin Binder.

Berryhill said Dowdy agreed to pay off the money within 12 months after the election in July of 1981. As late as July of this year, Berryhill said he thought Dowdy would repay the money.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 14, 1982

Ms. Jacqueline Smith Pierce
P.O. Box 12294
Jackson, Mississippi 39211

Dear Ms. Pierce:

This letter is to acknowledge receipt of your complaint of September 10, 1982, against Congressman Charles Wayne Dowdy which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Steven Barndollar at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosure

8 4 0 4 0 1 4 4 9 1 9

203710

RECEIVED AT THE FEC
Ltr # 8448
82 SEP 13 AM: 57

Jacqueline Smith Pierce
ATTORNEY AT LAW

PLAZA BUILDING
120 NORTH CONGRESS ST.
TELEPHONE: 352-8401
After hours: 956-7854

P.O. BOX 12204
JACKSON, MISSISSIPPI 39211

82 SEP 13 P1:50

September 10, 1982

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

Gentlemen or Ladies:

Please find enclosed a Complaint to be filed with the Federal Election Commission in accordance with those procedures set forth in 2 USC 437g, 437d(a) and 11 CFR Sec. 111.

If you have questions or comments regarding this Complaint, please let me know and I shall be glad to furnish you any information which I may possess.

Thank you for this service.

Yours sincerely,

Jacqueline Smith Pierce

jsp/s
Attachment

8 4 0 4 4 0

40404449

RECEIVED AT THE FEC

82 SEP 13 A10: 57

UNITED STATES OF AMERICA

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

the Complaint of Jacqueline Smith Pierce for the Initiation of Compliance Matters in regard to the Election of Charles Wayne Dowdy to the federal office of Representative to the Fourth Congressional District, United States Congress

COMPLAINT

Jacqueline Smith Pierce, whose address is 5512 Concord, Jackson, Ms. 39211 (P.O. Box 12294) and who is hereinafter referred to as "complainant" presents this Complaint for the purpose of initiating compliance matters because of a possible violation of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et seq.), and because of her desire for voters to learn the truth of the allegations recently filed against Congressman Charles Wayne Dowdy so that they may vote based on informed judgment in the November election.

The Federal Election Commission has jurisdiction under the aforesaid mentioned act, hereinafter referred to as "the Act."

The name of the person who is alleged to have committed violations under the Act is the Representative of the Fourth Congressional District, Congressman Charles Wayne Dowdy, whose residence address in Mississippi is Route 3, Box 221, Summit, Mississippi 39666, and whose mailing address in Washington, D.C. is 1631 Longworth House Office Building, Washington, D.C. 20515.

Allegations in this complaint are based upon the information in the Complaint of Herbert Berryhill and Lowery Berryhill, adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi, which complaint was filed in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on September 7, 1982, and on an article in the Jackson Daily News dated September 8, 1982, entitled "Ex-backers sue Dowdy for $38,000 they claim he Owes." Copies of the aforesaid Complaint filed in the Circuit Court and the news article are attached hereto and incorporated herein and made a part of this complaint as Exhibits "A" and "B."

In accordance with the information in the attached Exhibits heretofore mentioned, complainant believes that the Federal Election Commission has reason to initiate a compliance matter to determine whether or not Congressman Wayne Dowdy, hereinafter referred to as Respondent, is and has been in violation of the Federal Election Campaign Act of 1971, as amended. In support of this belief, complainant excerpts the following facts from the aforesaid Exhibits "A" and "B."

1. Respondent received cash contributions in excess of that allowed in the Act. According to 11 CFR Sec. 110.4(c)(2) and 2 USC 441g, it is illegal for any person to make a cash contribution in excess of $100; and any candidate receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor. In Section XIII of the Complaint attached hereto as Exhibit "A" Respondent obtained $18,000 in "cold cash" from Herbert Berryhill, which amount was supposed to be a loan. According to Mr. Berryhill, this amount has never been repaid. In Section XIV of the Complaint, Mr. Berryhill alleges that Respondent received the sum of $800 in cash to use for the purchase of alcoholic beverages.

This sum of $800 has not yet been repaid. The Act provides that the term "contribution" includes a loan, and a loan which is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 CFR Sec. 100.7 (a)(1)(B) (2 U.S.C. 431(8).

2. Respondent received contributions in excess of $1000 which amounts were in violation of 2 USC 441(a). The Complaint attached hereto as Exhibit "A" alleges numerous instances of loans which have not been repaid and which were in excess of the limits of the Act, specifically, as follows:

A. Section Vlll of the Complaint alleges that Lowery Berryhill made a loan of $5900 to Respondent which has not been repaid.

B. Section lX of the Complaint alleges that Herbert Berryhill paid The Country Kitchen the sum of $1500 and that Respondent was supposed to reimburse Mr. Berryhill this sum but that this sum has never been repaid. The sum of $1500 was for 750 pounds of catfish ordered by Respondent.

C. Section X of the Complaint states that Lowery Berryhill provided Respondent with hotel accommodations with the understanding that he would be reimbursed for said charges which totaled $1,241.88, but that Lowery Berryhill has not been reimbursed.

D. Section Xl of the Complaint lists the sum of $4000 as owing to Berryhill Farms, Inc. for aircraft and pilot services, which sum has not been repaid.

E. Section Xll of the Complaint states that Respondent owes Lowery Berryhill $351.08 for certain copier supplies.

F. Section XV of the Complaint states that the Berryhills paid campaign workers the sum of $5,174, which

amount was supposed to be a loan to Respondent but that this amount has not been paid.

3. Respondent received contributions from a corporation in violation of 1 USC 441b (4)(a) which prohibits corporations from making a contribution or expenditure to a Federal election. In Section XI of the Complaint, it is alleged that Berryhill Farms, Inc. and Little Dixie Supermarket, Inc. owned a twin engine airplane jointly and that this airplane was furnished to Respondent and his staff, together with pilot services. Berryhill Farms, Inc. claims that Respondent owes the amount of $4000 to this corporation.

4. Respondent failed to report the contributions and expenditures according to the requirements of the Act. Certain reports by candidates and political committees are required by 2 USC 434. According to Section XIII of the Complaint attached hereto, Respondent has not filed the required information to show that the loan of $18,000 was made to Respondent from Herbert Berryhill. According to the Complaint, Respondent used the $18,000 for campaign expenses and personally made cash disbursements for radio spots the day before the election. Moreover, according to Section XIII of the Complaint, a campaign worker allegedly received compensation in the sum of $15,500 but in truth the amount was spent for the campaign.

WHEREFORE, in view of the allegations made in the attached Complaint marked as Exhibit "A" and in the Jackson Daily News article marked as Exhibit "B," Complainant believes that there are reasonable grounds for the Federal Election Commission to make an investigation of this matter, and Complainant prays that the Federal Election Commission

will investigate this matter and take appropriate action in view of the Complaint and the findings thereon.

Dated September 15th, 1982.

Jacqueline Smith Pierce

Jacqueline Smith Pierce
P.O. Box 12294
Jackson, Ms. 39211
5512 Concord St.
(601) 352-8401 or 956-7854

AFFIDAVIT

COUNTY OF HINDS

STATE OF MISSISSIPPI

Jacqueline Smith Pierce, of 5512 Concord Drive, Jackson, Mississippi, appeared before me and being duly sworn, deposed and says:

1. That she is a citizen of the Fourth Congressional District of Mississippi and a qualified voter of Hinds County, Mississippi.

2. That she believes that she cannot vote intelligently in the November election unless the charges against Congressman Wayne Dowdy are resolved and the truth of the matter published.

3. That she is authorized to make this affidavit in accordance with procedures set forth in 11 CFR 111.4(a)(b) and (c).

4. That she is aware that this complaint is subject to the statutes governing perjury and to 18 USC 1001.

5. That the matters set forth in the above and foregoing Complaint to the Federal Election Commission are true and correct to the best of her information and belief.

Jacqueline Smith Pierce

Jacqueline Smith Pierce

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of September, 1982.

Charlotte Hawkins

NOTARY

MY COMMISSION EXPIRES:

2/24/85

8 4 0 4 0 1 4 4 9 7

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS

FILED
SEP 7 1982
WM. E. McKINLEY
CIRCUIT CLERK
D. C.

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

Exhibit "A"

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, a campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

Mississippi

Wednesday B
• September 8, 1982

JACKSON DAILY NEWS

Exhibit "B"

Ex-backers sue Dowdy for $38,000 they claim he owes

By JEFF EDWARDS
JACKSON DAILY NEWS Staff Writer

The courts will now decide if Rep. Wayne Dowdy owes two former campaign workers almost $38,000 for services and loans the past supporters say they provided during Dowdy's campaign last year for the 4th Congressional District seat.

Herbert Berryhill, a former Hinds County supervisor, and his son Lowery, operators of Berryhill Farms Inc. of Terry, have filed suit in Hinds Circuit Court for $37,966.96. The figure includes an alleged $18,000 cash loan and services such as air transportation, food, alcoholic beverages and staff salaries the Berryhills claim Dowdy will not repay.

Dowdy has denied owing the Berryhills any money, but Berryhill claimed last month he had proof of the expenditures.

JoAnn Klein, Dowdy's press secretary, said Tuesday the Democratic representative had no further comments on the matter.

"He's made his position clear on it," she said.

Lowery Berryhill said Tuesday he "really can't have any comment" on the matter due to the upcoming trial. Berryhill said he did not have a copy of the lawsuit, but it did include additional items "we had overlooked" from an earlier claim.

In July, while threatening to file suit, Berryhill said the representative owed his family $32,600.

"We're just going to have to wait for the trial. I hope it will be very soon," Berryhill said.

He said he would not have taken the case to court if he did not think he was going to win.

In the suit, Berryhill and his father, Herbert, a former Hinds County supervisor, claim they provided Dowdy with "large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeured defendant (Dowdy) from town to town throughout the district."

During Dowdy's campaign, Lowery Berryhill worked at the representative's state campaign headquarters on Capitol Street in Jackson.

The Berryhills claim Dowdy owes $5,900 in cash given to the campaign, $1,500 for 750 pounds of catfish, $1,241.88 for hotel accommodations, $4,000 for use of the Berryhill plane and commercial pilots, $351.08 for copier supplies, an $18,000 cash loan, $800 for alcoholic beverages for the victory party and $5,174 for campaign workers' salaries.

The suit says that Dowdy owes Herbert Berryhill $25,400, Lowery Berryhill $2,392.96, and Berryhill Farms Inc. $10,174.

The $18,000 in cash, which Berryhill claims his family gave to the campaign, was not reported on Federal Election Campaign reports as required by law, the suit claims.

"Defendant Dowdy told plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the FEC to show that the aforesaid $18,000 as provided to him by said plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done," the suit states.

"This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid...," the suit claims.

According to the lawsuit, Dowdy sought an introduction with Berryhill and his sons as he travelled to the Country Kitchen Restaurant in Byram, owned by Mrs. Herbert Berryhill.

At the restaurant, Dowdy "presented his desires to be elected, his programs, his hopes and ambitions" to the Berryhills, and they, "believing him to be an honest man of his word, were totally mesmerized by the defendant Dowdy."

On May 24, 1981, the Berryhills entered Dowdy's campaign where they worked "tirelessly" for Dowdy's election.

In the lawsuit, the Berryhills claim several of Dowdy's campaign workers were paid a total of $5,174.

One of the campaign workers named in the suit, who did not wish to be identified, said he only worked for Dowdy one afternoon and was not paid the money the Berryhills claim he received.

Campaign workers who received money, according to the lawsuit, are: Ray Barfield, $1,500; Tom Knight, $1,500; Stephen Jones, $1,000; Olga Lynn Jones, $280; Melvin Howell, $307; Dennis Reese, $307; and Beverly Whitehead, $280.

Berryhill first made his claims and threatened a lawsuit in July. The family is represented by attorney Alvin Binder.

Berryhill said Dowdy agreed to pay off the money within 12 months after the election in July of 1981. As late as July of this year, Berryhill said he thought Dowdy would repay the money.

8 4 0 4 0 1 4 4 9 0

RECEIVED AT THE FEC

82 SEP 13 AM 9:57

UNITED STATES OF AMERICA

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

the Complaint of Jacqueline Smith Pierce for the Initiation of Compliance Matters in regard to the Election of Charles Wayne Dowdy to the federal office of Representative to the Fourth Congressional District, United States Congress

COMPLAINT

Jacqueline Smith Pierce, whose address is 5512 Concord, Jackson, Ms. 39211 (P.O. Box 12294) and who is hereinafter referred to as "complainant" presents this Complaint for the purpose of initiating compliance matters because of a possible violation of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, et seq.), and because of her desire for voters to learn the truth of the allegations recently filed against Congressman Charles Wayne Dowdy so that they may vote based on informed judgment in the November election.

The Federal Election Commission has jurisdiction under the aforesaid mentioned act, hereinafter referred to as "the Act."

The name of the person who is alleged to have committed violations under the Act is the Representative of the Fourth Congressional District, Congressman Charles Wayne Dowdy, whose residence address in Mississippi is Route 3, Box 221, Summit, Mississippi 39666, and whose mailing address in Washington, D.C. is 1631 Longworth House Office Building, Washington, D.C. 20515.

Allegations in this complaint are based upon the information in the Complaint of Herbert Berryhill and Lowery Berryhill, adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi, which complaint was filed in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on September 7, 1982, and on an article in the Jackson Daily News dated September 8, 1982, entitled "Ex-backers sue Dowdy for $38,000 they claim he Owes." Copies of the aforesaid Complaint filed in the Circuit Court and the news article are attached hereto and incorporated herein and made a part of this complaint as Exhibits "A" and "B."

In accordance with the information in the attached Exhibits heretofore mentioned, complainant believes that the Federal Election Commission has reason to initiate a compliance matter to determine whether or not Congressman Wayne Dowdy, hereinafter referred to as Respondent, is and has been in violation of the Federal Election Campaign Act of 1971, as amended. In support of this belief, complainant excerpts the following facts from the aforesaid Exhibits "A" and "B."

1. Respondent received cash contributions in excess of that allowed in the Act. According to 11 CFR Sec. 110.4(c)(2) and 2 USC 441g, it is illegal for any person to make a cash contribution in excess of $100; and any candidate receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor. In Section XIII of the Complaint attached hereto as Exhibit "A" Respondent obtained $18,000 in "cold cash" from Herbert Berryhill, which amount was supposed to be a loan. According to Mr. Berryhill, this amount has never been repaid. In Section XIV of the Complaint, Mr. Berryhill alleges that Respondent received the sum of $800 in cash to use for the purchase of alcoholic beverages.

This sum of $800 has not yet been repaid. The Act provides that the term "contribution" includes a loan, and a loan which is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 CFR Sec. 100.7 (a)(1)(B) (2 U.S.C. 431(8).

2. Respondent received contributions in excess of $1000 which amounts were in violation of 2 USC 441(a). The Complaint attached hereto as Exhibit "A" alleges numerous instances of loans which have not been repaid and which were in excess of the limits of the Act, specifically, as follows:

A. Section VIII of the Complaint alleges that Lowery Berryhill made a loan of $5900 to Respondent which has not been repaid.

B. Section IX of the Complaint alleges that Herbert Berryhill paid The Country Kitchen the sum of $1500 and that Respondent was supposed to reimburse Mr. Berryhill this sum but that this sum has never been repaid. The sum of $1500 was for 750 pounds of catfish ordered by Respondent.

C. Section X of the Complaint states that Lowery Berryhill provided Respondent with hotel accommodations with the understanding that he would be reimbursed for said charges which totaled $1,241.88, but that Lowery Berryhill has not been reimbursed.

D. Section XI of the Complaint lists the sum of $4000 as owing to Berryhill Farms, Inc. for aircraft and pilot services, which sum has not been repaid.

E. Section XII of the Complaint states that Respondent owes Lowery Berryhill $351.08 for certain copier supplies.

F. Section XV of the Complaint states that the Berryhills paid campaign workers the sum of $5,174, which

will investigate this matter and take appropriate action in view of the Complaint and the findings thereon.

Dated September 10th 1982.

Jacqueline Smith Pierce

Jacqueline Smith Pierce

Jacqueline Smith Pierce
P.O. Box 12294
Jackson, Ms. 39211
5512 Concord St.
(601) 352-8401 or 956-7854

amount was supposed to be a loan to Respondent but that this amount has not been paid.

3. Respondent received contributions from a corporation in violation of 1 USC 441b (4)(a) which prohibits corporations from making a contribution or expenditure to a Federal election. In Section XI of the Complaint, it is alleged that Berryhill Farms, Inc. and Little Dixie Supermarket, Inc. owned a twin engine airplane jointly and that this airplane was furnished to Respondent and his staff, together with pilot services. Berryhill Farms, Inc. claims that Respondent owes the amount of $4000 to this corporation.

4. Respondent failed to report the contributions and expenditures according to the requirements of the Act. Certain reports by candidates and political committees are required by 2 USC 434. According to Section XIII of the Complaint attached hereto, Respondent has not filed the required information to show that the loan of $18,000 was made to Respondent from Herbert Berryhill. According to the Complaint, Respondent used the $18,000 for campaign expenses and personally made cash disbursements for radio spots the day before the election. Moreover, according to Section XIII of the Complaint, a campaign worker allegedly received compensation in the sum of $15,500 but in truth the amount was spent for the campaign.

WHEREFORE, in view of the allegations made in the attached Complaint marked as Exhibit "A" and in the Jackson Daily News article marked as Exhibit "B," Complainant believes that there are reasonable grounds for the Federal Election Commission to make an investigation of this matter, and Complainant prays that the Federal Election Commission

AFFIDAVIT

COUNTY OF HINDS

STATE OF MISSISSIPPI

Jacqueline Smith Pierce, of 5512 Concord Drive, Jackson, Mississippi, appeared before me and being duly sworn, deposed and says:

1. That she is a citizen of the Fourth Congressional District of Mississippi and a qualified voter of Hinds County, Mississippi.

2. That she believes that she cannot vote intelligently in the November election unless the charges against Congressman Wayne Dowdy are resolved and the truth of the matter published.

3. That she is authorized to make this affidavit in accordance with procedures set forth in 11 CFR 111.4(a)(b) and (c).

4. That she is aware that this complaint is subject to the statutes governing perjury and to 18 USC 1001.

5. That the matters set forth in the above and foregoing Complaint to the Federal Election Commission are true and correct to the best of her information and belief.

Jacqueline Smith Pierce

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of September, 1982.

NOTARY

MY COMMISSION EXPIRES:

2/21/85

4040144944

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS

SEP 7 1982
WM. E. McKINLEY
CIRCUIT CLERK
D. C.

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

Exhibit "A"

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, a campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers thc sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

Mississippi

Wednesday B
• September 8, 1982

JACKSON DAILY NEWS

Exhibit "B"

Ex-backers sue Dowdy for $38,000 they claim he owes

By JEFF EDWARDS
JACKSON DAILY NEWS Staff Writer

The courts will now decide if Rep. Wayne Dowdy owes two former campaign workers almost $38,000 for services and loans the past supporters say they provided during Dowdy's campaign last year for the 4th Congressional District seat.

Herbert Berryhill, a former Hinds County supervisor, and his son Lowery, operators of Berryhill Farms Inc. of Terry, have filed suit in Hinds Circuit Court for $37,966.96. The figure includes an alleged $18,000 cash loan and services such as air transportation, food, alcoholic beverages and staff salaries the Berryhills claim Dowdy will not repay.

Dowdy has denied owing the Berryhills any money, but Berryhill claimed last month he had proof of the expenditures.

JoAnn Klein, Dowdy's press secretary, said Tuesday the Democratic representative had no further comments on the matter.

"He's made his position clear on it," she said.

Lowery Berryhill said Tuesday he "really can't have any comment" on the matter due to the upcoming trial. Berryhill said he did not have a copy of the lawsuit, but it did include additional items "we had overlooked" from an earlier claim.

In July, while threatening to file suit, Berryhill said the representative owed his family $32,600.

"We're just going to have to wait for the trial. I hope it will be very soon," Berryhill said.

He said he would not have taken the case to court if he did not think he was going to win.

In the suit, Berryhill and his father, Herbert, a former Hinds County supervisor, claim they provided Dowdy with "large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeured defendant (Dowdy) from town to town throughout the district."

During Dowdy's campaign, Lowery Berryhill worked at the representative's state campaign headquarters on Capitol Street in Jackson.

The Berryhills claim Dowdy owes $5,900 in cash given to the campaign, $1,500 for 750 pounds of catfish, $1,241.88 for hotel accommodations, $4,000 for use of the Berryhill plane and commercial pilots, $351.08 for copier supplies, an $18,000 cash loan, $800 for alcoholic beverages for the victory party and $5,174 for campaign workers' salaries.

The suit says that Dowdy owes Herbert Berryhill $25,400, Lowery Berryhill $2,392.96, and Berryhill Farms Inc. $10,174.

The $18,000 in cash, which Berryhill claims his family gave to the campaign, was not reported on Federal Election Campaign reports as required by law, the suit claims.

"Defendant Dowdy told plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the FEC to show that the aforesaid $18,000 as provided to him by said plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done," the suit states.

"This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid...," the suit claims.

According to the lawsuit, Dowdy sought an introduction with Berryhill and his sons as he travelled to the Country Kitchen Restaurant in Byram, owned by Mrs. Herbert Berryhill.

At the restaurant, Dowdy "presented his desires to be elected, his programs, his hopes and ambitions" to the Berryhills, and they, "believing him to be an honest man of his word, were totally mesmerized by the defendant Dowdy."

On May 24, 1981, the Berryhills entered Dowdy's campaign where they worked "tirelessly" for Dowdy's election.

In the lawsuit, the Berryhills claim several of Dowdy's campaign workers were paid a total of $5,174.

One of the campaign workers named in the suit, who did not wish to be identified, said he only worked for Dowdy one afternoon and was not paid the money the Berryhills claim he received.

Campaign workers who received money, according to the lawsuit, are: Ray Barfield, $1,500; Tom Knight, $1,500; Stephen Jones, $1,000; Olga Lynn Jones, $280; Melvin Howell, $307; Dennis Reese, $307; and Beverly Whitehead, $280.

Berryhill first made his claims and threatened a lawsuit in July. The family is represented by attorney Alvin Binder.

Berryhill said Dowdy agreed to pay off the money within 12 months after the election in July of 1981. As late as July of this year, Berryhill said he thought Dowdy would repay the money.

OFFICE BOX 12294
SON, MISSISSIPPI 39211

84040444959

PRIORITY
MAIL

OFFICE OF THE GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
1325 K STREET
WASHINGTON, D. C. 20463

202765

WAYNE
Dowdy
UNITED STATES CONGRESS

RECEIVED AT THE FEC
Bcc# 8482
82 SEP 16 P1:57

82 SEP 16 P3:49
RECEIVED
GENERAL COUNSEL

September 8, 1982

Mr. Charles N. Steele
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20563

Dear Mr. Steele:

I would like to request the Commission's attention to matters which have been raised regarding campaign receipts and expenditures for the special Congressional election held in Mississippi on July 7, 1981.

Your files will reflect that various complaints were filed by the Mississippi Republican Party concerning my campaign's receipts and disbursements, and that the Commission found no violation after its review of the previous complaint by the Mississippi Republican Party.

Enclosed is a copy of a complaint in a lawsuit filed this week in Hinds County, Mississippi Circuit Court, which sets out the most recent allegations. We request an expedited review of the matters contained in this lawsuit.

I also wish to bring to your attention certain matters which are not revealed in the lawsuit. I first met the Berryhills during the 1981 campaign. Each was involved in the campaign only as a volunteer, and neither had any official capacity whatsoever. After the campaign, Mr. Herbert Berryhill insisted that his son, Lowery Berryhill, be given a job on my staff. I investigated the background of Lowery Berryhill and found that there was pending a suit filed by Berryhill claiming that a Mississippi bank owed Berryhill $91,000, due to the bank's alleged misplacement of a deposit made by Berryhill. I have since learned that the Berryhills lost the lawsuit. I also found that the Berryhills had taken bankruptcy on their businesses and had been involved in many lawsuits. For these and other reasons, I notified Mr. Herbert Berryhill that Lowery Berryhill could not be on my staff.

I do not owe any amount whatsoever to either Herbert Berryhill, Lowery Berryhill, or Berryhill Farms, Inc., or any other such person.

I do not intend to pay money that I do not owe.

Now that this matter has been brought to court, I ask that you look into the entire matter. I have instructed my accountant, campaign treasurer, and all other persons involved to cooperate fully.

Respectfully,

WAYNE DOWDY
Member of Congress

Enclosure

8401446251

40401449

RECEIVED AT THE FEC

82 SEP 16 P1:57

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

FILED SEP 7 1982 WM. E. McKINLEY CIRCUIT CLERK D.C.

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, a campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 I/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

Mr. Charles N. Steele
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20563

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1469

Date Filmed 4/4/84 Camera No. --- 3

Cameraman JRL

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1469 DEPOSITIONS AND AFFIDAVITS

Date Filmed 4/4/84 Camera No. --- 3

Cameraman JRL

8 4 0 4 0 1 4 4 9 7 7

(1)

BERRYHILL v. DOWDY

8404014497 8

(2)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL
AND BERRYHILL FARMS, INC. — PLAINTIFFS

FILED
SEP 7 1937
WM. E. McKINLEY
CIRCUIT CLERK
D.C.

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, (5) campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

13

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

8404014420 0

CHAPTER 11 PETITION

8 4 0 4 0 1 4 M D C

15

FORM NO. 1

VOLUNTARY CASE: DEBTOR'S PETITION

United States Bankruptcy Court

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

In re

LITTLE DIXIE SUPERMARKETS, INC.

Debtor [include here all names used by Debtor within last 6 years]

Case No. [illegible]

VOLUNTARY CASE: DEBTOR'S PETITION

1. Petitioner's post-office address is P. O. Box 10, Terry, Mississippi

2. Petitioner has had his principal place of business within this district for the preceding 180 days.

3. Petitioner is qualified to file this petition and is entitled to the benefits of title 11, United States Code as a voluntary debtor.

4. Petitioner intends to file a plan pursuant to chapter 11 of title 11, United Stated Code].

WHEREFORE, petitioner prays for relief in accordance with chapter 7 or chapter 11 of title 11, United States Code.

Signed William R. Kimbrough
Attorney for Petitioner.

Address 511 East Pearl Street
P. O. Box 25
Jackson, MS 39205

[Petitioner sign if not represented by attorney.]

Petitioner

[illegible] $200 pd
1:40

I, _____, the petitioner named in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct.

Executed on _____

Signature: _____
Petitioner

Verification attached hereto as Exhibit "C".

U. S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
AUG 24 1981
MOLLIE C. JONES, CLERK
By [illegible]

NOTE: This form may be used to commence a voluntary case under chapter 7, 11 or 13 of the Bankruptcy Code. A chapter 9 petition requires [illegible] allegations (see 11 U.S.C. § 109(c)) but this form may be adapted for such use.

The title of the case, in the caption of the form, should include other names used by the debtor, such as trade names, doing business names, married names and maiden names. This will help enable creditors to identify property the debtor when notices and orders are transmitted to the creditors.

A joint petition, available for an individual and spouse, may be filed under chapter 7, 11 or 13. See 11 U.S.C. § 302. Form No. 2 may be used for this purpose.

The unsworn declaration at the end of the petition conforms with Public Law 94-550, 90 Stat. 2534, 28 U.S.C. § 1746 (1976) which permits the declaration to be made in the form indicated with the same force and effect as a sworn statement. The form may be adapted for use outside of the United States by adding the words "under the laws of the United States" after the word "perjury."

8404011449 22

DOWDY AFFIDAVIT of OCTOBER 8

STATE OF MISSISSIPPI

COUNTY OF PIKE

I, Wayne Dowdy, after being first duly sworn, state on my oath as follows:

The allegations in the complaint filed in the First Judicial District of Hinds County, Mississippi, against me by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., are untrue. I do not know, nor had I ever heard of Herbert Berryhill, Lowery Berryhill, or Berryhill Farms, Inc., until I became a candidate for United States Congress in 1981. At some time between March and August, 1981, I met Lowery Berryhill and Herbert Berryhill for the first time. I do not remember the date of this meeting.

Neither was ever asked to assume any role in the campaign other than volunteer workers. They had, no official capacity in the election, nor did they ever assume any official capacity in the campaign. Both men performed some volunteer services for the campaign, along with hundreds of other people. I rode with them in their automobiles on one or two occasions, and I was invited to dinner with the Berryhills and other members of their family on two occasions. Both men talked with me on several occasions about contacts made by them on my behalf. I believed that Herbert Berryhill and Lowery Berryhill were working for me as volunteer campaign workers, interested in my election, just as hundreds of other persons who were working as volunteers in the campaign.

8404014490 3

I deny that I, or my campaign committee owes any money to Herbert Berryhill or Lowery Berryhill.

I deny that I received cash loans from Herbert Berryhill in the amount of $18,000.00, or in any amount, and I deny that these funds, which did not and do not exist, were used for campaign purposes, for radio advertising on "radio stations in Tylertown, Meadville, Liberty, Natchez, and Vicksburg," as stated in the Berryhills' complaint. Meadville and Liberty do not have radio stations. All records for advertising purchased on radio stations in Tylertown, Natchez, and Vicksburg are filed with the Federal Election Commission, including the amounts and dates of checks used for purchase of ads.

I deny that an un-named campaign worker approached Lowery Berryhill to cash four (4) checks for $5,900.00. All checks cashed by the campaign account are on file with the Federal Election Commission and no other checks were issued or authorized to any person.

I deny that the wife of Herbert Berryhill provided 750 pounds of catfish for a total value of $1,500.00, and I deny that any catfish in any amount was ever obtained from Berryhill, his wife, or any other member of his family.

I deny that Lowery Berryhill provided hotel accomodations for staff and press representatives in the amount of $958.49 from June 22 through June 25, 1981, and in the amount of $283.39 on July 7, 1981, or in any other amounts or on any other dates.

8401424

I also deny allegations that Lowery Berryhill authorized my wife, Susan Dowdy, to sign Lowery Berryhill's name to any document, including his credit card.

I used the Berryhill plane on at least two, and possibly three occasions, for which payment has been made, as shown on the reports which have been filed with the Federal Election Commission. I deny any agreement, oral or written, that the plane was to be used at a cost of $200.00 per hour air time and $50.00 per hour waiting time. These nor any other figures were ever discussed with Herbert Berryhill or Lowery Berryhill. The plane was offered by Herbert Berryhill for a trip to Natchez, Mississippi and on the day before the final election for a trip to Tylertown, Natchez and Vicksburg, Mississippi. A bill for the plane was requested, and when the bill was submitted, it was promptly paid and this payment is reflected on the records of my campaign committee and it is reflected on the committee's reports which have been filed with the Federal Elections Commission.

I deny that Lowery Berryhill agreed to pay for copy supplies or office supplies in the amount of $351.08 on May 28, 1981, or for office supplies in any amount on any date. Reports filed by my campaign committee with the Federal Election Commission reflect the committee's payment for all office supplies used in my campaign.

I deny the receipt of loans from Herbert Berryhill in the amount of $18,000.00 or in any amount whatever.

8401446

I deny that Lowery Berryhill gave me or my campaign $800.00 in cash, or in any amount, for the purchase of alcoholic beverages.

I deny that the Berryhills paid campaign workers $5,174.00, or any amount, for their work and services. I have never met Stephen Jones, Olga Lynn Jones, Melvin Howell, Dennis Reese, or Beverly Whitehead, who are listed as workers paid by the Berryhills. I did meet Ray Barfield and Tom Knight at various times during the campaign, but both were volunteer workers and no agreement was ever made that they would be paid workers.

After the election, and after assuming my office, I did not see the Berryhills for several weeks. I received a telephone call from Lowery Berryhill and Herbert Berryhill, who asked to meet with me. Both Berryhills drove to McComb for the meeting at some time in August, 1981. At that time, the Berryhills informed me that their businesses were going into bankruptcy, and that Lowery Berryhill should be given a job because of the work done by the Berryhills in the campaign. The Berryhills did not claim that any money was owed them at that time. I said that I would be back in touch with the Berryhills, and that I was unable to promise a job on the congressional staff to Lowery Berryhill at that time.

During September, 1981, Herbert Berryhill contacted me and asked to meet with me in my Jackson office in the Post Office Buidling. At this meeting, Herbert Berryhill again requested that his son be given a job. I again told Mr. Berryhill that I would not be able to give a job to Lowery Berryhill at that time.

8401426

I investigated the background of both Herbert Berryhill and Lowery Berryhill, and learned of many lawsuits in which they had been involved. I talked with an attorney about a suit filed by the Berryhills against a bank in Hazlehurst, Mississippi in the amount of $92,000.00 claiming the loss of a deposit slip by the bank in that amount. I also discussed with an attorney the bankruptcy petition filed by the Berryhills and learned of a large number of irregularities reflected by the petition. I talked with an attorney concerning a suit filed by Herbert Berryhill after his defeat for re-election as Supervisor in Hinds County.

Based on this information and other information I had learned, I decided I would not offer employment to Lower Berryhill, and I informed Herbert Berryhill of this decision by telephone at some time in either November or December, 1981.

I did not again talk to Herbert Berryhill or Lowery Berryhill until July or August, 1982. At that time, I was called by Lowery Berryhill and I spoke with him by telephone. Lowery Berryhill stated that he had tried to contact me on my occasions. To my knowledge, this is not true.

He then told me that unless I gave him either a job or payment for campaign services within three days, then he would go to the press with his claim that I owed the Berryhills money.

Lowery Berryhill stated, "I have met with the Republicans on this, and I could really hurt you."

8404014227

I told Berryhill that I would not give him a job and I would not pay him money.

Three or four days after this conversation, I was contacted by members of the press about claims made by Lowery Berryhill to television reporters that he and his family were owed money.

8401441228

STATE OF MISSISSIPPI

COUNTY OF PIKE

This day personally appeared before me, the undersigned authority in and for said county and state, the within named WAYNE DOWDY, who, after being first duly sworn, states on his oath that the matters and things in the above and foregoing statement are true and correct as therein stated.

Wayne Dowdy

WAYNE DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this, the 9th day of October, A. D, 1982.

Susie D. Ross

NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 23, 1984

940144 6

8404014500 0

DOWDY AFFIDAVIT of JANUARY 31

I, Wayne Dowdy, after being first duly sworn, state on my oath as follows:

The Complaint allegations relating to alleged disbursements of cash to representatives of radio stations in certain towns in the Fourth Congressional District of the State of Mississippi are false. Several of the certain towns listed by the Berryhills where these alleged transactions took place do not have radio stations, these towns include Meadville, Mississippi and Liberty, Mississippi. All radio advertisement and radio air time were purchased with campaign funds, and such advertisements and air time were purchased by check drawn on the campaign committee checking account as reflected by reports heretofore filed with the Federal Election Commission.

I paid for hotel accomodations at the Holiday Inn, Downtown, Jackson, Mississippi for June 23, 1981 and June 24, 1981, these being the date of the 1981 special election primary and date following. The payment for accomodations was made by personal American Express card, which was signed by my wife, Susan Dowdy with my knowledge and consent. My wife had no separate source of income and the funds paid for these accomodations were in fact my personal funds. The total charges for these accomodations which included hotel suite, telephone services, restaurant services and banquet room services for the victory celebration on the evening of June 23, together with catering totaled $928.28. This bill may be further itemized to show that $301.52 was paid for the hotel suite and telephone services and the sum of $626.70 was paid for the Raintree Banquet Room and catering. No other hotel accomodations were provided anyone associated with the campaign committee. The committee paid a part of those expenses incurred on July 7 and July 8, 1981 and this expense, together with the expense paid personally by me, represented the only committee related accomodations. Berryhills' accomodations and expenditures, if any, were not authorized or requested by me or, to my knowledge by the treasurer who would have had to approve such an expenditure.

In addition to adopting and incorporating herein my sworn affidavit of October 8, 1982 relative to the allegations of payment by the Berryhills for "copier supplies", affiant would add that such supplies were not even needed by the campaign inasmuch as the campaign headquarters in Jackson, Mississippi, where such supplies were allegedly delivered, had no copier machine or duplicating machine, nor did the committee employ any such machine in any office.

Lowery Berryhill did not give me the sum of $800.00 cash to use for the purchase of alcoholic beverages for a victory party after the election on July 7, 1981, nor did he give me any sum of cash for this purpose or any other purpose at any time. On the election evening I ran no errands to the liquor store nor did I purchase any alcoholic beverages for any party after the election. To the contrary, I spent the evening meeting with various persons regarding the steps that would follow my election and on the day following my election, I traveled to Washington to assume my office in the United States Congress. The July, 1981 Federal Election Commission report filed by my campaign committee reflects an expenditure made for the purchase of alcoholic beverages and reflects payment of said expenditure by campaign committee check. No other such expenditure was authorized or made.

I did not negotiate with Mrs. Herbert Berryhill or any member of the Berryhill family or any other person for the purchase of catfish during the course of my campaign. I attempted to devote my time to meeting as many people in as many places in the district as possible and in the course of these efforts, negotiations for the purchase of catfish for a pre-election fish fry had no place. I and my wife worked during the course of this 1981 campaign from predawn hours to after midnight routinely and I can recall no rally and no campaign meeting at which I appeared or arrived on time and I can solemnly state under oath that such

schedule conflicts did not result because I idly spent my time while campaigning for a position in the United States Congress haggling over the price of catfish. Such an assertion is asinine and ludicrous.

I did not direct, instruct or authorize Lowery Berryhill, Herbery Berryhill or anyone else associated with my campaign to cash any checks drawn on any account other than the account owned by my campaign committee. No person was instructed or authorized or allowed to obtain any funds or execute any instrument on behalf of the campaign or on behalf of affiant personally and such conduct and efforts, if any, and proceeds realized therefrom, if any, bore no relation to my campaign nor served an purpose therein.

I did not receive $18,000.00 or any amount of cash from the Berryhills. It is ludicrous that such transactions would have occurred between acquaitances of only weeks and it is now a matter of public record that the Berryhills family business was then bankrupt, which further casts grave suspicions as to the financial abilities of the Berryhills to dole forth such advances.

Further, affiant sayeth not.

Wayne Dowdy
WAYNE DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this, the 31 day of January, A. D., 1983.

Mary Curtis Brooman
NOTARY PUBLIC

My Commission Expires:
May 30, 84

ROBERT DARVILLE AFFIDAVIT

AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF PIKE

I, Robert H. Darville, Jr., after being duly sworn, state on my oath as follows:

I was the treasurer of the Wayne Dowdy for Congress Committee for the 1981 Special Election held in the Fourth Congressional District of the State of Mississippi.

I did not receive $18,000.00 or any amount of cash from the Berryhills in my capacity as treasurer of the Wayne Dowdy for Congress Campaign Committee. I know of no sum of cash whatsoever paid into the campaign by the Berryhills. I did not on behalf of the committee, or otherwise, direct, instruct or authorize Lowery Berryhill, Herbert Berryhill or anyone else associated with the committee to cash any checks drawn on any account other than the account owned by the election committee. No person was instructed, authorized or allowed to obtain any funds or execute any instrument on behalf of the campaign or, to my knowledge, on behalf of the candidate personally and such conduct and efforts, if any, and proceeds realized therefrom, if any, bore no relation to the effort of the campaign committee nor served any purpose therein.

All expenditures made for the purchase of radio advertisement and radio air time were from campaign funds, the same being purchased by check drawn on the campaign committee checking account as reflected by reports heretofore filed with the Federal Election Commission. Unreported cash expenditures for the purchase of air time or other media advertisement were in no fashion made.

Lowery Berryhill and Herbert Berryhill made no cash expenditures on behalf of the Wayne Dowdy Campaign Committee for hotel accomodations at any time during the course of the 1981 campaign. Such expenditures, if any, by them bore no relation to the efforts of the campaign committee or campaign committee personnel. Attached hereto as Exhibit "A" is a photocopy of the statement of

Holiday Inn Downtown, Jackson, Mississippi for its services July 7, 8 and 9, 1981. This bill was paid by campaign check no. 455 with campaign funds and represented charges for all hotel accomodations except the banquet room. Charges for the Delta III banquet room totalled $961.17, were paid by Susan Dowdy with the American express car of her husband Wayne Dowdy, and no reimbursement was made by the committee. Exhibit "B" attached hereto reflects the itemized charges for banquet room services which were paid by Wayne Dowdy's American Express Card.

Expenditures to provide hotel accomodations for staff and press representatives were not authorized or made. It was unnecessary that such an expense be incurred and such an expenditure be made since all salaried staff members were residents of the Jackson - Hinds County, Mississippi area and all press representatives known to the affiant to have covered the two election nights during the 1981 campaign were affiliated with the local - Jackson, Mississippi - media and such accomodations were totally unnecessary. Exhibit "A" to the Complaint filed herein reflects the Complaint of Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. and attached to said Complaint now pending in the Circuit Court of Pike County, Mississippi after transfer from the Circuit Court of the First Judicial District of Hinds County, Mississippi is Exhibit "C" thereto which those abovenamed Plaintiffs assert bears the signature of the wife of Wayne Dowdy, Susan Dowdy as having signed an American Express Card receipt dated June 22, 1981 allegedly in the sum of $958.49, the same constituting the bill for hotel accomodations provided the Dowdys by the Berryhills. In fact, said Exhibit "C" to said lawsuit is in the sum of $938.49, bears folio number 138 127, bears the guest's name "Berryhill, L." and in fact bears the signature of Lowery Berryhill and not that of Susan Dowdy. Any and all other such bills for hotel accomodations bear no relationship whatsoever to the campaign and allegations to the contrary are as absurd and

baseless as the Berryhills' Exhibit "C" to their Complaint.

The committee has paid every bill submitted to it for air travel by the candidate or authorized campaign personnel. No bill has ever been received and no demand has ever been made to the committee for payment of any flight time or waiting time and absent credible and substantiated documentation, such an expenditure is believed to be improper and inappropriate, and I know of no authority to extend such payment.

Lowery Berryhill was not authorized, directed or allowed to purchase office supplies of any sort for the campaign committee. Copier supplies were not required by the campaign committee since the committee had no copier machine or duplicating machine in its headquarters in Jackson, Mississippi, or in any other campaign office.

No employee, agent or campaign worker was authorized or directed to purchase from Velma Berryhill or any Berryhill business catfish for use in the campaign effort. All such authority for such expenditures was vested solely within me and no such requests were received by me and no such approval was extended to anyone associated with the campaign committee to contract for the purchase of catfish from the Berryhills. Additionally, no bill for any quantity of catfish delivered to the campaign committee has ever been received by me and no demand has ever been placed upon me as treasurer for payment to the Berryhills of any such alleged debt.

All payments to campaign workers for the polling effort immediately before the final election were made from campaign funds. Such expenditures were verified by vouchers and these vouchers are in the custody of the campaign committee. Attached hereto as Exhibit "C" is an explanation provided Ms. Benita Marcus Adler, Reports Analyst, Federal Election Commission, Washington, D. C., this explanation of the voucher system employed by the committee being dated April 1, 1982. The explanation was given in response to an inquiry directed to me as treasurer of the

Wayne Dowdy for Congress Committee, the inquiry from Ms. Adler being dated March 23, 1982. I hereby adopt under oath my explanation afforded the Commission in my telephone conversation with Ms. Adler and in my correspondence which confirmed that conversation of March 30, 1982. No other expenditures by the Berryhills and no other vouchers have any relationship whatsoever with the campaign committee or the candidate to my knowledge.

No payment, if any, from the Berryhills to any person or persons in any fashion associated with the campaign committee and election effort were known to or sought, requested, authorized, directed, ratified or accepted by the committee.

No payment in the amount of $800.00 was made by Lowery Berryhill on behalf of the committee for the purchase of alcoholic beverages. The committee paid checks no. 256 and no. 496 totalling $830.00 for the purchase of alcoholic beverages on the two election nights. Check number 256 reimbursed Sam Brand for his purchase of such supplies for the election night of June 23, 1981. Said checks are attached as Exhibit "D" and Exhibit "E".

Alleged employees Ray Barfield, Tom Knight, Stephen Jones, Olga Lynn Jones, Melvin Howell, Dennis Reese and Beverly Whitehead were not salaried employees of the committee and have never been paid by the committee so there is nothing to report. Payment by the Berryhills, if any, not authorized or directed. Of these, only Tom Knight is known to the Affiant.

This affiant, all authorized campaign personnel, and the candidate endeavored to comply with the letter and spirit of the Federal Election Campaign Act and Federal Election Commission Regulations. On numerous occasions, I solicited information from the Commission and on numerous occasions, I made inquiries seeking general assistance from the Commission office and endeavored to act in accordance with such information and instruction.

And, further, affiant sayeth not.

Robert H. Darville Jr.
ROBERT H. DARVILLE, JR.,
Treasurer, Wayne Dowdy for
Congress

SWORN TO AND SUBSCRIBED BEFORE ME, this the 28th day of January, A. D., 1983.

Susie D. Ross
NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 23, 1984.

34

STATEMENT

Holiday Inn® JACKSON DOWNTOWN
200 EAST AMITE ST.
JACKSON, MISSISSIPPI 39201

DOWDY CAMPAIGN HEADQUATERS
ATTN: MRS. SUSAN DOWDY
ROUTE 3, BOX 221
SUMMIT, MS. 39666

7-15-81
DATE

DETACH & RETURN UPPER PORTION WITH YOUR PAYMENT

AMOUNT ENCLOSED $ _____

DATE	DESCRIPTION	CHARGES	BALANCE
7-8-81	FOLIO#139623	$ 961. 17	
7-9-81	FOLIO#139615	227. 91	
7-9-81	FOLIO#139614	13. 05	
	TOTAL DUE:		$1202. 13

Pd.
CK.# 455

WE SINCERELY THANK YOU FOR THIS NICE BUSINESS.
IF WE CAN BE OF ANY SERVICE IN THE FUTURE PLEASE
CALL US.

Holiday Inn® JACKSON DOWNTOWN

EXHIBIT "A"

35

PRESS HARD - YOU ARE MAKING 5 COPIES

FORM NO HH-6-39

RM.	(LAST) NAME	(FIRST)	(INITIAL)	RATE	OUT	FOLIO NUMBER
132	Dowdy	Reception				3623

ADDRESS OR FIRM — STATE — ZIP — GUESTS A | C — FROM FOLIO

ATTN: Susan Dowdy

Route 3, Box 221 — IN — TO FOLIO

CLK. TRAVEL PROGRAM# — Summit, Ms. 39666 — ADVANCE PAYMENT

INN COPY

1		1	0132 RENT [illegible]
2		2	0132 3956 07/07BL [illegible]
3		3	
4		4	0132 - 7/07/81 PRBL [illegible]
5		5	0132 RENT [illegible]
6		6	
7		7	0132 3957 07/07BL 961.17 36
8		8	
9		9	0132 7/07/81 PRBL 961.17 36
10		10	0132 4165 07/07BL 961.17 36
11		11	0132 7/08/81 PRBL 961.17 36
12		12	T0132 3510 07/08BL 961.17 36
13		13	0132 7/09/81 PRBL 961.17 36
14		14	0132 OBILL 961.17-
15		15	0132 3960 07/09BL 961.17 36
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
26		26	
27		27	
28		28	
29		29	
30		30	
31	ROOM	31	
32	RATE [illegible]	32	
33		33	

SPECIAL BILLINGS Send bill to Dowdy Company Rt. 3, Box 221 Summit Ms.

Holiday Inn®
Downtown
200 East Amite Street
Jackson, MS 39201
Phone (601) 969-5100

SAFETY DEPOSIT BOX NO

36

PRESS HARD - YOU ARE MAKING 5 COPIES

FORM NO 057 NB-E-35

(LAST) NAME	(FIRST)	(INITIAL)	RATE	OUT	FOLIO NUMBER 139614
624 625 1509 Dowdy	Wayne				
ADDRESS OR FIRM	STATE	ZIP	GUESTS A C		FROM FOLIO
CLK. CR	TRAVEL PROGRAM			IN	TO FOLIO
	INN COPY				ADVANCE PAYMENT

Thank You for Staying

ROOM 1509

RATE

1509		RESTR	3.25
1509	3935	07/07BL	6.25 65
1509		7/07/81 PRBL	6[illegible] 50
T1509	4162	07/07BL	[illegible] 65
1509		7/06/81 PRBL	6.[illegible] 60
1509		LDIST	3.10
1509	4186	07/08BL	3.45 80
1509		7/08/81 PRBL	3.45 80
1509		LDIST	2.90
1509	4192	07/08BL	10.35 25
1509		7/08/81 PRBL	10.60 25
1509	4254	07/08BL	10.60 25
1509		7/08/81 PRBL	10.65 25
1509		6/PHONE	3.40
1509	4254	07/08BL	10.[illegible] 25
1509		7/08/81 PRBL	13.[illegible] 70
T1509	3598	07/08BL	13.35 70
1509		7/09/81 PRBL	13.[illegible] 70
1509		CBILL	13.05-
1509	3952	07/09BL	13.05 70

SPECIAL BILLINGS

Jackson Downtown Inn Inc d b a

Holiday Inn®

Downtown
200 East Amite Street
Jackson, MS 39201
Phone (601) 969-5100

SAFETY DEPOSIT BOX NO.

37

PRESS HARD - YOU ARE MAKING 5 COPIES

FORM NO

RM.	(LAST) NAME	(FIRST)	(INITIAL)	RATE	OUT	FOLIO NUMBER
1509	Bandy,	Wayne		205	7/7	139615

ADDRESS OR FIRM	STATE	ZIP	GUESTS A : C	FROM FOLIO
625				TO FOLIO

CLK.	TRAVEL PROGRAM	IN	ADVANCE PAYMENT
VP	INN COPY	7/7	

1509		ROOM	205.00
		RTAX	10.25
T1509	4161	07/07BL	215.25
1509	7/08/81	PRBL	215.25
1509		RESTR	7.41
1509	8405	07/08BL	222.66
1509	7/08/81	PRBL	222.66
1509		RESTR	5.25
1509	8490	07/09BL	227.91
1509	7/08/81	PRBL	227.91
T1509	3527	07/08BL	227.91
1509	7/09/81	PRBL	227.91
1509		OBILL	227.91-
1509	3951	07/09BL	227.91

Thank You

for

staying

with us

ROOM

RATE

SPECIAL BILLINGS

Holiday Inn®
Downtown
200 East Amite Street
Jackson, MS 39201
Phone (601) 969-5100

SAFETY DEPOSIT BOX NO.

28

WAYNE DOWDY FOR CONGRESS
CAMPAIGN FUND
915 DELAWARE AVE.
MC COMB, MISS. 39648

455

Aug. 21, 1981

86-92
653.0

PAY TO THE ORDER OF Holiday Inn Jackson $ 1202.13

One thousand two hundred two and 13/100 DOLLARS

DEPOSIT GUARANTY NATIONAL BANK
Grow With Us
McComb, Miss. 39648

FOR

Robert W Dowdy Jr

⑆065300923⑆ ⑈393⑈589⑈7⑈ ⑈0000120213⑈

39

Holiday Inn®
RESTAURANT
BANQUET CHECK
(PAYMENT BY AMERICAN EXPRESS)

CHARGE TO COMPANY: CARD # 372946638711006

BY: THE DOWDY RECEPTION
ATTN: MRS. SUSAN DOWDY

STREET: ROUTE 3, BOX 221

CITY: SUMMIT, MISS. 39666

DATE	SERVER	ROOM NO.	
7/7/81	Sarah	DELTA III 500/600	11004

1	SERVE AT 7PM --	
2		
432	COKES, 7 UPS, SPRITES @$.75	$324.00
4	EACH DRINK	48.60
5	+15% SERVICE CHARGE	372.60
9		18.63
7	+ 5% SALES TAX	$391.23
8	39123	
6		
10		
11		
12		
13		

Holiday Inn®
RESTAURANT
BANQUET CHECK
(PAYMENT BY AMERICAN EXPRESS)

569

CHARGE TO COMPANY: # 372946638711006

DOWDY RECEPTION
BY ATTN: MRS. SUSAN DOWDY

STREET: ROUTE 3, BOX 221

CITY: SUMMIT, MISS. 39666

DATE	SERVER	ROOM NO.	
7/7/81	Sarah	DELTA III 500/600	11003

1	SERVE AT 7PM --	
2	100 CHICKEN DRUMETTES	$ 50.00
3	@ $50.00 PER 100	
4	300 ASSORTED FINGER SAND-	150.00
5	WICHES @ $50.00 PER 100	165.00
9	300 SWEDISH MEATBALLS @$55.00 PER 100	75.00
7	5 DIP & CHIP TRAYS @$15.00	32.00
8	PER TRAY	479.00
6	4 LB. PEANUTS @ $8.00 PER LB.	70.00
01	+15% SERVICE CHARGE	549.00
11	+ 5% SALES TAX	27.44
12		$576.44
13		

EXHIBIT "B"

40

WAYNE DOWDY CONGRESS

R. S. "Sonny" Weir
CAMPAIGN MANAGER

April 1, 1982
(Dictated: March 31, 1982)

Ms. Benita Marcus Adler
Reports Analyst
Reports Analysis Division
Federal Election Commission
Washington, D. C. 20463

Re: Identification Number: C00140913
30 Day Post Special General Report
(6/17/81-7/27/81)

Dear Ms. Adler:

This letter will confirm our conversation of yesterday's date regarding the captioned report filed by the Wayne Dowdy for Congress Campaign Committee. Pursuant to our agreement reached in that conversation, I will undertake to explain the distribution of the $36,000.00 expenditures cited in your correspondence of March 23, 1982.

As we discussed, these funds were paid to individual staff members during the last three to five days of the campaign, which was concluded on July 7, 1981. this being the date of the special election involved. The checks drawn on the campaign account as reflected by the report and your letter were payable to staff members, but these funds were then disseminated by staff members to individual workers throughout the 4th Congressional District. This manner of distribution was necessitated by the fact that the election immediately followed the Fourth of July weekend and many banking institutions were unaccessable because of the holiday, this resulting from the closing of some banks in observance of the holiday on the Friday before the fourth of July and others closing on the following Monday, the day before the election.

During this period of time immediately prior to the election, our campaign involved 200 to 300 people daily working in the field to deliver campaign literature as well as deliver the vote on the following Tuesday. The amount of these funds averaged $20.00 to $60.00 per individual worker in the field.

410 EAST [illegible]
JACKSON, MISSISSIPPI 39[illegible]
PHONE: (601) 352-0890

EXHIBIT "C"

9401450116

41

These figures, as to individuals involved and as to expenditures, are documented by vouchers which were maintained on a daily basis.

Again, when the $36,000.00 was distributed to individual workers throughout the district, the average per person expenditure ranged from $20.00 to $60.00. And, this is why the report does not in every instance disclose the date, amount, and purpose of the payment, as the payment did not exceed the $200.00 limit, I understood that these ultimate expenditures to ultimate payees were therefore without reporting consequence.

I sincerely appreciate your interest in this matter and your direction and instruction. In the event that additional information is required, please advise.

With kind regards, I remain,

Very truly yours,

Robert H. Darville, Jr.

Robert H. Darville, Jr.,
Treasurer, Wayne Dowdy for Congress

RHD,Jr./sdr

84040147

42

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

23 March 1982

Mr. Robert H. Darville, Jr., Treasurer
Wayne Dowdy for Congress
P.O. Box 686
McComb, MS 39648

Identification Number: C00140913

Reference: 30 Day Post Special General Report (6/17/81-7/27/81)

Dear Mr. Darville:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Expenditures for gas, travel, food, pollwatchers, etc. totalling approximately $36,000 have been attributed to various staff members. Payments must identify the ultimate payee from whom you have purchased an item or service. You should disclose the date, amount, and purpose of the payment if you have paid more than $200 to this vendor. (11 C.F.R. 104.9)

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Benita Marcus Adler

Benita Marcus Adler
Reports Analyst
Reports Analysis Division

8140-1458

4040145019

WAYNE DOWDY FOR CONGRESS
CAMPAIGN FUND
915 DELAWARE AVE.
MC COMB. MISS. 39648

256

85-92
653 o

June 24 1981

TO THE ORDER OF Sam Brand $ 400.00

Four hundred dollars and 00/100 DOLLARS

DEPOSIT GUARANTY NATIONAL BANK
Grow With Us
McComb, Miss. 39648

For Hospitality room/Election Night

Matt H. Dowdy/RMT

⑆065300923⑆ 393 589 7⑈ ⑈0000040000⑈

EXHIBIT "D"

WAYNE DOWDY FOR CONGRESS
CAMPAIGN FUND
915 DELAWARE AVE.
McComb, Miss. 39648

496

1/20/ 19 52 33-32
853

Package Liquor Store

Thirty and no/100

DEPOSIT GUARANTY NATIONAL BANK
Grow With Us
McComb, Miss. 39648

EXHIBIT "E"

8404014502 1

45

SUSAN DOWDY AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF PIKE

I, Susan Dowdy, after being duly sworn, state on my oath as follows:

The allegations in the complaint filed in the First Judicial District of Hinds County, Mississippi, against me and my husband, Wayne Dowdy, by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., are untrue. I have never been authorized, directed, instructed, or requested by Lowery Berryhill or Herbert Berryhill or any representative of Berryhill Farms, Inc., to sign Lowery Berryhill's name to any document, credit card or other account of any nature.

I have never executed any document or signed any credit card or other account owned by any of the Berryhills.

All campaign expenses were paid by the Wayne Dowdy Campaign Committee and all bills submitted to the committee were promptly paid as reflected by each campaign committee report filed with the Federal Election Commission.

Prior to my husband's candidacy for United States Congress in 1981, I did not know nor had I ever heard of Herbert Berryhill, Lowery Berryhill or Berryhill Farms, Inc.

Subsequent to my husband's election to the United States Congress in July, 1981, I had no further contact with any of the Berryhills. And further, affiant sayeth not.

8401452

STATE OF MISSISSIPPI

COUNTY OF PIKE

This day personally appeared before me, the undersigned authority in and for said county and state, the within named SUSAN DOWDY, who, after being first duly sworn, states on his oath that the matters and things in the above and foregoing statement are true and correct as therein stated.

SUSAN DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this, the 8th day of October, A. D, 1982.

NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 23, 1984.

840145023

AFFIDAVIT

I, Susan Dowdy, after being duly sworn, state on my oath as follows:

Charges for hotel accomodations incurred on behalf of my husband, Congressman Wayne Dowdy, on the night of June 23, and June 24, 1981 and July 7 and July 8, 1981 were paid by American Express card owned by my husband, Wayne Dowdy. I personally presented this card in payment for all charges on these two occasions and personally signed the payment receipt making these charges to my husband personally with his consent and under his direction. I had nor have any separate income and all such payment was made from my husband's personal funds. Charges for the special primary election incurred for hotel accomodations totaled $928.28 and charges for hotel accomodations on the election night of July 7 and July 8, 1981 totaled $961.17.

Further, Affiant sayeth not.

Susan Dowdy
SUSAN DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 31st day January, 1983.

Jean Cook
NOTARY PUBLIC

My Commission Expires:
January 15, 1985

8404044502S

BANK OF HAZELHURST v. BERRYHILL COMPLAINT

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BANK OF HAZLEHURST — PLAINTIFF

VS. — NO. [illegible]

HERBERT BERRYHILL, HERBERT LOWERY BERRYHILL AND CLIFFORD LAMONT BERRYHILL — DEFENDANTS

COMPLAINT

Comes now the plaintiff, Bank of Hazlehurst, a banking corporation organized and authorized to do business under the laws of the State of Mississippi, whose address is 210 West Gallatin Street, Hazlehurst, Mississippi, by and through its attorneys, and brings this cause of action against the defendants, and in support thereof would show unto the Court the following:

1.

The defendant, Clifford Lamont Berryhill (hereinafter referred to as Clifford Berryhill), is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, who may be served with process at Cherry Grove Road, Terry, Mississippi. The defendant, Herbert Berryhill, is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, who may be served with process at Cherry Grove Road, Terry, Mississippi. The defendant, Herbert Lowery Berryhill (hereinafter referred to as Lowery Berryhill), is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, who may be served with process at Cherry Grove Road, Terry, Mississippi.

2.

On or about May 5, 1981, Little Dixie Supermarkets, Inc. executed a promissory note secured by certain equipment and real estate, whereby Little Dixie Supermarkets, Inc. agreed to pay the plaintiff the sum of $215,000.00 on demand, or if no demand, then on August 3, 1981, with interest thereon at the rate of 19.5% from May 5, 1981, and whereby Little Dixie Supermarkets, Inc. agreed to additional terms and conditions as set out in said note, including the payment of reasonable attorney fees in the event of default, and a copy of said promissory note is attached hereto as Exhibit "A" and incorporated

3.

Little Dixie Supermarkets, Inc. has defaulted in the payment of said note, and the plaintiff lawfully repossessed and sold the equipment described in the note to the highest and best bid and applied the proceeds to the unpaid balance, and the plaintiff lawfully foreclosed upon and sold the real estate described as security for said note and applied the proceeds to the unpaid balance. The principal amount of $140,253.81 plus interest of $40,211.77, all as shown on Exhibit "B" attached hereto and incorporated herein, for a total amount of $180,465.58 as of October 5, 1982, remains past due and owing under the terms and conditions of said promissory note, and Little Dixie Supermarkets, Inc. has failed, neglected and refused to pay said amount although demand has often been made therefor and has filed bankruptcy.

4.

On or about May 25, 1979, Little Dixie Supermarkets, Inc. executed a Combination Note and Disclosure Statement whereby Little Dixie Supermarkets, Inc. agreed to pay plaintiff the sum of $41,305.68, payable in thirty-six (36) monthly installments of $1,147.38 each, beginning on June 25, 1979, and on the same day of each successive month thereafter until paid, with interest to run thereon at the rate of 6% per annum after maturity, and whereby Little Dixie Supermarkets, Inc. agreed to additional terms and conditions as set out in said note, including the payment of reasonable attorney fees in the event of default, a copy of which note is attached hereto as Exhibit "C" and incorporated herein.

5.

Little Dixie Supermarkets, Inc. has defaulted in the payment of said Combination Note and Disclosure Statement and the amount of $3,442.14 is past due and owing under the terms and conditions of said Combination Note and Disclosure Statement, and Little Dixie Supermarkets, Inc. has failed, neglected and refused to pay said amount although demand has often been made therefor.

6.

Little Dixie Supermarkets, Inc. opened checking account number 631-674-9 with Bank of Hazlehurst and became indebted to Bank of Hazlehurst for overdrafts in said account in the amount of $2,338.10.

7.

On or about August 24, 1981, Little Dixie Supermarkets, Inc. filed a petition for relief under 11USC Chapter 11 in the United States Bankruptcy Court for the Southern District of Mississippi, Jackson Division.

8.

On or about July 9, 1979, defendant, Lowery Berryhill, executed a Continuing Guaranty Agreement in order to induce and encourage plaintiff to extend credit to Little Dixie Supermarkets, Inc. whereby Lowery Berryhill agreed to pay in full to Bank of Hazlehurst all charges of whatever nature and kind of any indebtedness, including all interest, attorney fees, and other fees which Little Dixie Supermarkets, Inc. owed to Bank of Hazlehurst up to the amount of $245,000.00, and whereby Lowery Berryhill agreed to the additional terms and conditions as contained in the Continuing Guaranty Agreement, a copy of which is attached hereto as Exhibit "D" and incorporated herein.

9.

On or about July 9, 1979, defendant, Clifford Berryhill, executed a Continuing Guaranty Agreement in order to induce and encourage plaintiff to extend credit to Little Dixie Supermarkets, Inc. whereby Clifford Berryhill agreed to pay in full to Bank of Hazlehurst all charges of whatever nature and kind of any indebtedness, including all interest, attorney fees, and other fees which Little Dixie Supermarkets, Inc. owed to Bank of Hazlehurst up to the amount of $245,000.00, and whereby Clifford Berryhill agreed to the additional terms and conditions as contained in the Continuing Guaranty Agreement, a copy of which is attached hereto as Exhibit "E" and incorporated herein.

10.

On or about July 9, 1979, defendant, Herbert Berryhill, executed a Continuing Guaranty Agreement in order to induce and encourage plaintiff to extend credit to Little Dixie Supermarkets, Inc. whereby Herbert Berryhill agreed to pay in full to Bank of

Hazlehurst all charges of whatever nature and kind of any indebtedness, including all interest, attorney fees, and other fees which Little Dixie Supermarkets, Inc. owed to Bank of Hazlehurst up to the amount of $245,000.00, and whereby Herbert Berryhill agreed to the additional terms and conditions as contained in the Continuing Guaranty Agreement, a copy of which is attached hereto as Exhibit "F" and incorporated herein.

11.

As indicated above, Little Dixie Supermarkets, Inc. is indebted to Bank of Hazlehurst as a result of the promissory note, Exhibit "A", in the amount of $180,465.58, and Little Dixie Supermarkets, Inc. is indebted to Bank of Hazlehurst on the Combination Note and Disclosure Statement, Exhibit "C", in the amount of $3,442.14, and Little Dixie Supermarkets, Inc. is indebted to Bank of Hazlehurst based on the overdraft of their account with Bank of Hazlehurst in the amount of $2,338.10. Therefore, Little Dixie Supermarkets, Inc. is currently indebted to Bank of Hazlehurst in the amount of $186,245.82.

12.

The defendant, Lowery Berryhill, has defaulted in the payment of the amount of $186,245.82, even though the same is past due and owing under the terms and conditions of the Continuing Guaranty Agreement and has refused, failed and neglected to pay said amount although demand has often been made therefor.

13.

The defendant, Clifford Berryhill, has defaulted in the payment of the amount of $186,245.82, even though the same is past due and owing under the terms and conditions of the Continuing Guaranty Agreement and has refused, failed and neglected to pay said amount although demand has often been made therefor.

14.

The defendant, Herbert Berryhill, has defaulted in the payment of the amount of $186,245.82, even though the same is past due and owing under the terms and conditions of the Continuing Guaranty Agreement and has refused, failed and neglected to pay said amount although demand has often been made therefor.

15.

In seeking to collect the current balance due and owing under said Continuing Guaranty Agreements and under said note, Exhibit "A", and under said note, Exhibit "C", it has been necessary for the plaintiff to employ the services of Henley, Lotterhos & Henley, and plaintiff is entitled to recover reasonable attorney fees as provided for in said notes and guaranty agreements in the amount of $15,000.00.

WHEREFORE, plaintiff sues and demands judgment of and from the defendants, Clifford Lamont Berryhill, Herbert Berryhill, and Herbert Lowery Berryhill, jointly and severally, in the amount of $186,245.82 together with reasonable attorney fees in the amount of $15,000.00 for a total of $201,245.82, plus all lawful interest and all costs of Court incurred herein.

Respectfully submitted,

HENLEY, LOTTERHOS & HENLEY
ATTORNEYS FOR PLAINTIFF

BY: Brand Henley
BRAND HENLEY

HENLEY, LOTTERHOS & HENLEY
990 Deposit Guaranty Plaza
P. O. Box 326
Jackson, Mississippi 39205
(601) 948-5131

8 4 0 4 0 1 4 5 0 3 1

55

HAZLEHURST, MISSISSIPPI 5 | LITTLE DIXIE SUPERMARKETS, INC.

On Demand, If No Demand Then

May 5, 1981 — DATE OF NOTE

August 3, 1981 — DUE DATE

$ 215,000.00 — AMOUNT OF NOTE

On Demand, If No Demand Then 90 days after date, the undersigned (jointly and severally, if more than one) hereinafter called Maker, promise to pay to

BANK OF HAZLEHURST, 210 West Gallatin St., Hazlehurst, Miss. or order

Two hundred fifteen thousand and 00/100---------- DOLLARS

with interest thereon at the rate of 19.5% per cent per annum from date until paid.

Maker has deposited with Bank as collateral for payment of this and any and all other liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter called "obligations"), the following property listed below and on the reverse side hereof, hereinafter called Collateral:

ecurity Agreement dated July 9, 1979, and Financing Statement covering equipment as follows, oused in Little Dixie Supermarket located on corner of Thousand Oak Drive, Hwy 18, 1/2 mile est of Jackson City limits, Hinds County, MS:

- BAS12L Dairy Cases, Serial No. 82774, 82777, 82775, & 82778
- CVH12 Refrigerated Produce Cases Serial No. 83832, 83833, 83856, & 83831
- CVHN1212 Dry Produce Case, Serial #83857

(Over, please - list continued)

Any pledgee or transferee of this note and the Collateral shall have all rights of Bank hereunder and Bank shall thereafter be relieved from any liability with respect to any Collateral so pledged or delivered.

Maker shall take all necessary steps to preserve rights against prior parties to instruments or chattel paper constituting Collateral and shall be responsible generally for its preservation.

Upon the happening of any of the following events, each of which shall constitute a default hereunder, all liabilities of each Maker to Bank shall become immediately due and payable at the option of Bank: (1) failure of any Obligor (which shall include each Maker, endorser, surety and guarantor of this note) to perform any agreement hereunder or pay any obligation secured hereby when due; (2) death of any Obligor; (3) filing of any petition in bankruptcy by or against any Obligor; (4) application for appointment of a receiver for, making of a general assignment for the benefit of creditors by, or insolvency of any Obligor, or (5) determination by any officer of Bank that a material adverse change has occurred in the financial condition of any Obligor. Upon occurrence of any such event or at any time thereafter, Bank shall have the remedies of a secured party under the Uniform Commercial Code of Mississippi. Any notice of sale or other intended disposition of the Collateral sent to Maker at least five days prior to such action shall constitute reasonable notice to Maker. Bank may waive any default before or after the same has been declared without impairing its right to declare a subsequent default hereunder, this right being a continuing one.

In case of a decline in the market value of the Collateral or if the Collateral shall at any time become unsatisfactory to Bank, Maker agrees upon demand of Bank to deposit with Bank within two hours after demand additional collateral of quality and value satisfactory to it and to create a security interest in the additional collateral in favor of Bank.

This note, or any renewal thereof, may be extended without notice and without affecting the liability of any Obligor or any Collateral. The Bank may at its discretion surrender any Collateral without affecting the liability of any Obligor.

Bank is hereby given a lien upon and a security interest in any moneys or property, including any deposits, at any time in possession of Bank belonging to each Obligor, all of which shall be treated as security for payment of this note. Bank may, at its option in event of default, set off such moneys, property or deposits against this note or any other obligation of Maker.

All Obligors waive protest of this note. If this note is not paid when due, all Obligors agree to pay all costs and expenses of collection, including reasonable attorneys' fees and legal expenses, all of which are secured by the Collateral. Bank shall in no event be liable to any party hereto for failure to collect this note, in whole or in part.

Any demand upon or notice to Maker shall be sufficiently served for all purposes if personally delivered or placed in the mail addressed to the address shown below or such other address as may be shown on the Bank's records.

MINIMUM CHARGE: If the interest earned is less than $10.00, the amount charged by the bank will be $10.00, the banks minimum charge.

BORROWER ADDRESS

O. Box or Street Address		
O. Box 10		
ty		State
rry		MS
Code		Telephone Number
9175		
FICER'S NITIALS	TELLERS INITIALS	SOCIAL SECURITY NUMBER
	pjb	

LITTLE DIXIE SUPERMARKETS, INC.

BY Lowery Berryhill, Sec.

MR. LOWERY BERRYHILL, SECRETARY

- [illegible] 82817, 82818, 82819, & 82820
- AHC 12 [illegible] Case Serial No. 77877
- AHC 12 Freez[illegible] Cases Serial No. 82817, 82818, 82819, & 82820
- CGC12 Freezer [illegible] Cases Serial No. 82741
- THR-760-S Compressors complete, Serial No. 76066 & 76067
- THR 400 S Compressor complete, Serial No. 76072
- THR-300-S Compressor complete Serial No. 76070
- THR-760-S Compressors complete Serial Nos. 76068, 76074, 76075, & 76073
- THR-400-S Compressors complete Serial No. 7606F
- THR-300-S Compressors complete Serial Nos. 76073 & 76069
- THR-150-S Compressor complete Serial No. 76065
- THR-300-H Compressor complete Serial No. 76071
- THR Two-zone Racks
- THR Single Rack
- APD058BV Remote Condensor Serial No. 43885
- APD065BV Condensor Serial No. 42886
- Fantrol Packages
- 12' x 54' x 6'5" Combination Cooler & Freezer Serial No. 82794
- TLS-140-BE Coil for Freezer Section Serial No. 43879
- TSL-100-BH Coil for Dairy Section Serial No. 43877
- GSA087BH Coil Produce Section Serial No. 43872
- 16' x 10'5½" Combination Serial No. 82793
- TA087BE Coil Serial No. 43873
- TSA120BE Coil for Meat Section Serial No. 42875
- TSA120BH for prep room Serial No. 43874
- TLS105BE Coil for Baker Freezer Section Serial No. 43878
- TLS050BH Coil for Deli Cooler Section Serial No. 43876

eed of Trust on Real Estate, recorded in Book 2675, Page 372, Hinds County, MS; Continuing uaranties on Lowery Berryhill, Clifford Berryhill, and Herbert Berryhill; Assignment of Life nsurance on Lowery Berryhill.

ITH MONTHLY REDUCTION OF $5,000.00 PLUS INTEREST.

The proceeds of this loan are to be used for Business purposes."

LITTLE DIXIE SUPERMARKETS, INC.

Signature: [illegible]

ay 5, 1981

MR. LOWERY BERRYHILL, SECRETARY

8404014503 3

57

STATEMENT OF TRANSACTIONS
SEPTEMBER 24, 1982
LITTLE DIXIE SUPERMARKETS, INC.
NOTE NUMBER 7932 - DATED 5/5/81 - DUE 8/13/81

STING ATE	INTEREST PAYMENT	PRINCIPAL PAYMENT	PRINCIPAL ADDITION	BALANCE	EXPLANATION
8/81				215,000.00	Note Booked
17/81	3,265.32	5,000.00		210,000.00	Note Payment
14/81	11,601.17			210,000.00	Interest Payment
17/81	(3,265.32)		5,000.00	215,000.00	7/17/81 Payment Returned NSF
0/23/81			150.00	215,150.00	Commercial Equipment Company Appraisal of Equipment
/5/82			500.00	215,650.00	James Kelly-Appraisal of Land
/8/82			60.00	215,710.00	Court Costs
2/11/82			175.00	215,885.00	Henley Firm-Attorney Fee
2/11/82			1,514.50	217,399.50	Henley Firm-Attorney Fee
2/12/82		175.00		217,224.50	Overpayment Henley Firm-Attorney Fee
3/9/82	6,000.00			217,224.50	Note Payment
4/26/82			350.00	217,574.50	Commercial Equipment
5/4/82			75.00	217,649.50	James Kelly-Court Appearance
6/9/82		84.81		217,564.69	Closed Account No. 631-678-0
6/29/82			1,629.30	219,193.99	Henley Firm-Attorney Fe
8/2/82		4,000.00		215,193.99	Sale of Building
8/19/82		75,000.00		140,193.99	Sale of Equipment
8/26/82			59.82	140,253.81	Thompson & Son-Locksmit for Keys

Interest due thru 9/24/82 is $39,462.77, with interest at $74.90 per day thereafter.

Exhibit "B"

LITTLE DIXIE SUPER MARKETS, INC.

BY: _____
CLIFF BERRYHILL, INDIVIDUALLY

_____
LOWERY BERRYHILL, INDIVIDUALLY

_____
HERBERT BERRYHILL, INDIVIDUALLY

8 4 0 4 0 1 4 5 0 7 5

59

CONFIRMATION NOTE AND DISCLOSURE AGREEMENT

LITTLE DIXIE SUPER MARKETS, INC.
BORROWER'S NAME

Hazlehurst, Miss. May 25, 1979

The undersigned (jointly and severally if more than one) hereinafter called Maker, promises to pay to the order of

BANK OF HAZLEHURST
210 West Gallatin Street
Hazlehurst, Mississippi 39083

No. 410-703-0 Due May 25, 1983

FORTY ONE THOUSAND THREE HUNDRED FIVE DOLLARS AND 68/100 DOLLARS

Principal, $ 41,305.68

Payable in 36 monthly installments of $ 1,147.38 on June 25, 19 79, and $ 1,147.38 on the same day of each successive month thereafter until this note is fully paid with interest thereon at the rate of six per cent. per annum from maturity. All installments shall become due and payable, at the option of the holder, if any installment is not paid when due.

Collateral for this note is:

F/S

MONTHLY PAYMENTS TO BE MADE BY AUTOMATIC CHARGE TO ACCOUNT #631-445-4

Any pledgee or transferee of this note and the Collateral shall have all rights of Bank hereunder and Bank shall thereafter be relieved from any liability with respect to any Collateral so pledged or delivered.

Maker shall take all necessary steps to preserve rights against prior parties to instruments or chattel paper constituting Collateral and shall be responsible generally for its preservation. If the collateral shall at any time become unsatisfactory to Bank, Maker shall within twenty-four hours after demand, pledge as part of the Collateral additional property which is satisfactory to Bank.

Upon the happening of any of the following events, each of which shall constitute a default hereunder, all liabilities of each Maker to Bank shall become immediately due and payable at the option of Bank: (1) failure of any Obligor (which shall include each Maker, endorser, surety and guarantor of this note) to perform any agreement hereunder or pay any obligation secured hereby when due; (2) death of any Obligor; (3) filing of any petition in bankruptcy by or against any Obligor; (4) application for appointment of a receiver for, making of a general assignment for the benefit of creditors by, or insolvency of any Obligor, or (5) determination by any officer of Bank that a material adverse change has occurred in the financial condition of any Obligor. Upon occurrence of any such event or at any time thereafter, Bank shall have the remedies of a secured party under the Uniform Commerical Code of Mississippi. Any notice of sale or other intended disposition of the Collateral sent to Maker at least five days prior to such action shall constitute reasonable notice to Maker. Bank may waive any default before or after the same has been declared without impairing its right to declare a subsequent default hereunder, this right being a continuing one.

This note, or any renewal thereof, may be extended without notice and without affecting the liability of any Obligor or any Collateral. The Bank may at its discretion surrender any Collateral without affecting the liability of any Obligor.

Bank is hereby given a lien upon and a security interest in any moneys or property, including any deposits, at any time in possession of Bank belonging to each Obligor, all of which shall be treated as security for payment of this note. Bank may, at its option in event of default, set off such moneys, property or deposits against this note or any other obligation of Maker. Any provision for a charge herein in excess of that authorized by law is expressly deleted.

All Obligors waive protest of this note. If this note is not paid when due, all Obligors agree to pay all costs and expenses of collection, including reasonable attorneys' fees and legal expenses, all of which are secured by the Collateral. Bank shall in no event be liable to any party hereto for failure to collect this note, in whole or in part.

Any demand upon or notice to Maker shall be sufficiently served for all purposes if personally delivered or placed in the mail addressed to the address shown below or such other address as may be shown on the Bank's records.

The Security Agreement will secure future indebtedness.

The Deed of Trust will secure future indebtedness.

CREDIT LIFE AND DISABILITY INSURANCE are not required in connection with this loan.

The insurance checked below extends for the term of the loan.

- ☐ Life ..... $
- ☐ Disability (Accident and Health) ..... $
- ☐ Other (describe) ..... $

I DESIRE TO OBTAIN THE CREDITOR INSURANCE CHECKED ABOVE.

(Date) (Maker's Signature) (Co-Maker's Signature)

PROPERTY INSURANCE—The Maker may choose the person through whom any property or liability insurance is to be obtained. This insurance is not available through creditor.

REDATE FOR PAYMENT IN FULL. If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date or maturity date, the Bank may give a rebate of precomputed interest computed under the Rule of 78's.

DEFAULT CHARGE. Borrower shall be liable for all reasonable attorneys' fees, court costs and expenses of whatever kind incident to collection of said indebtedness and the enforcement and protection of any security interest held by the creditor.

Proceeds To Borrower	$ 35,000.00	Interest	$ 6,305.68
Credit Life Insurance		Credit Investigation Fee	
A&H Insurance		Credit Life Insurance	
Official Fees		Property Insurance	
Title Fees			
AMOUNT FINANCED	$ 35,000.00	FINANCE CHARGE	$ 6,305.68
TOTAL OF PAYMENTS	$ 41,305.68	ANNUAL PERCENTAGE RATE	11.09 %

By execution, this and the Note and Disclosure Statement, the undersigned acknowledge receipt of a completely filled in copy hereof prior to execution.

BORROWER'S ADDRESS

P.O. Box 10

LITTLE DIXIE SUPER MARKETS, INC.

BY:

8 4 0 4 0 1 4 5 0 3 6

60

CONTINUING GUARANTY

In Consideration of BANK OF HAZLEHURST, HAZLEHURST, MISSISSIPPI, giving or extending credit to LITTLE DIXIE SUPERMARKETS, INC.

hereinafter called "debtor", I hereby give this continuing guaranty to the said Bank of Hazlehurst of Hazlehurst, Mississippi, hereinafter called "Bank" its transferees or assigns, for the payment in full, together with all interest, attorney fees, other fees, and charges of whatsoever nature and kind, of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of

TWO HUNDRED FORTY-FIVE THOUSAND AND NO/100 Dollars,

whether due or to become due, and whether now existing or hereafter arising. The Bank may, one or more times in its judgment, grant extensions, take and surrender securities, accept compositions, release or discharge indorsers, guarantor's or other parties, grant releases and discharges generally, make changes of any sort whatever in the terms of its contract or manner of doing business with the debtor and with other parties and securities in relation thereto without notice to the undersigned, such notice being hereby specifically waived. The Bank may, without any notice to or consent of the undersigned, also apply all moneys received from the debtor and others, or from securities, as it may think best, without in any way being required to marshal securities or assets, and any such application of moneys shall not in any way alter, affect, limit or lessen the liability of the undersigned under this Guaranty. The Bank shall not be bound to exhaust its recourse against the debtor or other persons or upon the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed. I do furthermore bind and obligate myself, my heirs and assigns, jointly and severally with said debtor, for payment of the said indebtedness precisely as if the same had been contracted and was due or owing by me in person, hereby agreeing to and binding myself, my heirs and assigns, by all terms and conditions contained in any note or notes signed or to be signed by said debtor, making myself a party thereto; hereby waiving all notice including notice of any such indebtedness and of demand, presentment, protest or notice of demand or non-payment and of notice of any act to establish the liability of any party on any commercial or other paper, indebtedness or obligation covered by this guaranty; I do further waive all notice and all pleas of discussion and division and I agree upon demand at any time, to pay to said Bank, its transferees or assigns, the full amount of said indebtedness up to the amount of this guaranty, together with interest, fees and charges, as above set forth, becoming subrogated in the event of payment in full by me to the claim of said Bank, its transferees or assigns, together with whatever security it or they may hold against said indebtedness.

In the event this Continuing Guaranty is executed by more than one individual, it is understood and agreed that each individual shall be bound by all of the provisions of this continuing guaranty and for the payment in full of the entire amount stated above, in the same manner as if each individual were the only person executing this continuing guaranty. It is also understood and agreed that this continuing guaranty does not supersede nor cancel any pre-existing guaranty or guaranties given by any of the undersigned on behalf of the borrower named above but to the contrary shall be in addition thereto.

It is expressly agreed that this continuing guaranty is absolute and complete, and that acceptance and notice of acceptance thereof by the Bank are therefore unnecessary and they are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be delivered to one of the executive officers of the said Bank, but such discontinuance shall not affect my liability on any debts and/or obligations of the debtor then existing nor the liability of any other party in the premises.

Witness my signature this 9th day of July, 1979

Lowery Berryhill

Special provision as to guaranty of corporate indebtedness on reverse side hereof.

Exhibit "D"

8 4 0 4 0 1 4 5 0 3 7

61

CONTINUING GUARANTY

In Consideration of BANK OF HAZLEHURST, HAZLEHURST, MISSISSIPPI, giving or extending credit to LITTLE MAN ENTERPRISES, INC.

hereinafter called "debtor", I hereby give this continuing guaranty to the said Bank of Hazlehurst of Hazlehurst, Mississippi, hereinafter called "Bank" its transferees or assigns, for the payment in full, together with all interest, attorney fees, other fees, and charges of whatsoever nature and kind, of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of

TWO HUNDRED FORTY-FIVE THOUSAND AND NO/100 Dollars,

whether due or to become due, and whether now existing or hereafter arising. The Bank may, one or more times in its judgment, grant extensions, take and surrender securities, accept compositions, release or discharge indorsers, guarantor's or other parties, grant releases and discharges generally, make changes of any sort whatever in the terms of its contract or manner of doing business with the debtor and with other parties and securities in relation thereto without notice to the undersigned, such notice being hereby specifically waived. The Bank may, without any notice to or consent of the undersigned, also apply all moneys received from the debtor and others, or from securities, as it may think best, without in any way being required to marshal securities or assets, and any such application of moneys shall not in any way alter, affect, limit or lessen the liability of the undersigned under this Guaranty. The Bank shall not be bound to exhaust its recourse against the debtor or other persons or upon the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed. I do furthermore bind and obligate myself, my heirs and assigns, jointly and severally with said debtor, for payment of the said indebtedness precisely as if the same had been contracted and was due or owing by me in person, hereby agreeing to and binding myself, my heirs and assigns, by all terms and conditions contained in any note or notes signed or to be signed by said debtor, making myself a party thereto; hereby waiving all notice including notice of any such indebtedness and of demand, presentment, protest or notice of demand or non-payment and of notice of any act to establish the liability of any party on any commercial or other paper, indebtedness or obligation covered by this guaranty; I do further waive all notice and all pleas of discussion and division and I agree upon demand at any time, to pay to said Bank, its transferees or assigns, the full amount of said indebtedness up to the amount of this guaranty, together with interest, fees and charges, as above set forth, becoming subrogated in the event of payment in full by me to the claim of said Bank, its transferees or assigns, together with whatever security it or they may hold against said indebtedness.

In the event this Continuing Guaranty is executed by more than one individual, it is understood and agreed that each individual shall be bound by all of the provisions of this continuing guaranty and for the payment in full of the entire amount stated above, in the same manner as if each individual were the only person executing this continuing guaranty. It is also understood and agreed that this continuing guaranty does not supersede nor cancel any pre-existing guaranty or guaranties given by any of the undersigned on behalf of the borrower named above but to the contrary shall be in addition thereto.

It is expressly agreed that this continuing guaranty is absolute and complete, and that acceptance and notice of acceptance thereof by the Bank are therefore unnecessary and they are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be delivered to one of the executive officers of the said Bank, but such discontinuance shall not affect my liability on any debts and/or obligations of the debtor then existing nor the liability of any other party in the premises.

Witness my signature this 9th day of July, 1979

Clifford Berryhill

CLIFFORD BERRYHILL

Special provision as to guaranty of corporate indebtedness on reverse side hereof.

Exhibit "E"

8 4 0 4 0 1 4 5 0 3 8

62

CONTINUING GUARANTY

In Consideration of BANK OF HAZLEHURST, HAZLEHURST, MISSISSIPPI, giving or extending credit to LITTLE DIXIE SUPERMARKETS, INC.

hereinafter called "debtor", I hereby give this continuing guaranty to the said Bank of Hazlehurst of Hazlehurst, Mississippi, hereinafter called "Bank" its transferees or assigns, for the payment in full, together with all interest, attorney fees, other fees, and charges of whatsoever nature and kind, of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of

--------TWO HUNDRED FORTY-FIVE THOUSAND AND NO/100 ---------- Dollars,

whether due or to become due, and whether now existing or hereafter arising. The Bank may, one or more times in its judgment, grant extensions, take and surrender securities, accept compositions, release or discharge indorsers, guarantor's or other parties, grant releases and discharges generally, make changes of any sort whatever in the terms of its contract or manner of doing business with the debtor and with other parties and securities in relation thereto without notice to the undersigned, such notice being hereby specifically waived. The Bank may, without any notice to or consent of the undersigned, also apply all moneys received from the debtor and others, or from securities, as it may think best, without in any way being required to marshal securities or assets, and any such application of moneys shall not in any way alter, affect, limit or lessen the liability of the undersigned under this Guaranty. The Bank shall not be bound to exhaust its recourse against the debtor or other persons or upon the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed. I do furthermore bind and obligate myself, my heirs and assigns, jointly and severally with said debtor, for payment of the said indebtedness precisely as if the same had been contracted and was due or owing by me in person, hereby agreeing to and binding myself, my heirs and assigns, by all terms and conditions contained in any note or notes signed or to be signed by said debtor, making myself a party thereto; hereby waiving all notice including notice of any such indebtedness and of demand, presentment, protest or notice of demand or non-payment and of notice of any act to establish the liability of any party on any commercial or other paper, indebtedness or obligation covered by this guaranty; I do further waive all notice and all pleas of discussion and division and I agree upon demand at any time, to pay to said Bank, its transferees or assigns, the full amount of said indebtedness up to the amount of this guaranty, together with interest, fees and charges, as above set forth, becoming subrogated in the event of payment in full by me to the claim of said Bank, its transferees or assigns, together with whatever security it or they may hold against said indebtedness.

In the event this Continuing Guaranty is executed by more than one individual, it is understood and agreed that each individual shall be bound by all of the provisions of this continuing guaranty and for the payment in full of the entire amount stated above, in the same manner as if each individual were the only person executing this continuing guaranty. It is also understood and agreed that this continuing guaranty does not supersede nor cancel any pre-existing guaranty or guaranties given by any of the undersigned on behalf of the borrower named above but to the contrary shall be in addition thereto.

It is expressly agreed that this continuing guaranty is absolute and complete, and that acceptance and notice of acceptance thereof by the Bank are therefore unnecessary and they are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be delivered to one of the executive officers of the said Bank, but such discontinuance shall not affect my liability on any debts and/or obligations of the debtor then existing nor the liability of any other party in the premises.

Witness my signature this 9th day of July, 1979

Herbert Berryhill

HERBERT BERRYHILL

Special provision as to guaranty of corporate indebtedness on reverse side hereof.

Exhibit "F"

8 4 0 4 0 1 4 5 0 3 9

63

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

Bank of Bazlehurst

COMPLAINANT

VS

Herbert Berryhill, Herbert Lowery Berryhill and Clifford Lamont Berryhill

DEFENDANT

6 Oct 82

DATE: October 6, 1982

Case No. 29,072

SUMMONS

To the Sheriff of Hinds County, Greetings:

You are hereby commanded to Summons:

Herbert Berryhill - Cherry Grove Road, Terry, Ms.
Herbert Lowery Berryhill - Cherry Grove Road, Terry, Ms.
Clifford Lamont Berryhill- Cherry Grove Road, Terry, Ms.

WM. E. "BILL" McKINLEY
CIRCUIT CLERK

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS BY FILING YOUR ANSWER AS PROVIDED BY LAW AND/OR THE MISSISSIPPI RULES OF CIVIL PROCEDURE.

THIS ANSWER MUST BE FILED AS PROVIDED BY LAW AND/OR THE MISSISSIPPI RULES OF CIVIL PROCEDURE WITHIN 30 DAYS OF THE DATE YOU ARE SERVED OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

Brand Henley
ATTORNEY FOR PLAINTIFF
Post Office Box 326
Jackson, Mississippi
ADDRESS

948-5131
PHONE NUMBER

WILLIAM E. "BILL" McKINLEY
Circuit Clerk
Hinds County, Mississippi
Post Office Box 327
Jackson, Mississippi 39205

By _____ D. C.

STATE OF MISSISSIPPI
COUNTY OF HINDS

I have this day executed the within writ personally by delivering to the within named defendant
Herbert Berryhill

A true copy of this writ. This the 7 day of Oct 1982

_____ D.C.

STATE OF MISSISSIPPI
COUNTY OF HINDS

I have this day executed the within writ personally by delivering to the within named defendant
Herbert Lowery Berryhill

A true copy of this writ. This the 7 day of Oct 1982

_____ D.C.

STATE OF MISSISSIPPI
COUNTY OF HINDS

I have this day executed the within writ personally by delivering to the within named defendant
Clifford Lamont Berryhill

A true copy of this writ. This the 7 day of Oct 1982

_____ D.C.

8 4 0 4 0 1 4 5 0 1 0

BERRYHILL v. HAZELHURST

8404 0 1 4 5 0 7 4

65

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: LITTLE DIXIE SUPERMARKETS, INC. DEBTOR
BANKRUPTCY NO. 8101974JC

LITTLE DIXIE SUPERMARKETS, INC. PLAINTIFF

VS. ADVERSARY PROCEEDING NO. 820091JC

BANK OF HAZLEHURST DEFENDANT

AMENDED

COMPLAINT TO REQUIRE SURRENDER OF ASSETS

COMES NOW the plaintiff, Little Dixie Supermarkets, Inc., a Mississippi corporation, by and through counsel, and files this, its Complaint to Require Surrender of Assets, and in support hereof would respectfully show unto this honorable Court the following, to-wit:

I.

That the plaintiff is debtor in the above entitled re-organization proceedings, and by order of has been continued in the possession of the estate.

II.

The defendant, the Bank of Hazlehurst, is a banking corporation, doing business in the State of Mississippi. That the defendant is the holder of funds amounting to ninety three thousand dollars ($93,000.00) which belongs to the plaintiff and received these funds under normal course of business on November 17, 1981 by way of the plaintiff depositing in said banking institution funds, but which funds were not credited to plaintiff's account by defendant. A copy of the deposit slip, as stamped by the defendnat bank, is attached hereto and incorporated herein as Exhibit "A" to this complaint.

III.

That the said funds were delivered to the Bank of Hazlehurst by an employee of the plaintiff, namely, Ray Barfield.

A true and correct Affidavit by said Ray Barfield is attached hereto and incorporated herein as Exhibit "B" to this complaint.

IV.

That the funds were prepared for deliverance and deposit to the Bank of Hazlehurst for safe keeping by Lowery Berryhill, an officer and the manager of plaintiff corporation. A true and correct Affidavit by said Lowery Berryhill is attached hereto and incorporated herein as Exhibit "C" to this complaint.

V.

That the plaintiff made demand upon the defendant on or about the 22nd day of February, 1982, with the appropriate officers of the said bank and the attorney for the bank at the office of the attorney in Hazlehurst, Mississippi, to credit said fund to plaintiff's account; but said defendant bank has failed and refused to comply with said demand.

WHEREFORE, plaintiff prays that upon a final hearing of this complaint, the defendant, Bank of Hazlehurst, be ordered to deliver unto the plaintiff the sum of ninety three thousand dollars ($93,000.00), which is being held by the defendant for the plaintiff, and plaintiff prays for such other and general relief as it may be entitled in the premises.

Respectfully submitted,

LITTLE DIXIE SUPERMARKETS, INC.

BY: Lowery Berryhill
LOWERY BERRYHILL

Sec.
title

STATE OF MISSISSIPPI

COUNTY OF HINDS

THIS DAY personally came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named LOWERY BERRYHILL, who, after being first duly sworn by me, state on oath that he is the duly qualified and

elected Secretary/Treasurer of Little Dixie Supermarkets, Inc.; that in such capacity he did sign the above and foregoing Complaint to Require Surrender of Assets after being first duly authorized so to do; and that the facts and matters set forth therein are true and correct as stated.

LOWERY BERRYHILL

SWORN TO AND SUBSCRIBED before me, this the 17th day of March, 1982.

NOTARY PUBLIC

My commission expires:

5/5

CERTIFICATE OF SERVICE

I, the undersigned, Ron C. Smith, attorney for plaintiff herein, do certify that I have on this date, hand-delivered a true and correct copy of the foregoing Amended, Complaint to Require Surrender of Assets to the attorney of record for the defendant herein, Henley, Lotterhos and Henley, at their usual business address of Suite 990, Deposit Guaranty Plaza, Jackson, Mississippi 39201.

RON C. SMITH

OF COUNSEL:

RON C. SMITH
SMITH & WHITEHEAD
Attorneys and Counselors at Law
Suite 288, Highland Village
Jackson, MS 39211

HAROLD J. BARKLEY, JR.
Post Office Box 1482
Jackson, MS 39205

DEPOSITED WITH
BANK OF HAZLEHURST
P.O. BOX [illegible]
TO THE CHECKING ACCOUNT OF

8-16-80

BANK OF HAZLEHURST

Berryhill #3 [illegible]

PLEASE FILL IN →

ACCOUNT NUMBER NOV 17 1980

63 [illegible] -0

RECEIVED BY

"NOTICE"

This Deposit Accepted Subject to the Rules and Regulations of the Bank Appearing on the Signature Card.

DEPOSIT TICKET

	DOLLARS	CENTS
CURRENCY	93000	00
COIN		
CHECKS		
USE OTHER SIDE FOR ADDITIONAL LISTING. TOTAL FROM OTHER SIDE		
TOTAL DEPOSIT	93000	00

DUPLICATE DEPOSIT TICKET

Exhibit "A"

STATE OF MISSISSIPPI

COUNTY OF HINDS

A F F I D A V I T

PERSONALLY came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named RAY BARFIELD, who, after being first duly sworn stated on oath the following:

"That on November 17, 1981, I hand delivered to the Bank of Hazlehurst in Hazlehurst, Mississippi, a deposit to be made to the account of Little Dixie Supermarkets, Inc., same being account number 631-678-0 for the sum of $93,000.00.

That the said funds were accepted by the bank and the deposit slip was stamped by the teller handling the transaction."

Ray Barfield
RAY BARFIELD

SWORN TO AND SUBSCRIBED before me, this the 10th day of January, 1982.

Linda M. Alexander
NOTARY PUBLIC

My commission expires:
Feb. 17, 1986

EXHIBIT "B"

STATE OF MISSISSIPPI

COUNTY OF HINDS

A F F I D A V I T

PERSONALLY came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named LOWREY BERRYHILL, who, after being first duly sworn stated on oath the following:

"That on November 17, 1981, I prepared a deposit to be made with the Bank of Hazlehurst in Hazlehurst, Mississippi, for the total sum of $93,000.00 to be deposited in account number 631-678-0.

That I intrusted the funds to the care of Ray Barfield and instructed him to carry same to the Bank of Hazlehurst in Hazlehurst, Mississippi and deposit into the company bank account.

That Ray Barfield returned the original deposit slip to me after making the deposit with the bank and said slip was stamped indicating that the deposit had been transacted."

Lowrey Berryhill
LOWREY BERRYHILL

SWORN TO AND SUBSCRIBED before me, this the 10th day of February, 1982.

Vicki M. Alexander
NOTARY PUBLIC

My commission expires:
July 17, 1985

EXHIBIT "C"

8 4 0 4 0 1 4 5 0 1 6

MAR 11 1982

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: LITTLE DIXIE SUPERMARKETS, INC. DEBTOR
BANKRUPTCY NO. 8101974 JC

LITTLE DIXIE SUPERMARKETS, INC. PLAINTIFF

VS. ADVERSARY PROCEEDING NO. 820091 JC

BANK OF HAZLEHURST DEFENDANT

REQUEST BY BANK OF HAZLEHURST FOR PRODUCTION OF DOCUMENTS

COMES NOW Bank of Hazlehurst, defendant in this adversary proceeding, pursuant to Rule 734 of the Bankrupty Rules and Rule 34 of the Federal Rules of Civil Procedure, and requests that the plaintiff, Little Dixie Supermarkets, Inc., produce for inspection and copying at the office of Peat, Marwick, Mitchell & Co., Suite 1600 Deposit Guaranty Plaza, Jackson, Mississippi, the material and documents described hereinafter on or before 9 o'clock a.m. on April 13, 1982, and to leave said material and documents in custody of Peat, Marwick, Mitchell & Co. for a sufficient number of days to allow them to complete a thorough review and audit of said material and documents. Alternatively, defendant requests that said documents and material be made available to Peat, Marwick, Mitchell & Co, Bill Hunter and other employees of Peat, Marwick, Mitchell & Co. and attorneys for Bank of Hazlehurst beginning on or before April 13, 1982, and that said availability be continued from day to day by giving said persons continuous access to said material and documents during business hours from 8 o'clock a.m. to 5 o'clock p.m. for a sufficient number of days, excluding Saturdays and Sundays, until said person or persons have concluded a thorough audit and review of said documents and material which will be produced on the premises of Little Dixie Supermarkets, Inc. where said records are maintained, provided that at each location, said auditors or examiners with Peat, Marwick, Mitchell & Co. will be provided with reasonable space which is quiet,

private and conducive to the audit function being performed so as to allow a quick, efficient, thorough and accurate examination of said records and to provide a reasonable means of photocopying any and all documents and records produced, either on the premises or in the offices of Peat, Marwick, Mitchell & Co. with provision for transporting and returning the documents to be copied.

The documents and material to be produced are the following:

1. All of the following documents for the time period of January 1, 1981 through February 28, 1982:

   a. All cash receipts journals.

   b. All cash disbursements journals.

   c. All general journals.

   d. All general ledgers.

   e. All cancelled checks for all bank accounts with all banks.

   f. All deposit slips and supporting documentation for all bank accounts in all banks.

   g. All bank reconciliations for all bank accounts with all banks.

   h. All monthly financial statements.

   i. All daily sales journals or other reports used to summarize or record daily sales.

   j. All cash register tapes.

2. All documents which were used to prepare the alleged November 17, 1981 deposit of $93,000.00.

3. All documents which identify or which could aid in the identification of any specific check, draft, amount of cash, or other item forming part of the alleged November 17, 1981 deposit of $93,000.00.

4. All documents and business records which contain any information regarding the amount of income received by plaintiff from January 1, 1981 through February 28, 1982, whether by cash, check or otherwise.

5. All documents and business records which contain any information regarding the amount of disbursement of funds, whether by check or otherwise.

6. All documents containing any information as to the amount of funds received and recorded by cash registers.

7. All documents made or referenced in attempting to verify or locate the alleged November 17, 1981 deposit of $93,000.00.

8. All documents which will, or may, aid in an audit to determine whether or not the alleged $93,000.00 ever existed and if so, then the specific composition of the alleged November 17, 1981 deposit of $93,000.00.

9. All documents containing inquiries as to any check or other item which could have possibly been part of the alleged November 17, 1981 deposit of $93,000.00.

10. All documents and reports of audits of Little Dixie Supermarkets, Inc.

11. All of Little Dixie Supermarkets, Inc.'s by-laws, stock ownership books, minutes of stockholders meetings, minutes of directors meetings, and all documents concerned with the organization, ownership, management, operation, or purposes of Little Dixie Supermarkets, Inc. and all documents recording official decisions and directions of Little Dixie Supermarkets, Inc.

The following definitions apply to this Request by Bank of Hazlehurst for Production of Documents:

(a) "Little Dixie Supermarkets, Inc." means Little Dixie Supermarkets, Inc. and all persons, employees, officers, owners, agents and others acting on behalf of Little Dixie Supermarkets, Inc.

(b) The term "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies, or otherwise (including without limitation), time records, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, work papers, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, ledgers, invoices, billings, drawings, maps, sketches, photographs, applications, plats, films, tapes, receipts, return summaries, financial statements, bank statements, bank debit and credit memos, loan ledgers, promissory notes, security agreement, deeds of trust, financing statements, records of any bank special or

expense accounts, and any and all other writings, typings, printings, or drafts or copies or reproductions thereof irrespective of form in your possession, custody or control.

(c) The term "all documents" means every document as above defined known to you and every such document which can be located or discovered by reasonable diligent effort.

Respectfully submitted,

BANK OF HAZLEHURST

By _____
Brand Henley
Attorney for Defendant

Henley, Lotterhos & Henley
990 Deposit Guaranty Plaza
P.O. Box 326
Jackson, Mississippi 39205

601/948-5131

CERTIFICATE OF SERVICE

I, the undersigned attorney for the defendant, Bank of Hazlehurst, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Request by Bank of Hazlehurst for Production of Documents to Hon. Ron C. Smith, Suite 288, Highland Village, Jackson, Mississippi 39211, attorney for the plaintiff.

This the 10th day of March, 1982.

_____
Brand Henley

8 4 0 4 0 1 4 5 0 5 1

75

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

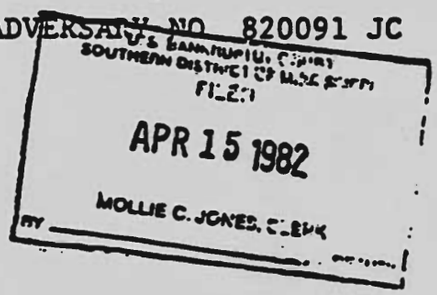
LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff,

ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST

Defendant



MOTION TO COMPEL DISCOVERY

COMES NOW, the defendant, Bank of Hazlehurst, and files this motion to compel discovery and would show the following:

1. Little Dixie Supermarkets, Inc. filed this adversary proceeding against Bank of Hazlehurst on February 27, 1982.

2. Discovery in the form of interrogatories and request for production of documents was filed on behalf of defendant and served upon the plaintiff's attorney on March 10, 1982.

3. Plaintiff has failed to answer said discovery.

4. The discovery was to be answered by April 12, 1982.

WHEREFORE, the defendant, Bank of Hazlehurst, moves this Court for an order compelling the plaintiff to answer said discovery.

Respectfully submitted,

BANK OF HAZLEHURST

Will S. Henley, II

WILL S. HENLEY, II
Its Attorney

Harris B. Henley
H. Brand Henley, Jr.
Will S. Henley, II
HENLEY, LOTTERHOS & HENLEY
990 Deposit Guaranty Plaza
P.O. Box 326
Jackson, Mississippi 39205
(601)948-5131

8-4040145052

76

CERTIFICATE OF SERVICE

I, Will S. Henley, II, attorney for Bank of Hazlehurst, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Motion to Compel Discovery to Hon. Robert S. Murphree, P.O. Box 370, Jackson, Mississippi 39205, Hon. Ron C. Smith, Suite 288 Highland Village, Jackson, Mississippi 39211 and Hon. Harold J. Barkley, Jr. P.O. Box 1482, Jackson, Mississippi 39205, attorneys for Little Dixie Supermarkets, Inc.

DATED this the 14th day of April, 1982.

Will S. Henley, II

WILL S. HENLEY, II

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

JUN 15 1982
MOLLIE C. JONES, CLERK
BY

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff

VS. ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST

Defendant

MOTION TO DISMISS

COMES NOW defendant, Bank of Hazlehurst, and files this motion to dismiss the Amended Complaint to Require Surrender of Assets and for cause would show the following:

1. Plaintiff has totally failed to comply with the Order entered in this matter on April 23, 1982, requiring the plaintiff to make a more definite statement in its amended complaint, specifying the exact amount of currency contained in the alleged $93,000.00 deposit as well as specifying and describing in detail each individual check or item or document which formed a part of the alleged $93,000.00 deposit.

2. Plaintiff has failed to comply with the Order entered in this matter on April 23, 1982, compelling plaintiff's answers to defendant's discovery in that plaintiff produced only a few of the requested documents and specifically failed to produce its bank statements, cancelled checks, documents supporting the $93,000.00 deposit and many other requested documents.

3. Plaintiff has failed to support its claim by making a more definite statement and by failing to produce documents supporting its claim as ordered by this Court.

WHEREFORE, defendant, Bank of Hazlehurst, moves that the Amended Complaint to Require Surrender of Assets be dismissed with prejudice and that plaintiff be ordered to pay defendant's attorney's fee, as provided by Rule 37 of the Federal Rules of Civil Procedure.

Respectfully submitted,

BANK OF HAZLEHURST

By _____
Will S. Henley, II
Its Attorney

Henley, Lotterhos & Henley
990 Deposit Guaranty Plaza
P.O. Box 326
Jackson, Mississippi 39205
601/948-5131

CERTIFICATE

I, Will S. Henley, II, attorney for Bank of Hazlehurst, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Motion to Dismiss to Hon. Russel D. Moore, III, P.O. Box 864, Jackson, Mississippi 39205, to Hon. Ron C. Smith, Suite 288, Highland Village, Jackson, Mississippi 39211, and to Hon. Robert S. Murphree, P.O. Box 370, Jackson, Mississippi 39205, Trustee for Little Dixie Supermarkets, Inc.

Dated this the 14th day of June, 1982.

_____
Will S. Henley, II

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff

VS. ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST

Defendant

ORDER OF DISMISSAL

THIS MATTER being brought before this Court on defendant's Motion to Dismiss, and the Court, having considered the premises, finds and orders as follows:

1. Plaintiff has totally failed to comply with the Order entered in this matter on April 23, 1982, requiring the plaintiff to make a more definite statement in its amended complaint, specifying the exact amount of currency contained in the alleged $93,000.00 deposit as well as specifying and describing in detail each individual check or item or document which formed a part of the alleged $93,000.00 deposit.

2. Plaintiff has failed to comply with the Order entered in this matter on April 23, 1982, compelling plaintiff's answers to defendant's discovery in that plaintiff produced only a few of the requested documents and specifically failed to produce its bank statements, cancelled checks, documents supporting the $93,000.00 deposit and many other requested documents.

3. Plaintiff has failed to support its claim by making a more definite statement and by failing to produce documents supporting its

claim as ordered by this Court.

4. The Amended Complaint to Require Surrender of Assets should be dismissed with prejudice.

WHEREFORE, IT IS HEREBY ORDERED that the plaintiff's Amended Complaint to require Surrender of Assets is dismissed with prejudice.

ORDERED this the 22nd day of June, 1982.

UNITED STATES BANKRUPTCY JUDGE

8 4 0 4 0 1 4 5 0 3 6

87

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

BANK OF HAZLEHURST

Plaintiff

VS. ADVERSARY NO. 8200091 JC

LITTLE DIXIE SUPERMARKETS, INC.

Defendant

MOTION TO SET ASIDE ORDER OF DISMISSAL

COMES NOW the Plaintiff in the above styled adversary proceeding, Little Dixie Supermarkets, Inc., by and through its attorney of record, and files this its Motion to Set Aside Order of Dismissal and in support thereof would show unto the Court the following, to wit:

I.

That this Honorable Court has jurisdiction to consider this Motion through and pursuant to Rule 60(b), Federal Rules of Civil Procedure.

II.

That on or about February 17, 1982, the Plaintiff herein filed this adversary proceeding against the Defendant, Bank of Hazlehurst. Thereafter, this Honorable Court entered its Order requiring that the Plaintiff herein make a more definite

statement in its Amended Complaint concerning the alleged $93,000.00 deposit, and that the Plaintiff had ten (10) days to so amend.

III.

That on or about June 15, 1982, the Defendant herein filed its Motion to Dismiss this adversary proceeding on the basis that the Plaintiff herein failed to comply with the previous Order of this Court regarding the requirement that the pleadings be made more definite and certain. That at the time of the filing of the Motion to Dismiss the same was noticed for hearing on or about June 21, 1982, and on June 23, 1982, this Honorable Court dismissed this adversary proceeding with prejudice.

IV.

Plaintiff herein would respectfully show unto the Court that the first knowledge the representatives of Plaintiff had of the dismissal was on or about August 1, 1982. At said time, the Plaintiff's present attorney of record researched the adversary proceeding file and discovered the Order of Dismissal. That during the period of the filing of the Complaint through the date of the entry of the Order of Dismissal, Plaintiff herein was represented by Russell D. Moore, III, and Plaintiff would show unto this Honorable Court that its previous counsel never informed Plaintiff that it was necessary to make a more definite and certain statement regarding the pleadings; that there had been a Motion filed to dismiss; that there would be a hearing on said Motion; and that the adversary proceeding had, in fact, been dismissed. Plaintiff would state that its representative, Herbert Berryhill, informed previous counsel in May, 1982, that he did not want anything to happen which would jeopardize the adversary proceeding against the Bank of Hazlehurst.

V.

Plaintiff would further show that at the time it was required

that a more definite and certain statement be made, per this Court's Order, Plaintiff had been removed from the Byram store effective March 24, 1982, and even if Plaintiff had known of the requirement of the Order of this Court, it would have been impossible, without the cooperation of the Trustee in Bankruptcy, Robert Murphy, and others, for the Plaintiff to have acquired the records necessary.

VI.

Rule 60(b) grants unto this Court the authority to examine previous Orders, and especially an Order of Dismissal with prejudice, to see if the interest of justice would be served to reopen a case under the proper circumstances. Plaintiff most respectfully requests that the inadvertence and mistake of its previous counsel in failing to inform the Plaintiff herein of the previous Orders, Motions, and hearings, are an inadvertence of the nature in line with the spirit of Rule 60(b), which should not be attributed to the Plaintiff, and that this Court should grant unto the Plaintiff herein additional time to comply with its Order to make a more definite statement. Further, this Court, in reopening this matter, should order the Trustee in Bankruptcy to make available all necessary records so that this Plaintiff may respond properly.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this matter be heard and that upon a full hearing hereof that the previous Order of Dismissal with prejudice be set aside and that this adversary proceeding be reinstated, allowing Plaintiff sufficient time to comply with the previous Order of this Court requiring that it make a more definite and certain statement.

Respectfully submitted,

LITTLE DIXIE SUPERMARKETS, INC.

BY: _____
ITS ATTORNEYS

8 4 0 4 0 1 4 5 0 5 6 84

CERTIFICATE

I, William B. Kirksey, do hereby certify that I have this date furnished a true and correct copy of the above and foregoing Motion to Set Aside Order of Dismissal to the Honorable Will Henley, Henley, Lotterhos & Henley, 990 Deposit Guaranty Plaza, P. O. Box 326, Jackson, Mississippi 39205.

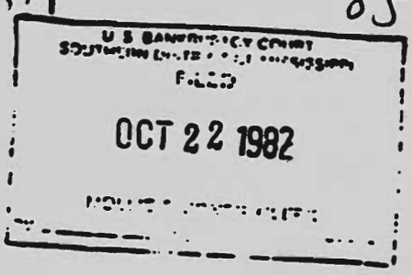
This the 21 day of October, 1982.

WILLIAM B. KIRKSEY

BINDER, KIRKSEY & DeLAUGHTER
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

D-2

85



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974JC

Debtor,

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff ADVERSARY NO. 920091JC

VS.

BANK OF HAZLEHURST

DEFENDANT

APPEARANCES:

FOR PLAINTIFF, LITTLE DIXIE SUPERMARKETS, INC.:

Hon. Russell Moore
P. O. Box 171
Jackson, Mississippi 39205

Hon. Harold J. Barkley, Jr.
P. O. Box 1482
Jackson, Mississippi 39205

FOR DEFENDANT, BANK OF HAZLEHURST:

Hon. Brand Henley
P. O. Box 326
Jackson, Mississippi 39205

Hon. Will S. Henley, II
P. O. Box 326
Jackson, Mississippi 39205

* * * * * * * * * * * * * * * *

BE IT REMEMBERED that on June 22, 1982, Honorable Russell Moore made the following statement pertaining to the above-styled and numbered adversary proceeding:

* * * * * * * * * * * * * * * *

22nd Oct. 82

Willie C. Jones, Clerk, U.S. Bankruptcy Court

By: D.C. Deputy, D. C.

BY RUSSELL MOORE:

Let the record show my name is Russell Moore. Harold Barkley is present and earlier on this date, Mr. Herbert Berryhill had appeared representing Little Dixie Supermarkets, Inc., and it was discussed with him the proposed Order of Dismissal in the suit styled, Little Dixie Supermarkets, Inc. vs. Bank of Hazlehurst, and the fact that several requests had been made by both Ron Smith, one of his other attorneys, by myself, and by Harold Barkley for certain records which were or had been kept by Little Dixie Supermarkets, Inc., and that on one occasion, Harold Barkley and Bob Taylor went to the place of business at Byram in search of the records and found a part thereof.

That a concerted effort was made by the attorneys in order to secure the records. However, the parties Plaintiff or representatives of Little Dixie Supermarkets, Inc. failed to do the same in order that the previous order of the Court could be complied with ordering an amendment and production of certain documents.

Let the record further show that there is no objection to the Order of Dismissal proposed by the Defendant in this case.

BY BRAND HENLEY:

We would like to show that Brand Henley and Will Henley were present at this statement.

The foregoing is a true and correct transcript of a tape recording made by me on June 22, 1982.

Mitzie C. Nations

Mitzie C. Nations

8 4 0 4 0 1 4 5 0 5 3 87

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff ADVERSARY NO. 820091 JC

VS.

BANK OF HAZLEHURST

Defendant

O R D E R

THIS MATTER having come on for hearing on November 23, 1982, on plaintiff's Motion to Set Aside Order of Dismissal entered on June 23, 1982, and the Court having considered the pleadings, testimony, exhibits and other evidence, hereby finds and orders that plaintiff's Motion to Set Aside Order of Dismissal is not well taken and should be denied.

WHEREFORE, IT IS HEREBY ORDERED that the plaintiff's Motion to Set Aside Order of Dismissal is not well taken and is hereby denied.

ORDERED this the 24 day of November, 1982.

UNITED STATES BANKRUPTCY JUDGE

ORIGINAL

88.

IN THE BANKRUPTCY COURT
OF THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

IN THE MATTER OF:

LITTLE DIXIE SUPERMARKETS, INC.- NO. 8101974JC
Debtor

LITTLE DIXIE SUPERMARKETS, INC.
Plaintiff

vs ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST
Defendant

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 09 1982
WILLIE C JONES, CLERK
BY _____ DEP

MOTION TO SET ASIDE ORDER OF DISMISSAL

BEFORE: HONORABLE BARNEY EATON

Taken on Tuesday, November 23, 1982, at 1:45 p.m., Deposit Guaranty Building, Jackson, Mississippi

APPEARANCES:

WILLIAM B. KIRKSEY, ESQ.
511 East Pearl Street
Jackson, Mississippi 39205
ATTORNEY FOR THE PLAINTIFF

BRAND H. HENLEY, JR., ESQ.
WILLIAM S. HENLEY, II, ESQ.
Henley, Lotterhos & Henley
990 Deposit Guaranty Plaza
Jackson, Mississippi 39205
ATTORNEYS FOR THE DEFENDANT

REPORTED BY:

CYNTHIA ROGERS, CSR, RPR
Notary Public

8401450564

I-N-D-E-X

	Page
LOWERY BERRYHILL	
Direct by Mr. Kirksey.....	3
Cross by Mr. Henley.....	9
Redirect by Mr. Kirksey.....	11
RUSSELL MOORE	
Direct by Mr. Henley.....	14
Cross by Mr. Kirksey.....	25
Redirect by Mr. Henley.....	28
ROBERT MURPHREE	
Direct by Mr. Henley.....	29
Cross by Mr. Kirksey.....	34
HAROLD J. BARKLEY	
Direct by Mr. Henley.....	43
HERBERT BERRYHILL	
Direct by Mr. Kirksey.....	52
Plaintiff Rests.....	57
Defendant Rests.....	57

E-X-H-I-B-I-T-S

	Marked	Received
Exhibit D1, Pleadings.....	12	15
Exhibit D2, June 22 Statement...	24	24

8401045055

THE COURT:

On June 23, 1982 the Bankruptcy Court for the Southern District of Mississippi entered an order in Little Dixie Supermarkets, Inc. vs. The Bank of Hazelhurst which was an order of dismissal. Today the Court has scheduled a motion to set aside that order of dismissal. Is that correct?

MR. KIRKSEY:

Yes, sir, Your Honor.

THE COURT:

Are you ready?

MR. KIRKSEY:

Yes, sir, Your Honor, I am ready. We would ask the rule be invoked, Your Honor.

THE COURT:

All right.

MR. KIRKSEY:

We call Lowery Berryhill, Your Honor.

LOWERY BERRYHILL

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Berryhill, would you state your

8401456

name to the Court, please?

A. Herbert Lowery Berryhill.

Q. And, Mr. Berryhill, in February of 198 were you an officer of Little Dixie Supermarkets, Inc.?

A. Yes, sir.

Q. What capacity were you serving in in February of '82?

A. Secretary.

Q. All right. Now, on or about February 17, 1982 did you, as an officer of Little Dixie, authorize an adversary proceeding be filed against the Bank of Hazelhurst?

A. Yes, sir.

Q. Would you tell this Court who represented you at the time of the filing of this action?

A. Ron Smith and Harold Barkley.

Q. Now, after the filing of this adversary proceeding, would you tell this Court whether or not you were ever contacted by Ron Smith or Harold Barkley that you were required by this Court to make a more definite statement concerning the facts and allegations of that complaint?

A. That I was required?

8400145057

Q. Yes.

A. No, sir.

Q. In--on April the 23rd of 1982 what attorney represented you?

A. In April?

Q. Yes.

A. Russell Moore.

Q. Do you remember when Harold Barkley and Ron Smith withdrew from this case or whether or not you relieved them of their job?

A. In March, for Mr. Barkley and Mr. Smith left, I think, in March or April.

Q. All right. When you say he left, Ron Smith just left the state; did he not?

A. I believe so.

Q. Okay. Now, after April 23 of 1982 would you tell this Court whether Russell Moore contacted you concerning the fact that you were required by this Court to make certain records available concerning your allegations of the adversary proceeding?

A. Not that I was required, no, sir.

Q. Did he ask you to produce them?

A. He asked if we could meet at the store at Byram to go over the records and this was in

8403014508

May, I believe.

Q. Okay. And would you tell this Court whether, in fact, you met in May at the store in Byram?

A. Not with Mr. Moore.

Q. Would you tell the Court who you met with?

A. With Mr. Taylor and Mr. Barkley.

Q. All right. Now, when you say Mr. Taylor, do you mean Robert Taylor?

A. Yes, sir.

Q. And when y'all met at the store in May did you go in the store?

A. They were already in the store and I went in the store later.

Q. All right. And why were you in the store, if you know?

A. To go over the records.

Q. All right. And when you were once in the store were the records there?

A. Yes, sir.

Q. All right.

A. Part of them were.

Q. Okay. Where were the rest of the records if you know?

8404145069

A. I don't know.

Q. Would you tell the Court when the trustee took over the operation of that store, if you remember?

A. In March.

Q. All right. And do you--at the time you vacated the premises or were removed from the premises, were all the records there?

A. Yes, sir.

Q. So when you were there in May, certain records that you needed were not available; is that correct?

A. Yes, sir.

Q. Now, tell this Court whether or not you were aware that the Bank of Hazelhurst ever filed a motion to dismiss the complaint that y'all had filed against the bank?

A. No.

Q. Who was representing you on or about June the 15th, 1982?

A. I would say Russell Moore.

Q. All right. And did you ever meet with Russell Moore and discuss with him this adversary proceeding?

A. No, sir.

8400145070

Q. Did he ever tell you or inform you that there was to be a hearing on June 21, 1982 to dismiss this adversary proceeding?

A. No.

Q. When did you first become aware of the fact that this Court had entered its order dismissing the adversary proceeding?

A. The first thing we knew anything about it we read it in the paper.

Q. All right. And when did you find out for sure that the Court had dismissed it?

A. I asked your firm to research it.

Q. All right. And do you remember what month that was, Mr. Berryhill?

A. I believe in August.

Q. All right. Now, at any time when you met with Bob Taylor or any of these other lawyers, did they ever emphasize to you the necessity of coming up with additional documents, why they were needed?

A. The only thing they ever told me, we were going to need to produce some things before the hearing.

Q. Did they ever tell you there was a dead-line, a ten-day deadline on production of these

documents?

A. No.

Q. Were you ever present when there was a discussion with Russell concerning the fact that the Little Dixie Supermarkets wanted to make sure that the adversary proceeding against the Bank of Hazelhurst was properly preserved?

A. Yes.

Q. And would you tell the Court where the meeting took place if you know?

A. Here in this building.

Q. All right. And who made that statement to Mr. Moore?

A. My father.

Q. All right. Mr. Berryhill, would you state to this Court whether or not you feel that you have been treated fairly as far as this adversary proceeding is concerned?

A. No.

MR. KIRKSEY:

I don't think I have anything further, Your Honor.

CROSS-EXAMINATION

BY MR. HENLEY:

Q. Mr. Berryhill, would you give me a very

8401450972

brief sketch of your businesses? What you are running as Little Dixie Supermarkets?

A. Four grocery stores.

Q. Four grocery stores?

A. Yes, sir.

Q. Now, Little Dixie Supermarkets, Inc. had more than one officer. Who were the other officers?

A. My brother Cliff was president. My father Herbert was vice president.

Q. Were these two gentlemen also involved in the decision making processes concerning the corporation and the corporation's business?

A. Yes.

Q. Who is your father that you referred to earlier?

A. Herbert.

Q. Herbert Berryhill?

A. Yes, sir.

Q. And was he also one of the officers who had authority to make decisions concerning Little Dixie Supermarkets, Inc.?

A. Yes.

Q. Was Mr. Barkley rehired after he was released from employment in March of 1982?

8404140573

A. No, he was not.

Q. So he didn't have any involvement with this with Little Dixie Supermarkets, Inc. after March of 1982?

A. No.

Q. Do you know what firm Robert Taylor works for?

A. Moore, Royals & Taylor.

Q. And do you know if he was employed by that firm during May and June of 1982?

A. To my knowledge. That was the first time I had met him was in May.

Q. When did you say that you read in the paper that the adversary proceeding had been dismissed for prejudice?

A. I believe the later part of July, first part of August.

MR. HENLEY:

That's all.

REDIRECT EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Berryhill, even though you are the secretary of Little Dixie Supermarkets, who was the officer primarily charged with the daily operation of Little Dixie Supermarkets?

8400145074

A. I was.

Q. Thank you.

MR. KIRKSEY:

Nothing further, Your Honor.

THE COURT:

That's all.

MR. KIRKSEY:

The plaintiff rests, Your Honor.

MR. HENLEY:

Your Honor, we move for a directed verdict on the motion on the fact that it has bee totally unsupported by the evidence presented tha there was any malfeasance or misconduct on the part of the plaintiff's attorneys.

THE COURT:

Would you like to say something?

MR. KIRKSEY:

Yes, sir, Your Honor. The testimony a it stands right now, Your Honor, stands unrefuted that my client was ever informed of the necessity of the production of these documents or what they were for. The testimony is clear that there was records that weren't available. It is further from the testimony which stands uncontradicted at the present time that they were never informed of

8 4 0 4 0 1 4 5 0 7 5

the motion to dismiss or of the hearing on June 23, 1982. And someone, Your Honor, whether it w Mr. Barkley, Mr. Moore or Mr. Smith or whoever represented them at the time had a duty to inform the client as to what was going on.

THE COURT:

Well, I know they are both here. Are they available for testimony?

MR. HENLEY:

Yes, sir. We will be happy to call them, Your Honor.

THE COURT:

All right.

MR. HENLEY:

Your Honor, we will call Russell Moore

THE COURT:

All right.

MR. HENLEY:

Your Honor, while waiting, we would as that this be marked as an exhibit for reference purposes. This is just copies of the pleadings i the file so we can refer to them readily and I would like to be able to refer to them by exhibit.

(Exhibit D1 was marked for identification.)

THE COURT:

COMPUTER-AIDED TRANSCRIPTION BY
CERTI-COMP COURT REPORTERS, INC. (601) 355-2007

All right.

RUSSELL MOORE

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENLEY:

Q. Would you state your name, please?

A. Russell Moore.

Q. Can you briefly describe for me your address and occupation?

A. 416 East Amite, Jackson, Mississippi, Attorney at Law.

Q. And what is your involvement with the case at bar?

A. Sometime last spring, I believe it was in March or April, Mr. Herbert Berryhill, Lowery Berryhill, his brother and Ron Little came to my office and asked me if I would assist in the case.

Q. In this particular case?

A. Yes, sir.

Q. Can you tell me--this case is styled Little Dixie Supermarkets, Inc. vs. The Bank of Hazelhurst in an adversary proceeding. Do you know who the officers are of Little Dixie Supermarkets, Inc. and who they were at that time?

8401450277

A. As I understood it, it was Lowery Berryhill, Cliff Berryhill and Herbert Berryhill.

Q. Can you tell me the relationship of these parties?

A. Mr. Herbert Berryhill is the father and the other two are the sons.

Q. Can you tell me who had authority to act on behalf of the corporation as far as making decisions concerning the litigation and the running of the business of Little Dixie Supermarkets, Inc.?

A. Basically, in all of my dealings they primarily were with Mr. Herbert Berryhill. I have had conferences with him when Lowery was not present. I have had him call for Lowery. I really cannot state which of them made the final decision in any instance. I had assumed that basically they all kind of worked together.

Q. Let me hand you what's been marked as Exhibit D1. It hasn't been entered into evidence yet, and just ask if you would generally describe that exhibit?

A. Well, the first instrument, of course, is the original complaint against the Bank of Hazelhurst by Little Dixie Supermarkets demanding

8400145078

that the sum of $93,000 be credited to their account. Then there were interrogatories propounded by the Bank of Hazelhurst on March the 11th, 1982 and I became one of the attorneys subsequent to that because my first appearance was in this courtroom where the defendants had made some type motion in addition to this. And I requested of you or your brother an additional ten days so I could try and get the information up because I had just--

Q. Was that meeting in March of 1982?

A. I think it was, yes, sir. Do you want a description of it otherwise?

Q. Well, the exhibit is copies of the pleadings in the file.

A. That is correct, yes.

Q. We would offer this to be introduced into evidence.

THE COURT:

All right.

MR. KIRKSEY:

No objection, Your Honor.

(Exhibit D1 was received in evidence.)

MR. HENLEY:

Q. Do you know who the owners of Little

Dixie Supermarkets, Inc. were?

A. The owners? I thought I had said earlier, Herbert Berryhill, Lowery Berryhill.

Q. They are the officers and also the owners?

A. Yes.

Q. I would like you to refer to the request for production of documents filed March 11 and ask you, if you would, to tell me what response was made to that request for production of documents?

A. I was unable to comply with the request even though I made several demands upon both Herbert and Lowery Berryhill.

Q. What kind of demands?

A. Telling them what we needed and, basically, the consequences if we didn't supply it. And Lowery primarily was involved in that and he advised me that he could not find the records. And one day--I have forgotten when it was--Harold Barkley and Bob Taylor, my associates, went down to the store and they did find some type printout or partial records which were supplied to you but I don't know how much information that would be.

Q. Let me ask you, of the documents

produced do you know of any bank accounts that were produced?

A. They were not.

Q. Any general ledgers produced?

A. No, sir.

Q. Any cash receipt journals produced?

A. No, sir.

Q. Any cash disbursement journals produced?

A. No, sir.

Q. Any canceled checks produced?

A. No, sir.

Q. Were there any deposits produced besides the one attached to the complaint and amendment complaint, the alleged--

A. I have forgotten that exhibit. There was one allegedly showing the 93,000 and another one showing some other.

Q. But just one other besides that?

A. That's correct.

Q. Were there any cash register tapes produced that you know of?

A. No, sir.

Q. Do you know if any documents were produced concerning the preparation of the $93,000 deposit?

A. No, sir. And I made several requests of Lowery for some information about that and the best I could get was maybe $60,000 in cash and the rest in checks but no itemization on those.

Q. Would it be fair to say that for a business the size of the grocery stores run by Little Dixie Supermarkets, Inc. that almost no records were produced?

A. Not for me in order to answer this motion to produce.

Q. Would you refer to the motion to compel in Exhibit D1 that was filed April 15, 1982 and could you describe for me your response to the motion to compel discovery?

A. You know, I must have entered this case about April the 2nd because that was the day that I first appeared and asked you for additional time and there is an order here, an agreed order for more definite--for a continuance and you granted me more time so that I could try and get the instruments up.

Q. Yes, sir. What action was taken concerning after the motion to compel was heard and the order entered concerning the motion to compel? I believe that order was entered on April

8400145232

23, 1982.

A. Okay. When the motion to compel discovery was filed, I made additional efforts to see if we could find some or get some records.

Q. Did you--

A. I couldn't.

Q. Did you advise the individual Berryhill owners of the consequences of failing to produce the documents as required by the order?

A. Perhaps I did not at that time but throughout, generally, I would advise that we have got to have these otherwise this case will be dismissed.

Q. Yes, sir. Later--

A. And I would say I said that both to Herbert and to Lowery.

Q. Later a motion to dismiss was filed according to W. F. Winter on June 15, 1982. Can you tell me what response you made concerning that motion?

A. I did not make a written answer to the motion to dismiss for the simple reason I had no defense to it.

Q. Yes, sir.

A. I--you and your law firm had given me

3404145033

time. I had made requests, even had someone go down and try to find them themselves and so, therefore, I did not file a response. I had nothing to respond with.

Q. In Exhibit D1 there is a copy of the order of dismissal that's the subject matter of this motion which was entered on June 23, 1982. Can you tell me what actions you took immediately prior to the entering of this order of dismissal concerning notice to the individual owners of Little Dixie Supermarkets, Inc.?

A. As I recall, when the motion to dismiss was filed, I attempted to get in touch with Herbert Berryhill. He had always been my contact, more or less, and life long friend. He was in the bean fields I believe at that time up in Flora or some area. But any rate, on the 21st when it was set, I requested of you a couple of days or a day or two so that I could be sure that Mr. Berryhill would be advised of the status of the matter.

Q. Yes, sir.

A. And where we stood and so we did pass it over for a day or two. Mr. Berryhill came in. I talked to him then, came up here, talked to him in the little office right outside here, advised

8401450334

him that--

Q. What day was that?

A. The day the order was--I think the day the order was entered.

Q. All right. June the 22nd?

A. It was the day that I--when did we make a record?

Q. We made a record on the 22nd.

A. All right. On that day, yes, on that day. I guess you submitted your order the next day. I'm sorry. Right. But we were up here with Mr. Berryhill. Harold Barkley and I talked to Mr. Berryhill in the little room out here and explained to him that we were unable to get any records. Now, Lowery had on two occasions told me that he believed that the trustee, Robert Murphree, had them. I requested of Robert a couple of times did he have the records and he stated that he did not. And I am sure he will testify.

Q. Is there any question in your mind that at that June the 22nd, 1982 meeting with Herbert Berryhill that he understood that this case would be dismissed for failure to produce some records unless some action was taken?

A. I have no question in my mind that we

explained to him that the case was going to be dismissed because we had not been able to produce the records, that we had had a continuance before and went on further to show that if it were even pursued it would go to the other people's benefit and not to his since it was really the company in bankruptcy's lawsuit.

Q. Yes, sir.

A. And--well, you know, I just wouldn't let a case be dismissed without telling my client, and both Harold Barkley and I explained it to him.

Q. In the motion to vacate this order and to set aside the order of dismissal it's in there that previous counsel, meaning Russell D. Moore, had never informed plaintiff that it was necessary to make a more definite certain statement regarding the pleadings, that there had been a motion filed to dismiss, that there would be a hearing on said motion and that the adversary proceeding had, in fact, been dismissed. Is that true?

A. That's not true. When the--you originally file these motions to the interrogatories and the request for production of documents. Ron Smith was the primary attorney and

I think Harold Barkley came into the case at that time or about that time. And then subsequent to then, I think on about April 2, is when I came into it and came up and asked you to give me time.

(Exhibit D2 was marked for identification.)

Q. I want to ask you to refer on this document and, if you would, describe for me what it is?

A. An order to--in order that the record might have reflected what occurred I dictated a statement on June 22 to the court reporter setting forth that Harold Barkley and I represented Little Dixie, that we had discussed this matter, I think, and had--it recites what I basically testified to here today and the fact that I could not produce and therefore I had really no way to object to the entering of the order.

MR. HENLEY:

We would like to ask this be made an exhibit.

MR. KIRKSEY:

No objection, Your Honor.

THE COURT:

All right.

(Exhibit D2 was received in evidence.)

MR. HENLEY:

No further questions, Your Honor.

THE COURT:

All right.

MR. KIRKSEY:

May I proceed, Your Honor?

THE COURT:

Yes.

CROSS-EXAMINATION

BY MR. KIRKSEY:

Q. Russell, Brand has questioned you concerning the request for the production of documents, journal ledgers, cash journals, canceled checks, deposit slips, cash register tapes, etc. Now, when you would discuss these things with Lowery or Herbert Berryhill, what would their normal response be?

A. Well, this--I think I discussed it before the trustee took over and told them what we needed.

Q. All right.

A. And I did not get them and then the trustee took over. And after that as I stated, Lowery on one or two, two maybe three occasions, said--made the allegation that the trustee had

them.

Q. All right. Now--

A. And I requested of Robert any records of anything that he might have.

Q. All right. When Robert Taylor went down there with Harold Barkley, and Robert being your associate, did he come back and report to you what he found down there? Were all the records there? Do you know, Russell?

A. He brought back what he could find and that was the tape, printout.

Q. Okay. All right. Now, did--when you would talk to Bob, Robert Murphree, about the record situation, did the trustee have any of the records to your knowledge?

A. To my knowledge he did not and he stated to me that he did not.

Q. All right.

A. I intended to persue the case. I had a handwriting analysis made of the slips and all that sort of stuff but without any records, you know, there is nothing I can do.

Q. Yes, sir. Russell, on I think Exhibit D2 if I am not mistaken, states that Mr. Herbert Berryhill had appeared representing Little Dixie

Supermarkets, Inc. and it was discussed with him the proposed order of dismissal. Now, was that on June 22, 1982?

A. That was the day that this record was made, that's correct.

Q. And where did you speak with Mr. Berryhill?

A. In the anteroom right outside the courtroom.

Q. And would you tell me the general tenor of that conversation?

A. I told him that we had been unable to produce any records, that I had gotten continuances and we were just absolutely up to it and there was nothing in my opinion that we could do at that time since it had gone on and on and on. Harold, I think, brought up the fact that the suit was on behalf of Little Dixie and that Lowery or Herbert or his brother would not personally benefit even if there were a recovery. And that, basically, was it and that the case would be dismissed.

Q. What was Mr. Berryhill's response to you at that time?

A. Basically, all right. He did not raise

8404045000

an objection of any type and I think he was not present when this was dictated because he had to go--some way or another the court was not in session or something--but I wanted to be certain that a record was made of what had transpired.

MR. KIRKSEY:

Yes, I have nothing further, Your Honor.

MR. HENLEY:

Judge, I have just got one more question.

REDIRECT EXAMINATION

BY MR. HENLEY:

Q. The notice of this hearing on June 21 was first scheduled for June the 21st. Do you know why it was on the 22nd that we actually had Mr. Berryhill?

A. At my request to be certain that one of the--Mr. Berryhill or someone was here representing, you know--

Q. So we met before the Court on the 21st of June 1982 and then continued it because Mr. Berryhill wasn't here?

A. Right. He was out in the bean fields, I think.

MR. HENLEY:

8401450021

Yes. That's all, Your Honor, of this witness.

THE COURT:

Thank you

MR. HENLEY:

We would like to call Robert Murphree.

ROBERT MURPHREE

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENLEY:

Q. Would you state your name and address, please?

A. Robert Murphree, Post Office Box 370, Jackson, Mississippi, 39205.

Q. Okay. And you are an attorney?

A. Yes.

Q. Can you tell me what your connection has been with Little Dixie Supermarkets, Inc. during the last seven or eight months?

A. Well, Mr. Henley, my first connection would have been my appointment as trustee of the debtor and I believe the record would reflect that was in late March or early April of this year. After I was appointed the trustee, I assumed the

9410145022

operation of the Byram store, which I believe was the only store operating at that time. I operated it as trustee for approximately a month and at that time it was impractical to continue the operation so we closed the store. Since that time, my connection with the case has really been limited to those ordinary duties of a trustee. Now, I don't think anyone would pretend that this has been a normal case. So my duties as trustee have had some unusual characteristics. For example, I never operated a grocery store before. But to answer your question, I have just carried out my trustee's duties.

Q. What has been your connection with the case at bar?

A. The adversary proceeding that's before the Court?

Q. Yes, sir.

A. Well, I think it was filed prior to the time I became the trustee. I know I didn't file it and I know the first time I was acquainted with it it was already filed. My first connection with it was Mr. Smith, Mr. Ron Smith, who I believe was the debtor's attorney, telling me that, in fact, such a case was filed. I asked to see the

8400145023

documents involved in the case from Mr. Smith and I didn't get a whole lot of help from that source. So I came down and looked at the adversary proceeding file.

I saw that it was filed in the name of Little Dixie Supermarkets, Inc. as the plaintiff and I told Mr. Smith that the cause of action belonged to me. As you can imagine since the cause of action alleged some 90-something thousand dollars of assets belonging to the debtor was missing, I had a fairly active interest in the case. Any trustee who has an opportunity to recover $90,000 has his interest perked up. I asked Mr. Smith what the allegations of this complaint were based on. He told me about the missing deposit. I asked him to bring me the documents, anything that he had to support the allegations and he didn't.

Q. Were you familiar with the order of dismissal with prejudice toward this adversary proceeding was dismissed in June of 1982?

A. I don't think I was there at the time. I will say this, that because of the fact that Mr. Smith and his successors could never convince me as trustee that a viable cause of action existed

8401430274

and could never document it, I told them that, although it was my cause of action, that I didn't feel like it had any merit, that I would allow them to continue to maintain it if they wanted to. The code has a provision that says a trustee is not required to carry on litigation he doesn't think is meritorious that he can abandon it back to the debtor. And I told them I wasn't going to prosecute the action and, if it had to be prosecuted, that they had to prosecute it. And actually, Mr. Henley, I told Mr. Smith that he would need to file an amended complaint to get the documents out of the name of the debtor because the debtor was going to abandon the cause of action back to the individuals who--if they wanted to maintain it.

Q. The motion to dismiss or to vacate the order of dismissal which we are concerned with here today suggests that one of the reasons that the documents couldn't be produced to satisfy the defendant's request for production of documents was that they were in your possession, you being the trustee; is that true?

A. No, sir. Actually, the subject of documents is a pretty sore one with me. I don't

have any documents belonging to the debtor and really don't know where they are. I do know this. For example, we are trying to prepare W2s for the employees and we don't have their Social Securities or addresses. Now, I do know this. One of the attorneys for the debtor called me and asked me did I have anything and I told him, no, I did not. And, specifically, I certainly had nothing to do with this lawsuit and I asked him--he told me that their position was the documents were in the store at the time I took over. And I said, "Well, if that's the case, they are still there." And I tendered him the key to go out there and get them and he came and got the key and, really, I don't think he ever brought it back. And that's a whole story in itself but that's what happened.

Q. To your knowledge did they ever turn over any bank records to you?

A. No, sir.

Q. Any general ledgers, cash receipt ledgers?

A. No, sir. And my file is full of letters to the debtor's attorneys, actually Mr. Smith I think, asking him to do so. There were--ar who is familiar with the history of this case

knows that there were a number of allegations of mismanagement on the part of the debtor corporation and that all the creditors had a number of questions about where the assets of the corporation were. And, of course, once I was appointed, all of their questions were directed to me and I felt very acutely that I needed to have some information about the debtor's operations. I never could get any.

MR. HENLEY:

Thank you.

CROSS-EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Murphree, what date did you as trustee remove the officers of Little Dixie Supermarket from possession of the Byram store?

A. Bill, the file would show the actual date but, if I remember correctly, it would have been March 25, March 26.

Q. Sometime in later March of '82?

A. The reason I remember is because--if I remember correctly, I operated the store from March 25 until April 25. That sounds right.

Q. Now, on the date that you became, in effect, the operating trustee of the Byram store,

did anyone either yourself or someone under your direction, go down and inventory to see what boo and records were there on that date?

A. Well, I--now, as far as inventory, no I think a retail grocery inventory service either then or shortly thereafter performed an actual count of the inventory of the store.

Q. I am not talking about the food stuff that sort of thing. What I am talking about is the inventory of the books and records.

A. Well, now, I myself physically looked and there were very few records. If you are familiar with the physical layout of the store--

Q. Oh, yes.

A. --you will know that there is an up-raised office portion toward the front of the store that has a safe in it.

Q. Correct.

A. And that there is a stockroom to the left of the store running along the north side o the store as you go in. And the only two places that records could have been were in either the little upraised office at the front or the stock room on the side. Now, let me say this. We wen around and around the bush on this record questi

I would say, "Where are the records?" And the answer I would get would be, "You have them. They are in the store."

Now, there were three or four file cabinets in the stockroom and I looked through those file cabinets at length, and for one thing they were locked. And, of course, the debtor said I had the keys and I don't ever recall getting them but, anyhow, I got them open. I forced them open. I think that's--that's right. We had to actually physically force those file cabinets open because all of the records I was looking for were said to be in the store. Well, they weren't in the upraised office portion so they had to be in the file cabinets if they were there.

So I forced the file cabinets open and all they had--all the file cabinets had in them were old invoices, paid invoices I gathered, from vendors. There were the payroll account bank statements which, of course, I wasn't too interested in and I left those there. I think I took one of them to get the account number to ask the bank was there any money in the account. There were some forms. There were a lot of order forms. There were a lot of unused bank deposit

8400142329

forms and there were a lot of old daily reports where they would--register receipt reports, but those were the only records there.

Q. At the time that you took over, you found no cash receipt journals?

A. No, sir.

Q. No cash disbursement journals?

A. No, sir. Let me clarify this. There was no--there was no document or there was no book or journal or anything that said on the front of it cash disbursement journal. Now, the debtor's affairs were in a jumble. There was no question about it and there were some loose-leaf binders in the store itself in the upraised office portion. But I could never tell what they were and I don't think that's what they were. Now, if the debtor had some unusual system for keeping track of those items that nobody could look at it and tell that's what it was, there may have been. But there was nothing that I could tell and, believe me, I had a very active interest in it. And if you are familiar with what a trustee does, you will have to realize that nobody tells him there is a chance to get $90,000 and a trustee not display an active interest in it.

Q. Did you, Robert, when your interest got peaked in this 93,000, did you check with the accountant that the Court had previously appointed to see if he had any of these records by any chance?

A. I read the accountant's report and, no, I never asked him if he had any records. But you will have to remember there were--the debtor's attorneys were telling me that the records were in the store and certainly I had no way of knowing where the records were except for what the people who had possession of them would have mentioned to me. And they were the ones who said they were in the store.

Q. Did you ever think that what the debtor said in this case may have been, in fact, true, Mr. Murphree, that there was a viable claim here and someone maybe should have looked for the records?

A. Well, yes, sir, I did. I started--

Q. As trustee, did you ever--since it was your claim, did you ever actually take it upon yourself to try to find each and every one of these items so this claim could be pursued?

A. I certainly did. I did everything I

knew to do. I know I have alienated Mr. Ron Smith because I badgered him so much about it. That's the only person I knew to ask. He couldn't come up with the records. I looked through the building. They told me they were in the building and I was--I looked through the building. I turned it upside down.

Q. Did you, as trustee, on any occasion ever approach the Court in your capacity as trustee and inform the Court that if these records ever existed they no longer existed or could not be found?

A. No, I did not do that and I will tell you why because you are asking me if I have ever made a representation to the Court about the state of the debtor's records. No, I didn't and no I won't. The only thing I know about the debtor in his records is that everything I have ever asked for I have not received. And the only reason I have ever been given is that I already had them and I know I didn't. And I know I don't have that much of a law practice but I have enough to where I don't try to do things I don't need. And if you ask somebody for something and they won't give it to you and they keep telling you you have it and

you know you don't have it, what do you do?

Q. On the day that you took over as trustee, Robert, since I wasn't there--you know I wasn't involved in this case at that time--did yo yourself actually run the store for that month or did you have someone, another grocery firm or whatever help you run the store?

A. For the first week the people of Lewis Grocery Company actually provided the management.

Q. All right. Now, during that week that Lewis Grocery was there, do you know whether or not they possibly removed records from that store

A. I would have no way of knowing except for when I was there. I was there on a--I was there at least two or three times a day and was oftentimes there when we closed at night because physically transported the deposits to the bank and to my office to have them counted and deposited. And during the time I was there, they did not.

Q. Okay.

A. Now, of course, I would have no way of knowing what they did when I was not there.

Q. Of course.

A. However, if I am allowed to venture an

8401453

opinion, I obviously had a great deal of confidence in the people they proffered to me or I would not have used them. I am--as trustee I am a neutral party and I don't take sides in the controversy.

Q. Oh, I understand that and I didn't mean by any chance, Robert, to be implying that. I hope you didn't take it that way. What you are saying then is that you didn't have the records and the debtor says he didn't have the records so the records must have just disappeared if they ever existed in the first place?

A. Well, I don't know what happened. I do know this. The debtor's attorney came to me and said, "My client says you have the records." I told him he was perfectly free to go through every file I had but I didn't think he would find anything there that would satisfy him. He came back later and said, "Well, my client says the records are in the store." At that point I gave him the keys to the store. I didn't even go down there with him. I gave him the keys and never got them back, I don't think, but I gave them to him. And if they were in the store then--now, let me say this. As far as Lewis Grocery Company

8404045104

removing records, I just--I don't think it physically could have been possible because the day I took over we looked. I know I looked in th little store enclosure, the office, which is approximately as large, twice as large as the Judge's desk there and they were not in there. There were no records of the nature you described in that small enclosure and the only other record in the store were in the file cabinets which I have told you were locked. And, of course, we went round and round and round about who had the keys to the file cabinets and, when we couldn't get that resolved, I broke them open. Now, when broke the file cabinets open--

THE COURT:

I have heard enough to rule on this.

MR. KIRKSEY:

I have no further questions of this witness, Your Honor.

I do have, Your Honor--I do have a witness on the way that I would like for the Cou to be able to listen to possibly, Your Honor.

THE COURT:

All right. Do you want to take a recess?

MR. KIRKSEY:

Yes, sir. He should be here within three or four minutes I think, Judge.

THE COURT:

All right.

(Whereupon a recess was had.)

THE COURT:

I'm sorry we kept you Mr. Barkley. I thought we were through with the witnesses.

MR. KIRKSEY:

Your Honor, for the record since Mr. Barkley is returning as well as Mr. Moore, I would like the record to reflect that on behalf of myself and my client we do not require the other.

THE COURT:

All right.

MR. HENLEY:

Your Honor, the record can reflect the same from the attorneys for the defendant. We would not either.

HAROLD J. BARKLEY

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENLEY:

9404014506

Q. Mr. Barkley, will you state your name and address and occupation?

A. Harold J. Barkley, Jr., my address is 2320 Pebble Lane, Jackson, Mississippi. My offic address is 418 East Amite Street, Jackson, Mississippi. I am an attorney.

Q. Can you tell me what your involvement with the case at bar has been generally?

A. Little Dixie?

Q. Yes.

A. I started representing the debtors, Little Dixie, sometime in November or December, I believe, of 1981.

Q. Can you tell me during what period of time you represented them?

A. Yes, sir. I represented them up until sometime in January or February and I got fired one time. And I think I started back and I represented them sometime in March and they fired me again. And I got rehired back and represented them up to about June, I guess it was.

Q. So when we were discussing Little Dixi Supermarkets, who did you deal with?

A. With the Supermarkets?

Q. Little Dixie Supermarkets, Inc., who

8400145127

were you dealing with?

A. Most of my dealings were with Lowery Berryhill. Some of them were with Herbert Berryhill and another brother of Lowery named--you will have to help me on the name.

Q. Clifford?

A. Clifford, Cliff, right.

Q. And were these three officers of the corporation?

A. Yes, as far as I know. Now, I was associated in this case with another lawyer and I didn't have anything to do with the filing of this petition so you are asking me--I am assuming that's what they were. I don't really remember.

Q. But those were the three individuals that you dealt with?

A. Yes, sir.

Q. Were you familiar with the request for production of documents which the defendants filed in this case?

A. In which case now?

Q. On the adversary proceeding.

A. On the adversary proceedings of the Bank of Hazelhurst?

Q. Yes.

A. Yes, sir.

Q. I want to hand you what's been marked Exhibit D1 and these are copies of the pleadings in this case, the adversary proceeding, so that you can refer to them. If you would, refer to th request for the production of documents.

A. The production of documents?

Q. Yes, sir.

A. Okay. I may have passed it the first time. Let me see.

Q. It was filed on March 11. It would have been one of the first documents.

A. All right. The defendants first--no, that's the interrogatories. All right. I see it request for Bank of Hazelhurst for production of documents?

Q. Yes, sir. And you were familiar with this request for production of documents at the time it was filed back in March up until the time it was--the case was dismissed?

A. Are you Will or Brand? I can't ever get it straight.

Q. Brand.

A. Not at first I don't believe and let m tell you why I'm saying that. I am looking at

8400145109

your certificate over here. You only show that you mailed this to Ron Smith.

Q. Uh-huh.

A. Okay. I didn't get it at that particular time and I don't know when I first saw this, but I saw it at a time after Ron Smith had gotten it and started the answer to your interrogatories and the production of the documents.

Q. Okay. But you were involved with trying to answer that request for production of documents?

A. Yes, sir, at some point in time, right.

Q. I would like to ask you to refer to the motion to compel concerning that request for production of documents?

A. Motion for--

Q. No, motion to compel. It was filed on April the 15th.

A. April the 15th? All right.

Q. Would you describe for me what efforts you and Russell Moore made to comply with this motion to compel discovery concerning the production of documents?

A. Yes. And, again, I can't be certain

about the date. But sometime after this was fil
Bob Taylor from Russell's office and my office, t
went to the site of Little Dixie there in Byram,
Mississippi to look for the documents to comply
with the discovery request and met with Lowery
Berryhill and went through some filing cabinets
and didn't find the documents that we made
reference to.

Q. Okay. Were any other efforts made by
yourself personally to obtain these documents?

A. None other than requesting the people
to bring them in and for Ron Smith to get them.

Q. When you say requesting people, who ar
you talking about?

A. I am talking about Lowery Berryhill an
I believe there was another owner. At that time
Russell was involved in it and I was kind of
working through Russell. But you are asking me--
that's the only time I went to look for them,
right.

Q. I would like to ask you to refer to th
motion to dismiss filed by the defendant on June
15, 1982?

A. June 15th?

Q. Yes.

8400145111

A. Okay. I got it.

Q. And if you would also refer to the next document in Exhibit D1 which is the order of dismissal signed on June 23, 1982, and ask you to tell me what efforts were made by you and Mr. Moore to comply and satisfy the request for production of documents and to obtain the documents needed?

MR. KIRKSEY:

. Excuse me just a second, Your Honor. If you would, Mr. Berryhill, please step out for a second. I think in all fairness to the Court, Your Honor.

THE COURT:

All right.

A. The question again.

MR. HENLEY:

Q. Would you describe for me the efforts you and Mr. Moore made to obtain the necessary documents to continue this litigation and therefore to prevent the order of dismissal from being entered that was entered on June 23, 1982?

A. Well, number one, we attempted to get it through our clients and we also attempted to get it through their place of business and the

8404014511 2

records in Byram, Mississippi and that was throu
Ron Smith who was also working on it at the same
time and that was what we tried to obtain.

Q. Do you recall discussing the motion t
dismiss and the order of dismissal which was on
June 23 with Herbert Berryhill on June 22, 1982?

A. I am not certain about the date but I
remember discussing with him. Is that about the
same time the order was entered?

Q. Yes.

A. I do recall that Russell and myself a
I believe, you and your brother, one of your
brothers were present at the time if I am not
mistaken.

Q. Yes, sir. I would like to ask you to
refer to this document and, if you would, tell m
what it is?

A. This appears to be what Russell Moore
dictated into the record that day on June the 22

Q. Would you read it?

A. In whole?

Q. No, would you just read it to yoursel

A. I have read it.

Q. Okay. Is that exhibit a true and
correct statement of what happened? Is that

8 4 0 4 0 1 4 5 1 1 3

statement that was read into the record by Russell true and correct?

A. As far as I know, yes, sir.

Q. Okay. Would you describe for me in detail the conversation that was had with Herbert Berryhill that day on June 22, 1982 concerning the order of dismissal?

A. Yes, sir. To the best of my recollection Mr. Russell, he and I and Russell talked about it and this was after we were under the Court order to produce these documents and the dates and it had been continued once or twice. And I don't believe it was a formal order allowing the continuance because the attorneys had all agreed on it and we got down and we didn't have the records to produce and the question came down to--what it was in my opinion and Russell's was any money recovered would go to the estate and not to the Berryhills individually.

Q. And do you recall explaining to Herbert Berryhill that the order of dismissal would likely be entered if the documents weren't produced?

A. Very much so, yes, sir. Now, I say--I remember being present. I don't know whether Russell--I think Russell explained that to him. I

8400145114

remember it being explained to him.

MR. HENLEY:

That's all the questions I have.

MR. KIRKSEY:

Nothing of this witness, Your Honor.

THE COURT:

Thank you.

MR. KIRKSEY:

Your Honor, one short witness, Herbert Berryhill.

HERBERT BERRYHILL

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Berryhill, at the time the trustee in bankruptcy took over the operation of the Byram store, where were your records pertaining to that store?

A. Prior to that time?

Q. No, at the time.

A. At the time they had been moved into the store proper, to the storeroom.

Q. Did that include general ledgers, cash journals, cash disbursements?

8404145

A. Yes.

Q. Cash register receipts?

A. Yes.

Q. Do you know what happened to those records?

A. No, I do not.

Q. Mr. Berryhill, do you remember being in this courtroom on or about June 22, 1982?

A. I have never been in this courtroom, Mr. Kirksey.

Q. All right. Do you know the room that you were just in out here, the library type room? Were you ever in that room on or about June 22, 1982?

A. I was in that room on the day that it was converted to a seven. After that time we went around the hall and met with the man that was called the trustee, Robert Murphree. It was converted to a seven, I believe, that day.

Q. Okay. Do you remember or have you ever had an occasion to discuss with Russell Moore and/or Harold Barkley the dismissal of the adversary proceeding that was pending against the Bank of Hazelhurst?

A. Russell told me briefly that morning.

That same day Harold Barkley was not employed by us.

Q. All right.

A. I would have had no reason to discuss it with Harold. Russell told me that they wanted to dismiss it, the Bank of Hazelhurst's attorneys wanted to dismiss it. I heard Harold Barkley tell Russell and the lawyers for the Bank of Hazelhurst, I believe it was the gentlemen to my left, that they would come back that afternoon and take care of it. I had told Russell that under no circumstances would I agree for it to be dismissed with prejudice.

Q. Did you ever discuss with Herbert Berryhill, I mean, with Russell Moore the fact that on that particular day there would be an order entered dismissing the adversary proceeding?

A. No.

Q. Was it your explicit instructions to Russell Moore as your attorney that you did not want the adversary proceeding dismissed under any circumstances if it could be avoided?

A. Yes, it was.

Q. Okay. At any time during the period that you were searching for these records that you

8400145117

needed to produce, did any of the lawyers that you had hired tell you how important it was to produce those documents?

A. No, not really, Bill. In fact, we had been instructed or ordered--I assume it was a Court order from Robert Murphree. He ordered us the day that he took over the store and he said he was a trustee for Lewis Grocery Company and he ordered me and my two sons not to go back into the store under any circumstances. Consequently we were never in the store again to my knowledge during this period of time.

Q. Did you ever tell your attorneys that you had no way to produce or get access to any records because the trustee had the company?

A. Right.

Q. When did you first learn that this matter had been dismissed, Mr. Berryhill?

A. When I was in Al Binder's office and he read the documents to me.

Q. All right. And have you met with Russell Moore since you found out that this was dismissed?

A. He was in Al's office and he told me at that time that--

MR. HENLEY:

Judge, we would object to what happened afterward as that would be irrelevant.

THE COURT:

Sustained.

MR. KIRKSEY:

Okay. So you can't say anything about that, Mr. Berryhill.

Q. Did you know on June 22, 1982 that this matter was going to be dismissed?

A. No.

Q. Did you talk to Russell Moore concerning the dismissal of this action?

A. No more than to tell him that I would not agree that it be dismissed.

Q. If he dismissed it or agreed to dismissal after your conversation with him, did he do it against your wishes as his client?

A. Yes.

MR. KIRKSEY:

Nothing further, Your Honor.

MR. HENLEY:

No questions, Your Honor.

THE COURT:

Thank you, Mr. Berryhill.

8404145119

MR. KIRKSEY:

That's all, Your Honor, that we have.

MR. HENLEY:

Your Honor, the defendant rests.

THE COURT:

I believe you earlier made a motion for a directed verdict, did you not?

MR. HENLEY:

Yes, sir.

THE COURT:

The Court has before it a motion to set aside an order of dismissal. I find that the motion is not well taken and shall be set aside.

MR. HENLEY:

Your Honor, did you say denied motion?

THE COURT:

Denied, motion denied.

(THE HEARING CONCLUDED AT 3:20 P.M.)

8400145120

CERTIFICATE OF COURT REPORTER

I, CYNTHIA ROGERS, Notary Public in and for the County of Hinds State of Mississippi, hereby certify that the foregoing pages, and including this page, contain a true and correct transcript of the testimony of the witnesses, as taken by me at the time and place heretofore stated, and later reduced to typewritten form by computer-aided transcription under my supervision to the best of my skill and ability.

I further certify that I am not in the employ of, or related to, any counsel or party in this matter, and have no interest, monetary or otherwise, in the final outcome of the proceeding.

Witness my signature and seal this the 6th of December 1982.

Cynthia Rogers

CYNTHIA ROGERS
My Commission expires June 16, 1986

8 4 0 4 0 1 4 5 1 2 2

BERRYHILL v. MISSISSIPPI PUBLISHING CORPORATION

8 4 0 4 0 1 4 5 1 2 3

147

County Employes May Be Stealing

By JOE STEBBINS
and
RONNI PATRIQUIN
Clarion-Ledger Staff Writer

Administrative level employes of Hinds County District Five have allegedly been appropriating county tax monies for personal use.

The county funds have allegedly been siphoned by officials taking advantage of the lack of an orderly county purchasing unit. Funds, and in some cases other services, have been procured by requesting private concerns to work on privately owned equipment and then billing the work as a county incurred debt.

As on April 11, 1974 when Tire Service, Inc., of Jackson was called by District Five to repair a tractor tire.

The tractor, privately owned by Herbert Berryhill, District Five road foreman, was in a soybean field owned by Berryhill.

Tire Service, Inc., repaired the tire, replaced the tube and billed the county for a total of $52.62.

Berryhill personally initialed the receipt that specifically names Hinds District Five as the purchaser.

On April 16, Bill Boykin, District Five employe, called in the purchase order number 50424 to Mrs. Charlene Moore in the county purchasing office for the tire repair.

However, since county officials learned of The Clarion-Ledger's investigation, attempts have been made to explain the action.

L.J. Beasley, District Five supervisor, claimed that the mistake was in the billing records of Tire Service, Inc., and said a correction was due

"Nobody in our organization knew about it and I'm sure nobody at the tire company knew of it or they would have let us know," Beasley said.

But no correction was found in the regular June billing by Tire Service, Inc. The correction was not made until July 3, when the county received a special billing correction from Tire Service Inc. — three days after The Clarion-Ledger

See STEALING, Pg. 14A

3 4 0 4 0 1 4 5 1 2 4

148

STEALING

Continued From Pg. 1A

obtained the information from county records.

Tire Service, Inc., refused to comment on the matter.

Several residents of District Five have also charged the county with illicit distribution of gravel — especially in election years.

Though county distribution of gravel to individuals for private driveway maintenance has been traditional, it is legally forbidden.

No county machinery, equipment, labor or materials can legally be used beyond the county's right-of-way.

According to a number of sources in District Five — sources who said they would be willing to testify before a jury but preferred to remain anonymous at this time, — only favored individuals can expect the county to provide gravel for their driveways at times other than election years.

The gravel dole allegedly increases as campaigns for reelection begin.

"They're sure starting to fix up some of these black's driveways now. You know they're after the black vote," one source said.

"They never give the colored folks anything until an election comes up," another source said.

Another incident allegedly involving misuse of county equipment was in conjunction with the construction of a deer camp near Eagle Lake in Warren County in 1967.

The deer camp was allegedly being constructed with county machinery and labor.

One source heard of the operation and went there, but the ferry operator refused to take him across and disavowed any knowledge of a county work force on the opposite bank.

However, two sources returned to the location the next day and saw county equipment in the area.

"We went out the next day after the ferry operator denied knowing anything, and a county bulldozer was sitting on this side waiting for the Lo-Boy (trailer) to take the dozer to Utica. When it got to Utica, it was torn down as if it was down there to be worked on," a source said.

Beasley emphatically denied that

"A piece of my equipment has never gone out of Hinds County. We have never taken ment than that.

"We don't even own a Lo-Boy we can move equipment on. That comes from the county engineer," Beasley said.

Allegedly, these clandestine county movements were covered by a lack of distinct markings on county equipment and the lack of a firm vacation policy for county employes.

To receive vacation time, a county employe has only to ask for it the day before he leaves. If his absence interferes with no planned county functions, the leave is granted directly by the district road foreman.

Therefore, a county employe may be working on a private project while drawing county pay. And if it is discovered, simple collusion between the foreman and the employe can provide an unimpeachable cover that the employe was on vacation.

Beasley acknowledges that such an arrangement is possible.

The question of nepotism also arises in District Five. The county employs not only Herbert Berryhill, but four other Berryhills plus a nephew by marriage.

Two of his sons work for the county and directly responsible to Herbert. His son's wife also works for the county and until recently, his other son's wife temporarily worked for the county.

Berryhill's nephew is also employed by the county this summer as driver of the mosquito control truck.

This practice is not illegal according to existing nepotism statutes. Legally, only the hiring authority per se (the supervisors in this case) is liable for nepotism.

Traditionally, the foreman accepts applications and makes a judgement, then the supervisor "rubber stamps" the foreman's decision, an attorney familiar with state supervisor's procedures said.

This raises the question as to whether a county foreman can ethically *hire* members of his family, a county political observer said.

"I believe I keep a little closer check on things down there. The boards of supervisors are wards of the legislature — completely, 100 per cent. As long as we don't violate the law, it is not unethical," Beasley said.

8 4 0 4 0 1 4 5 1 2 5

District 5 Road Foreman Replies To Paper Report

Herbert Berryhill, District Five road foreman, Thursday responded to charges made against him in an article published Wednesday in The Clarion-Ledger.

The article stated Berryhill had appropriated county tax money for his personal use, specifically in using county money to pay for repairs to a tractor owned by Berryhill.

Berryhill presented his version of the story, saying that "the following are the true facts. My brother, Allen Berryhill, was working my tractor in my soybean field when it developed a flat tire. Allen flagged down Bill Boykin, a personal friend, and asked him to send someone to fix the tire. Later that afternoon, the Tire Service driver brought a receipt for the tire to the county office where I was working. I was asked to initial the receipt since Mr. Boykin was not in the office. Mr. Boykin generally handles this type of receipt. At the time I initialed the receipt, I presumed it was a county-owned tire, as I had no knowledge whatsoever of the flat tire or the contact between my brother, Allen, and Mr. Boykin. On July 2, more than two months after the above facts occurred, I was first informed that there was some mistake. At this point, I made an investigation and determined the foregoing facts and learned that the Tire Service people had erroneously billed the county for my tire. They were immediately instructed to change this, and I paid for the tire repair."

The Clarion-Ledger article had stated that a correction in the billing records of Time Service, Inc., was made July 3, three days after Clarion-Ledger reporters obtained the information from county records.

Berryhill also said, "Statements in the article were also printed in regard to 'nepotism in District Five'. The article stated that two of my sons (I have only two sons) work for the county and are directly responsible to me. This is totally incorrect. My older son works for the Hinds County Permit Dept. and was hired by and is directly responsible to H.B. Braswell. He has never worked in

See DISTRICT, Pg. 8A

DISTRICT

Continued From Pg. 1A

my district or been responsible to me in his work for the county. My younger son was originally hired by the Engineering Dept. of the county at Raymond and later requested a transfer to District Five, where he is directly responsible to the construction foreman, Earl Boyd. My older son, Lowery Berryhill, who works for the Hinds County Permit Dept. as an inspector, advises me that the writers of the article in your paper actually came to his office where he was working and were advised by several people as to the type work he was doing, which obviously was not working for me or in District Five. Your reporters either knew the facts and failed to report accurately, or in attempt to print a 'sensational' type story, just ignored the facts."

The Clarion-Ledger's article stated that Berryhill's two sons, nephew and two daughters-in-law were working or had been working for the county, although this practice is not illegal according to existing nepotism statutes.

8 4 0 4 0 1 4 5 1 2 6

150

DEC 6 - 1974

WM. E. MILLER, McCOMB
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 33466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

DECLARATION

Comes the Plaintiff, Herbert Berryhill, and files this his suit against the Defendant, Mississippi Publishers Corporation, and for cause of action would show the following:

I.

That the Plaintiff is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, and that the Defendant, Mississippi Publishers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Mississippi, having its principal place of business at Jackson in the First Judicial District of Hinds County, Mississippi, and may be served with process by service on its agent for service of process, R. M. Hederman, Jr., 311 E. Pearl Street, Jackson, Mississippi.

II.

That at all times hereinafter mentioned, the Defendant was and now is engaged in the business of publishing a daily newspaper, to-wit: The Clarion Ledger, and that said newspaper is a newspaper of wide and general circulation in the State of Mississippi.

III.

That on July 17, 1974, the Defendant, in the morning edition of said newspaper, wilfully and maliciously published of

and concerning the Plaintiff, certain false, defamatory and libelous words, said words being libelous per se; a true copy of said article is attached hereto as Exhibit I and made a part hereof as if copied in full herein.

IV.

That said newspaper published by the Defendant in Jackson, Mississippi, has a very large and extensive circulation in the entire State of Mississippi, and elsewhere, and that its news and editorial items are extensively copied and commented on by all leading newspaper presses, radio and television stations and other media of communication in the State of Mississippi.

V.

That by publishing that the Plaintiff was "stealing" in said newspaper, the Defendant did falsely and maliciously accuse the Plaintiff of a loathsome and reprehensible crime, to-wit: Larceny and/or embezzlement, thereby labeling him a criminal. Said words so published were generally read by the subscribers to said newspaper and by others and were, by such readers, understood to convey the meaning that the Plaintiff was a thief.

VI.

That on July 18, 1974, the Plaintiff, pursuant to Section 95-1-5 of the Mississippi Code of 1972, caused to be delivered to the office of the Defendant notice and demand, within ten days after receipt of notice of said communication to publish or cause to be published, over the signature of the author of said article, a full fair and adequate correction, apology and retraction of said defamatory, false and malicious statements published by the Defendant. A copy of said notice is attached hereto as Exhibit II and made a part hereof as if copied in full herein.

VII.

That on July 19, 1974, the Defendant did publish an article of and concerning the Plaintiff in response to Plaintiff's notice of July 18, 1974. A true copy of said article is attached hereto as Exhibit III and made a part hereof as if copied in full herein.

VIII.

That the article published July 19, 1974, by the Defendant was in no way a full, fair and adequate correction, apology and retraction of the false, defamatory, malicious and libelous statements published by the Defendant in The Clarion Ledger on July 17, 1974.

IX.

That the natural and proximate consequences of the statements published by the Defendant on July 17, 1974, in The Clarion Ledger, have caused and will continue to cause substantial and irreparable injury to the Plaintiff in his personal, social, and business life, by exposing him to hatred, contempt and ridicule thereby severely damaging his good reputation and standing in the community in which he lives and throughout the entire State of Mississippi, all to the detriment and injury of the Plaintiff in the amount of $100,000.00.

X.

That said statements published by the Defendant on July 17, 1974, in The Clarion Ledger were false, wilful, wanton and malicious and the Plaintiff demands exemplary damages in the amount of $150,000.00.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment of and from the Defendant, Mississippi Publishers Corporation, in the amount of $250,000.00, as actual and exemplary damages together with interest and all costs herein.

Respectfully submitted,

HERBERT BERRYHILL

BY: G. Garland Lyell III

W. E. GORE, JR.
G. GARLAND LYELL, III
Attorneys for Plaintiff

8 4 0 1 0 1 4 5 1 3 0

24

154

Herbert Berryhill

No. 22,466

Vs.

Mississippi Publishers Corporation

COURT SUMMONS

THE STATE OF MISSISSIPPI

TO THE SHERIFF OF HINDS COUNTY—GREETINGS:

WE COMMAND YOU HEREBY THAT YOU SUMMONS Mississippi Publishers Corporation---- agent for process is R. M. Hederman, Jr., 311 E. Pearl Street, Jackson, Ms.

Defendant

if to be found in your County, so that it be before the Circuit Court to be holden in and for the First District of Hinds County, at the Court House thereof, in the City of Jackson, on the 1st Monday of January, 19 75 to answer the declaration of Herbert Berryhill

Plaintiff

against the said defendant, now on file in the Clerk's office of said Court. And have then and there this summons.

(By Section 1519, Mississippi Code of 1942, as amended, you are required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier.)

The amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs.

Judgement will be demanded at return term.

Issued the 6th day of December, 19 74

Declaration filed when summons issued.

ATTEST:

WILLIAM E. "BILL" McKINLEY, Clerk

(SEAL)

By: _____, D. C.

G. Garland Lyell, III

Attorney For The Plaintiff

8 4 0 4 0 1 4 5 1 3 1

Mrs Publishers Corporation
Mr Tony Halloran
10 Agent
Dear Sir
Yours Sincerely

8 4 0 4 0 1 4 5 1 3 2

HERBERT BERRYHILL

No. 22,466 Vs.

MISSISSIPPI PUBLISHERS CORPORATION

(A L I A S) **COURT SUMMONS**

THE STATE OF MISSISSIPPI

TO THE SHERIFF OF HINDS COUNTY—GREETINGS:

WE COMMAND YOU HEREBY THAT YOU SUMMONS

MISSISSIPPI PUBLISHERS CORPORATION-----

AGENT FOR PROCESS: R. M. HEDERMAN, JR.,

311 E. PEARL ST., JACKSON, MS.

Defendant

if to be found in your County, so that IT be before the CIRCUIT Court to be holden in and for the First District of Hinds County, at the Court House thereof, in the City of Jackson, on the 1ST Monday of JANUARY, 19 75 to answer the declaration of

HERBERT BERRYHILL

Plaintiff

against the said defendant, now on file in the Clerk's office of said Court. And have then and there this summons.

(By Section 1519, Mississippi Code of 1942, as amended, you are required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier.)

The amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs.

Judgement will be demanded at return term.

Issued the 12 day of DECEMBER, 19 74

Declaration filed when summons issued.

ATTEST: WILLIAM E. "BILL" McKINLEY, Clerk

(SEAL) By: Dell Cook, D. C.

G. GARLAND LYELL, III

Attorney For The Plaintiff

8404014513

F. M. Holmes, M.D.
Eye, Ear, Throat
Fitting Glasses

8 4 0 4 0 1 4 5 1 3 4

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

V. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

ANSWER AND DEFENSES TO AMENDED DECLARATION

COMES NOW Mississippi Publishers Corporation, defendant in the above entitled cause, and for its answer to the Amended Declaration exhibited against it says:

1.

Defendant admits the allegations of paragraph 1 of the Amended Declaration.

2.

Defendant admits the allegations of paragraph 2 of the Amended Declaration.

3.

Defendant admits that Exhibit I to the Amended Declaration is a true copy of an article published in "The Clarion-Ledger" on or about July 17, 1974, and admits that said article, in part, concerned plaintiff. Defendant denies the remaining allegations of paragraph 3 of the Amended Declaration. The actual facts are that the article in question was not published wilfully or maliciously, but was published in complete good faith in justifiable reliance on reliable sources of information, including official county records. Defendant denies that the article in question contained false, defamatory or libelous words or that any portion of said article which may have been incorrect, if any, was either libelous or libelous per se.

Defendant further specifically denies that said article was published with reckless disregard for the truth of the contents thereof. Defendant avers that the reporters who wrote said article investigated the subject matter thereof, and other alleged improprieties in the Fifth Supervisor's District of Hinds County, Mississippi, some of which related to the plaintiff, said investigation being conducted over a period of several days and with reasonable care and with attention to acceptable reporting practices. In accordance with said practices, although said reporters obtained information relating to a variety of allegedly improper practices committed by plaintiff and others in the Fifth Supervisor's District of Hinds County, Mississippi, they only published in said article those matters which could be independently verified or which were related to them as fact by more than one person.

4.

Defendant admits that the newspaper, "The Clarion-Ledger", has a large and extensive circulation in the State of Mississippi and elsewhere. Defendant denies the remaining allegations of paragraph 4 of the Amended Declaration; because defendant does not know the practices of the other leading newspaper presses, radio and television stations and other media of communication in the State of Mississippi as respects their copying and commenting upon this defendant's news and editorial items.

5.

Defendant denies the allegations of paragraph 5 of the Amended Declaration. It is specifically denied that defendant accused plaintiff of "stealing", or that said article implied that plaintiff was "stealing", or that the words contained in the entire article, taken in context, were intended to, or did, convey to defendant's subscribers, or anyone else, the meaning that plaintiff was a thief.

6.

Defendant admits that Exhibit II to the Amended Declaration is a true copy of the notice which plaintiff, on July 18, 1974, delivered or caused to be delivered to defendant pursuant to §95-1-5, Mississippi Code of 1972, Annotated. Defendant admits receipt of said notice by it. Defendant denies the remaining allegations of paragraph 6 of the Amended Declaration, especially the inference that the article in question is defamatory, false or malicious.

7.

Defendant admits the allegations of paragraph 7 of the Amended Declaration.

8.

Defendant denies the allegations of paragraph 8 of the Amended Declaration.

9.

Defendant denies the allegations of paragraph 9 of the Amended Declaration.

10.

Defendant denies the allegations of paragraph 10 of the Amended Declaration because (1) the article in question and its publication were not such as to justify exemplary damages in any event and (2) plaintiff could not, under any circumstances, be entitled to such damages in this case by virtue of the provisions of §95-1-5, Mississippi Code of 1972, Annotated.

Defendant denies that plaintiff is entitled to judgment against it in the sum of $250,000.00 or any other amount whatsoever.

AND NOW, having answered the allegations of the Amended Declaration exhibited against it, defendant would show and charge the following special and affirmative matters:

FIRST AFFIRMATIVE DEFENSE

The article of which complaint is made is a statement of true and correct facts; therefore, it cannot, as a matter of law, be defamatory, malicious or libelous.

SECOND AFFIRMATIVE DEFENSE

1.

At all times material hereto, the plaintiff was a public official of the County of Hinds, State of Mississippi holding a position of trust and responsibility.

2.

Defendant published the article in question believing the contents thereof to be true, same having been obtained from sources, including official county records, which the authors justifiably considered accurate and reliable.

3.

If any portion of the article in question is false, which defendant denies, defendant avers that it did not knowingly publish any false statement about plaintiff nor did it publish any statement about plaintiff with reckless disregard of the truth or falsity thereof or with a high degree of awareness of the probable falsity of any such information. Defendant avers that it gave due regard to the truth of the subject matter of the publication in question and the facts and matters therein recited before it published said article and it published same fully believing, in good faith, that the subject matter of the article was a matter of interest to the public being generally concerned with the expenditure of tax dollars and published said article believing the contents thereof to be true.

4.

Defendant avers, therefore, that its publication of the article in question was protected by the privilege accorded

defendant and other publishers under the First Amendment to the Constitution of the United States. Even if any portion of the article were false, its publication under these circumstances, did not give rise to a cause of action in favor of plaintiff.

THIRD AFFIRMATIVE DEFENSE

1.

For brevity and convenience, defendant adopts and here reasserts by reference paragraphs 1 through 3, inclusive, of its second affirmative defense.

2.

In addition, defendant avers that the article as a whole was concerned with the lack of an orderly county purchasing unit, which was, and is, a matter of great public interest in the State of Mississippi as evidenced by the attention which the subject has received from both the Governor and Legislature of the State of Mississippi.

3.

For this additional reason, the publication in question was privileged and was protected by the First Amendment to the Constitution of the United States. Therefore, the plaintiff can have no cause of action on account of the publication of this article, in any event.

FOURTH AFFIRMATIVE DEFENSE

Defendant denies that plaintiff is entitled to any recovery whatsoever on account of the publication in question. In the alternative, however, defendant avers that plaintiff is not entitled to any sum greater than his actual damages, if any, by virtue of the provisions of §95-1-5, Mississippi Code of 1972, Annotated, with which defendant has fully and fairly followed.

AND NOW, having fully answered, defendant prays that the Amended Declaration will be dismissed at the cost of the plaintiff.

Respectfully submitted,

W. SCOTT WELCH, III
1700 Deposit Guaranty Plaza
Post Office Box 22567
Jackson, Mississippi 39205
(601) 948-5711

ATTORNEY FOR DEFENDANT

OF COUNSEL:

ROGER C. LANDRUM
BUTLER,SNOW,O'MARA,STEVENS & CANNADA
1700 Deposit Guaranty Plaza
Post Office Box 22567
Jackson, Mississippi 39205

C E R T I F I C A T E

I, W. SCOTT WELCH, III, one of the attorneys for the defendant, do hereby certify that I have this day served a true and correct copy of the foregoing Answer and Defenses to Amended Declaration upon W. E. Gore, Jr. and G. Garland Lyell, III, by personally delivering same to their respective business addresses in the City of Jackson, Mississippi.

SO CERTIFIED this the 29th day of March, 1976.

W. SCOTT WELCH, III

INSTRUCTION (2)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL PLAINTIFF

VS. NO. 22,466

MISSISSIPPI PUBLISHING CORPORATION DEFENDANT

FILED JAN 1 1977 E. "BILL" CIRCUIT CLERK

The Court instructs the Jury that if you believe from a preponderance of the evidence in this case that the publication in question that appeared in the Defendant's newspaper on July 17, 1974, including the headlines and article, was false and that the publication meant to and did charge the plaintiff with stealing, and if you further find from a preponderance of the evidence that the defendant through its duly authorized agents and employees knew or by the exercise of reasonable care should have known that the publication was false, and accused the plaintiff of stealing, if you so find, then the Court instructs you that you should return a verdict for the plaintiff in the amount of actual damages sustained by the plaintiff, if any. In that event and you so find, in arriving at the amount of your verdict you are the sole judges as to that amount. You may take into consideration all damages, if any, necessarily incurred by plaintiff as the result of the publication. You may take into consideration any humiliation or embarrassment necessarily sustained by the plaintiff. You may take into consideration any exposure of the plaintiff to public contempt or ridicule.

The Court further instructs you that if you should find from a preponderance of the evidence that the publication in question was false, and you further find from a preponderance

of the evidence that the defendant, through its duly authorized agents and employees, knew that the publication was false or that it acted in a reckless disregard for the truth, then the Court instructs you that in addition to actual damages you may award the plaintiff punitive damages. By punitive damages is meant damages that would deter any such action in the future. The amount of any punitive damages, if any should be awarded by you, is solely within your discretion.

8 4 0 4 0 1 4 5 1 1 2

166

D 10

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that when any nine of you have agreed upon a verdict, you may return the same into Court as the verdict of the jury.

8400145143

167

IN THE C CUIT COURT OF THE FIRST J CIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

INSTRUCTION NO. P-4

FILED
JAN 13 1977
WM. E. "BILL" McKINLEY
CIRCUIT CLERK

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHING CORPORATION — DEFENDANT

The Court instructs the Jury that if you find for the Plaintiff and you find he is entitled to actual damages only, then the form of your verdict may be:

"We, the Jury, find for the plaintiff in the amount of $_____ as actual damages."

The Court further instructs you that if you find that the Plaintiff is entitled to punitive damages, the form of your verdict may be:

"In addition to the above actual damages, we the Jury find that the Plaintiff is entitled to the sum of $_____ as punitive damages."

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL (Charles) PLAINTIFF

VS. NO. 22466

MISSISSIPPI PUBLISHERS CORPORATION DEFENDANT

INSTRUCTION NO. P-5

The Court instructs the Jury that when nine (9) of you arrive at a verdict you may bring it into Court as the verdict of the entire Jury.

Jurors

8 4 0 4 0 1 4 5 1 1 5

169

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

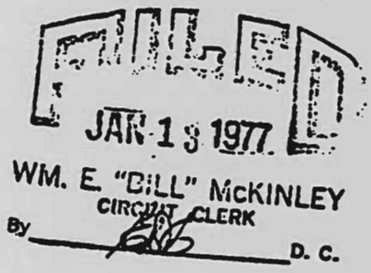
HERBERT BERRYHILL — PLAINTIFF

VS. — NO._____

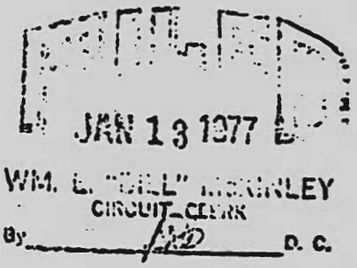
MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

INSTRUCTION NO. P-3

The Court instructs the Jury that you are the sole judges of the weight and credibility of the witnesses, including expert witnesses, who testified in this case, and you are not bound by the testimony of any one witness, but you are to base your verdict on the greater weight of the believable evidence.



"Why the grey, pink for the defendant."



8 4 0 4 0 1 4 5 1 1 7

171

D 11

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that if you find for the defendant, your verdict may be in the following form:

"We, the jury, find for the defendant."

Please write your verdict on a separate sheet of paper.

8400145118

172

D 7A

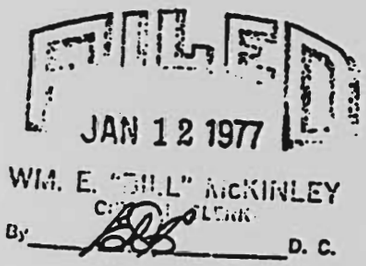
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The court instructs the jury that the mere fact that you have been given instructions relating to the law of damages in this case does not mean that the court is of the opinion that the plaintiff should or should not recover any sum of money whatsoever. Such instruction is given you for the sole purpose of allowing the jury to be completely instructed on all matters of law which may be applicable to the case.



8 4 0 4 0 1 4 5 1 4 9

D 9C

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

Any sum of money awarded as actual damages must be supported by the evidence and any such damages must have been established by a preponderance of the evidence with reasonable certainty, although not with mathematical precision.

8 4 0 4 0 1 4 5 1 5 0

D 7

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court further instructs you that the rule is that such reckless disregard as is required for an award of punitive damage is not measured by whether a reasonably prudent man would have published said article or would have investigated further before publishing or even whether there was negligence or a mistake in connection with any investigation which you find from the evidence was undertaken. This is so only with regard to the issue of whether or not the plaintiff is entitled to recover punitive damages.

Given

8 4 0 4 0 1 4 5 1 3 1

175

D 6A

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that the phrase "reckless disregard for the truth" as used in these instructions, on the issue of punitive damages, means publication of the alleged defamatory statements with knowledge that they were false or with reckless disregard of whether they were false or not and with a high degree of awareness by defendant of their probable falsity. The Court instructs you further that even if you find from the evidence that the article in question was false, you must further find that there has been proof of knowing falsity or "reckless disregard for the truth" as herein defined before plaintiff is entitled to recover any ~~sum of money whatsoever~~ punitive damages and that unless the preponderance of the evidence establishes with convincing clarity that the article was published with "reckless disregard for the truth", it is your sworn duty to find for the defendant on the issues of punitive damages to which issue, alone, this instruction applies.

Given

FILED
JAN 13 1977
CLERK

8 4 0 4 0 1 4 5 1 5 2

176

D 4

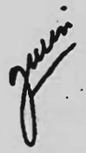
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that, in considering the article sued on, including the accompanying headlines, you will read the article according to the ordinary meaning of the language used. The Court therefore instructs you that if you find, from such a consideration of the article, that it was not false, then it is your sworn duty to return a verdict for the defendant.



8 4 0 4 0 1 4 5 1 5 3

177

D 3B

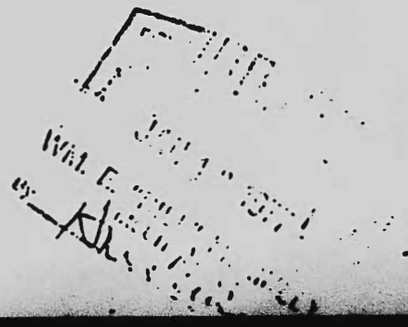
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that this case must be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair treatment at your hands as a private individual. The law is no respecter of persons; all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.



8 4 0 4 0 1 4 5 1 5 4 178

D 3A

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that in an action for libel the plaintiff is required to prove the falsity of the publication complained of, and if the falsity of the publication is not proved by the greater weight of the believable evidence, then it would be your sworn duty to return a verdict for the defendant.

Given

Acct 9458

PERKINS, COIE, STONE, OLSEN & WILLIAMS

ANCHORAGE OFFICE
420 "L" STREET
SUITE 301
ANCHORAGE, ALASKA 99501
TELEPHONE: 907-276-6561
TELECOPIER: 907-276-3108

1110 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005
TELEPHONE: 202-857-9030

PLEASE REPLY TO WASHINGTON, D.C. OFFICE

SEATTLE OFFICE
1900 WASHINGTON BUILDING
SEATTLE, WASHINGTON 98101
TELEPHONE: 206-682-8770
TELECOPIER: 206-682-8784
CABLE "PERKINS SEATTLE"
DOM TELEX: 32-0319
INT'L TELEX: 471123

2 P5:20

February 2, 1983

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

8 4 0 4 0 1 4 5 1 5

Dear Sir:

Enclosed you will find a full response on behalf of the Dowdy for Congressman Committee to the allegations contained in the complaint filed by Jacquelin Smith Pierce on September 13, 1982.

The Committee regrets the delay in responding to these allegations. The delay related solely and exclusively to the time required to conduct a full investigation into the basis of these allegations. The allegations came to the Committee as more than a moderate surprise; neither the candidate, nor any of the officers, were familiar with any of the facts averred, with the exception of allegations relating to the Committee's use of corporate aircraft jointly owned by Berryhill Farms, Inc. and Little Dixie Supermarkets. As a result of the inevitable time pressures associated with an imminent election, followed by the difficulties in compiling the material necessary to "prove the negative," i.e., that the allegations were untrue, a substantial delay was incurred.

The delay experienced by the Committee in responding cannot and should not be construed, even implicitly, as an admission of liability under any of the claims raised through this MUR.

As the enclosed response demonstrates, the Committee categorically and vehemently denies that these allegations have any factual foundation whatsoever.

Very truly yours,

Robert F. Bauer
Counsel, Dowdy for Congress
Committee

8404014516

PERKINS, COIE, STONE, OLSEN & WILLIAMS

ANCHORAGE OFFICE
420 "L" STREET
SUITE 301
ANCHORAGE, ALASKA 99501
TELEPHONE: 907-279-8561
TELECOPIER: 907-276-3108

1110 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005
TELEPHONE: 202-887-0030

PLEASE REPLY TO WASHINGTON, D.C. OFFICE

SEATTLE OFFICE
1900 WASHINGTON BUILDING
SEATTLE, WASHINGTON 98101
TELEPHONE: 206-682-8770
TELECOPIER: 206-682-8784
CABLE "PERKINS SEATTLE"
DOM TELEX: 32-0310
INT'L TELEX: 47123

February 2, 1983

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

RE: MUR 1469

Dear Sir:

This letter serves as the response and defense of the Dowdy for Congress Committee ("the Committee") to the Federal Election Commission's ("the Commission") determination on January 5, 1983, that there existed "reason to believe" that the Committee violated various sections of the Act. The Commission's finding stemmed from a complaint filed by one Jacquelin Smith Pierce on September 13, 1982, which made various allegations subsumed within the findings cited by the Commission in its "reason to believe" notification dated January 6, 1983. The Pierce complaint, in turn, was based wholly and without exception on representations made in a civil complaint filed against Congressman Dowdy by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. in Berryhill et al. v. Charles Wayne Dowdy (Hinds County Circuit Court, Miss., Civil Action No. 28,991).

As reviewed further below, the Commission cites reason to believe that the Committee violated the Act as follows:

(1) In accepting contributions in excess of the lawful limits in violation of 2 U.S.C. § 441a(f);

(2) In accepting cash contributions in excess of the lawful limit in violation of § 110.4(c)(2) of the Commission's regulations;

8401457

(3) In failing to report the receipt of the contributions cited in (1) and (2); and

(4) In accepting an illegal corporate contribution "by making use of aircraft jointly owned by Little Dixie Supermarket, Inc. and Berryhill Farms, Inc. . . . , but [failing] to pay commercially reasonable rates."

The respondent Committee categorically and vehemently denies each and every one of the Berryhill allegations underlying the Commission's finding (1) through (3). Each of these allegations will be fully reviewed and rebutted below.

In the case of the fourth allegation, involving unpaid travel on corporate aircraft, the Committee admits use of this air transportation. The Committee, however, denies negotiating a specific "rate" for regular use of this aircraft. The aircraft was used on a few occasions and any and all bills submitted for its use were paid. If bills relating to this use are outstanding, the Committee has been, and will continue to be, prepared to pay them upon receipt of documented invoices. Any other uses and related charges claimed by the Berryhills, are denied.

Accordingly, the Committee requests immediate dismissal of the Pierce complaint based on the Berryhill allegations, and will request that the file be closed immediately for failure of the plaintiffs to proffer proof--which is in any event nonexistent--sufficient to justify a "probable cause to believe" finding by the Commission.

INTRODUCTION

The complaint in question, filed by Jacquelin Smith Pierce, is supported solely by reference to allegations made in the previously cited civil complaint filed against Congressman Dowdy by the Berryhills and Berryhill Farms, Inc. Those Berryhill allegations--and specifically, their veracity--are at issue in this matter.

It is the position of the Committee that with the qualified exception of campaign-related plane travel, the Berryhill allegations underlying the Commission's reason to believe notification are utterly without factual foundation. The Committee has made every effort to investigate the grounds for these allegations, but finds none. The evidence available to the Committee, in fact, suggests that these claims were

fabricated by "complainant" Berryhills solely and exclusively in response to their own desperate financial situation, which includes pending bankruptcy proceedings under Chapter 11 involving a corporation, Little Dixie Supermarket, Inc., which they own and control. To the best of the Committee's knowledge, the Berryhills seek through these allegations to embarrass and exert illicit pressure on Congressman Dowdy, in the hope that he or the Committee will disgorge cash, in settlement of the claim, which the Berryhills have pressing need for.

It is also apparent that the allegations in question, regardless of whether they are successful in extorting cash from the Congressman or the Committee, represent a pattern in the business affairs of the Berryhills. This pattern can best be captured by the old adage "the best defense is a good offense." As will be demonstrated further, the business affairs of the Berryhills, conducted through Little Dixie Supermarkets, Inc., Berryhill Farms, Inc., and otherwise, are in catastrophic condition. These business affairs, and the conduct of the Berryhills generally, have given rise to considerable controversy in Mississippi over the years. In each instance that the Berryhills have been forced to account for their conduct in court, through the press or otherwise, they have habitually responded with aggressive allegations of misconduct directed against their detractors or others. The record shows that, in each such instance, the Berryhills' diversionary tactics have been exposed for what they are--pure and simple defensive manuevers built around gross misrepresentations of fact.

None of the foregoing is rendered less true by the possibility that the Berryhills are prepared to offer written "proof" or "witnesses" to corroborate their version of the truth. While the Committee has no knowledge to substantiate the point, the Berryhills' allegations refer to various "campaign workers" who were paid by, or otherwise associated with, the Berryhills in connection with certain of the activities giving rise to their civil complaint. The Committee, however, is prepared to categorically deny that the "campaign workers," if any, had any authority whatsoever to make any arrangements with the Berryhills relating to Committee finances. Moreover, in at least one case, one of the "campaign workers" cited by the Berryhills, who had allegedly received payments from them on behalf of the Committee, has been associated with the Berryhills in another, unrelated scheme which was decisively rejected by a Mississippi court for the fraud that it was.

In short, the complaint in question raises a fundamental question of the "real" plaintiffs'--the Berryhills'--credibility. That credibility must be carefully weighed in light of the evidence which will be reviewed in this response. This evidence includes, but is not limited to, sworn affidavits of Congressman Dowdy, his wife, and the campaign treasurer; Committee documents which corroborate the sworn testimony of these three individuals; and reams of revealing information about the business and other practices of the Berryhills which suggest that the instant complaint is based on the same modus operandi of individuals whose word simply does not carry the weight necessary to justify further Commission involvement in this matter.

THE BERRYHILLS: THE RELATIONSHIP OF THIS MATTER TO BERRYHILL FINANCIAL AND BUSINESS DIFFICULTIES

This complaint arose out of, and at the time of, the financial collapse of Little Dixie Supermarkets, Inc. a chain of grocery stores owned and operated by Herbert and Lowery Berryhill. A Chapter 11 voluntary bankruptcy petition was filed on behalf of Little Dixie on August 24, 1981.1/ It was shortly before this declaration of bankruptcy, in late spring of 1981, that the Berryhills sought to become involved in the campaign by Congressman Wayne Dowdy for election to the United States Congress. See the affidavit of Congressman Dowdy, dated October 8, 1982 [hereinafter referred to as the "Dowdy October 8th affidavit"].2/ The Congressman considered the Berryhills as merely two among "hundreds of other people" who volunteered and performed volunteer services in connection with his campaign. However the Berryhills understood their role, the Congressman viewed them as nothing other than volunteers, who had never been "asked to assume any [formal] role in the campaign . . . had no official capacity in the election, nor did they ever assume any official capacity in the campaign." See Dowdy October 8th affidavit. The Congressman's testimony on this score is corroborated by Robert H. Darville, Jr., the Treasurer of the Committee, whose affidavit is attached3/ and who

---

1/This petition is included in the Appendix to this response.

2/See Appendix.

3/See Appendix.

8401450

swears that no authorization whatsoever was given to the Berryhills to make any contributions or expenditures in connection with any of the activities undertaken by the Committee.

Nonetheless, following the election, Congressman Dowdy was contacted by telephone by Lowery and Herbert Berryhill, who requested a meeting, held sometime in August 1981 in Macomb, Mississippi. At that time, the Berryhills informed Congressman Dowdy that their businesses were failing, that bankruptcy was imminent and that "Lowery Berryhill should be given a job because of the work done by the Berryhills in the campaign." See Dowdy October 8th affidavit. No claim that money was owing to them was made at that time. The Congressman made no commitment to provide a job to Lowery Berryhill.

Once again, in September, 1981, Herbert Berryhill requested and obtained a meeting with the Congressman in his Jackson office. His request that Lowery Berryhill be given a job in the Congressman's office was pressed. The Congressman simply stated that "I would not be able to give a job to Lowery Berryhill at that time." See Dowdy October 8th affidavit.

The Congressman then undertook to thoroughly investigate the background of both Berryhills, whom, the record shows, he did not know at all until the spring of 1981 when they became involved in his campaign as volunteer workers. The Congressman found that the Berryhills had been embroiled in a series of legal actions, including, but not limited to, the pending Chapter 11 bankruptcy proceeding involving the Little Dixie Supermarket, Inc. owned and operated by the Berryhills.[4/] On the basis of this information, the Congressman informed Herbert Berryhill that he would be unable to offer his son a position with his office. This decision was communicated by telephone in November or December 1981.

3401451

4/Other legal actions involving the Berryhills include Chase Manhatten v. Berryhill (Hinds County Circuit Court, No. 28796) (action to collect unpaid equipment rental); USS Agri-Chemicals v. Berryhills (Hinds County Circuit Court, No. 24408) (action to collect unpaid bills); and Bank of Hazelhurst v. Berryhill, infra (action in response to default on bank loans).

It was not until July or August 1982 that the Congressman heard again from the Berryhills, and on this occasion the character of the present action was decisively revealed. Lowery Berryhill called the Congressman to make a demand: "Unless I gave him either a job or payment for campaign services within three days, then he would go to the press with his claim that I owed the Berryhills money." See Dowdy October 8th affidavit. This demand was coupled with a threat of a political nature: "Lowery Berryhill stated, 'I have met with the Republicans on this, and I could really hurt you.'" Id. The Congressman refused this patent attempt at extortion. The Berryhills then went public with their claims that the Committee owed them money.

As Congressman Dowdy's affidavit suggests, particularly in referring to continuous legal claims and counterclaims involving the Berryhills, the Berryhills' thinly veiled extortion attempt was consistent with their past record and reputation. This record will be reviewed below, where relevant, in addressing and rebutting each of the specific allegations made by the Berryhills following their unsuccessful attempt to extort money or employment from Congressman Dowdy. It is sufficient to state here that the civil action filed against the Congressman, which is the basis of the Jacquelin Smith Pierce complaint, reflects the highly personal and unprincipled nature of the action pursued against the Congressman.[5/] Thus, for example, in Count 13, the Berryhills make another series of allegations relating to aid they allegedly furnished to the Congressman in connection with his campaign. As the complaint of the Berryhills states the matter "defendant once again returned to the gravy train and obtained a loan from the plaintiff, Herbert Berryhill . . . ." In the same vein, in the same count, the Berryhills denounce the Congressman for failing to repay the loan made to him by the Berryhills, insisting that "this promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else." Apart from the revealing nature of the language used here, it is most interesting that defendants, on the brink of bankruptcy, would view themselves, or expect anyone else to view them, as a "gravy train." Yet, as will be demonstrated below, this gumption is consistent behavior for the Berryhills.

[5/] See Appendix.

8401452

THE BERRYHILL ALLEGATIONS

Each of the Berryhill claims, which form the basis for the Pierce complaint and the Commission's finding of "reason to believe," will be reviewed below. With the qualified exemption relating to corporate plane travel, each will be shown to be without foundation, and consistent with the Berryhills' practice of making fraudulent misrepresentations to serve their immediate business ends.

1. Excessive Contributions/Cash Contributions

The allegations relating to excessive contributions and excessive cash contributions obviously overlap, and these will be treated together here. Each of the Berryhill allegations underlying these "violations" will be addressed separately here.

a. Alleged $18,000 Cash Contribution to Congressman Dowdy

The Berryhills claim that they loaned Congressman Dowdy $18,000, "every dollar of which was in cold cash." Congressman Dowdy categorically denies this. The Committee Treasurer Robert H. Darville, Jr., who in the course of his responsibilities would have been advised of the availability of this cash, denies this, as well. See Dowdy October 8th affidavit, and affidavit of the Congressman dated January 31, 1983 [hereinafter referred to as Dowdy January 31st affidavit]; see affidavit of Robert H. Darville, Jr., Treasurer of the Committee, dated January 28, 1983 [hereinafter referred to as the Darville affidavit]. Moreover, the Berryhill claims contain specific representations which only underscore their utter lack of credibility.

For example, the Berryhills would claim to be on the verge of bankruptcy, pressed on all sides by creditors, but somehow have access to $18,000 in cash which could be made available for unspecified purposes to Congressman Dowdy. The Berryhills would also maintain that Congressman Dowdy pledged to "report" a cash contribution of $18,000, when, in fact, even the average unsophisticated lay person, much less an experienced politician, would have known that a cash contribution in this amount was prohibited by the "Watergate reforms" incorporated in the Federal Election Campaign Act of 1971, as amended. Finally, as Congressman Dowdy testifies, it is simply incredible that an experienced politician such as

Congressman Dowdy would have engaged in a transaction such as this with "acquaintances of only weeks." See Dowdy January 31st affidavit.

In support of this contention, the Berryhills make reference to vouchers totalling $11,657.49, concededly a sum significantly less than the $18,000 allegedly loaned to Congressman Dowdy. These vouchers establish nothing. As Mr. Darville, the Committee Treasurer, informed the Commission in the course of the campaign, vouchers such as these were routinely used to track expenditures of the Committee. See Darville letter to Benita Adler, marked as Exhibit "C" to Darville affidavit. There are literally thousands of these vouchers. The Berryhills have been unable to make even the remotest shred of a connection between the vouchers attached to their complaint, and the $18,000 in "cold cash" allegedly loaned to Congressman Dowdy.

Most amusing, the Berryhills contend that Congressman Dowdy made use of the cash to pay radio advertisements to be aired by stations in Macomb, Meadville, Liberty, Natchez, and Vicksburg. Clifford Berryhill, a son of Herbert Berryhill and one Ray Barfield, allegedly "witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election." Unfortunately for the Berryhills, as Congressman Dowdy testifies, neither Meadville nor Liberty have radio stations. Moreover, as both Congressman Dowdy and Mr. Darville have testified, all radio air time was purchased with campaign funds, and these transactions are reflected in reports filed with the Commission in accordance with law.

b. $5,900 in "Bad" Checks Tendered by a Campaign Worker and Cashed on Behalf of the Committee by the Berryhills

It is on this claim that the modus operandi of the Berryhills becomes apparent. A series of checks, totalling $5,900, are attached by the Berryhills to their complaint as evidence that a Dowdy campaign worker sought successfully to have bad checks cashed on behalf of the Committee by the Berryhills. The proffered "evidence" means nothing. One of these checks, dated July 24, 1981, is made out illegibly to a payee who is neither Congressman Dowdy nor his Committee. One of the checks is made out to the Country Kitchen, with a memo that it represents a "loan" for an individual who is neither Congressman Dowdy, Mr. Darville, nor anyone else associated with the Committee. One check is made out to "cash" and another to the Little Dixie Supermarkets, Inc.

This is not proof. Both Congressman Dowdy and Mr. Darville categorically deny, in sworn affidavits, that any authority was extended to any person associated with the campaign to cash personal checks for the Committee's use in making expenditures. The Darville affidavit is particularly instructive on this point, because the treasurer makes it abundantly clear that "all . . . authority for [campaign] expenditures was vested solely within me . . . ." See Darville affidavit. The treasurer further testifies that "no payment, if any, for the Berryhills to any person or persons in any fashion associated with the campaign committee and election effort were known to or sought, requested, authorized, directed, ratified or accepted by the Committee." Id.

If any campaign worker proceeded as stated in the Berryhill complaint, he or she did so absolutely without the authority of the Committee. Nor is there any evidence that the cash received from the transaction in question, if it took place, was ever received by the Committee, or spent in connection with its activities.

Finally, it must be stated that the kind of "evidence" offered here mirrors the kind of approach that the Berryhills have taken in response to their own business difficulties. The Committee is speaking specifically here of the fabrication of evidence. This matter will be addressed more specifically below, with reference to the "receipt" for payments allegedly made to secure copier supplies for the Committee, hotel accommodations, and catfish for an "election fry."

c. Alleged Payment by Berryhills of Hotel Accommodations

In Count 10 of the Berryhill complaint, Lowery Berryhill maintains that payment was made on behalf of the Committee for hotel accommodations for Congressman Dowdy, his staff, and press representatives. These accommodations were allegedly procured on or about the 22nd day of June, 1981, on or about the 7th day of July, 1981 (election eve), and on other occasions. Here too, there is "evidence" proffered in the form of Holiday Inn bills paid by Lowery Berryhill. In attempting to establish some connection between these "receipts" and the campaign, Lowery Berryhill maintains that he "authorized the wife of defendant, Susan Dowdy, to sign his name to all such billings." See Count 10 of Berryhill et al. v. Dowdy.

The same pattern of outright falsehoods and internal contradictions plagues this allegation, as well as the others. Congressman Dowdy testifies that at no time did Lowery Berryhill provide hotel accommodations for the Congressman, his staff, or press representatives. See Dowdy October 8th affidavit. In fact, the Congressman swears under oath that in the case of the Holiday Inn accommodations required for the pre-primary special election in June 1981, Congressman Dowdy made payment on his personal American Express card signed by his wife, Susan Dowdy, with his knowledge and consent. In his affidavit of January 31, 1983, the Congressman carefully accounts for all charges paid with his credit card on behalf of the campaign. He states further that "no other hotel accommodations were provided anyone associated with the campaign committee." The same testimony is offered with respect to the payment of hotel accommodations and facilities on July 7-8, 1981, when the special general election was held.

Congressman Dowdy's testimony, in his October 8 and January 31 affidavits, is fully corroborated by the Committee Treasurer, Mr. Robert H. Darville, Jr., and his wife, Susan Dowdy.6/ In her affidavit dated October 8, 1982, Susan Dowdy states unequivocably that she has never been "authorized, directed, instructed, or requested by Lowery Berryhill or Herbert Berryhill . . . to sign Lowery Berryhill's name to any document, credit card, or other account of any nature." In a subsequent affidavit prepared January 31, 1983, Mrs. Dowdy corroborates her husband's testimony concerning the use of his American Express card, signed by Mrs. Dowdy with her husband's consent and knowledge, to cover costs associated with the hotel accommodations needed by the campaign on June 23-24, 1981, and on July 7-8, 1981.

Similarly, the Committee Treasurer, Mr. Darville, swears under oath, unequivocably, that if the Berryhills made any cash expenditures on behalf of the Committee for hotel accommodations at any time, "such expenditures, if any . . . bore no relationship to the efforts of the campaign or the campaign committee personnel." See Darville affidavit. Records reflecting payments made by the Committee and/or Congressman Dowdy are attached as exhibits to the Darville affidavit.

6/See Appendix.

8404014516

In the face of this evidence, the Holiday Inn "statement" offered by the Berryhills has absolutely no indicia of credibility. These receipts are signed by Lowery Berryhill, and bear no evidence of any relationship whatsoever to the Dowdy campaign. Moreover, as is the case with all allegations made by the Berryhills, their statements carry significant internal contradictions which cast a fatal pall over their credibility. As Darville, the Committee Treasurer, points out in his January 28 affidavit, the campaign had no need for funds to provide hotel accommodations for staff and press representatives. Mr. Darville explains that "all salaried staff members were residents of the Jackson-Hinds County, Mississippi area and all press representatives known to the affiant to have covered the two election nights during the 1981 campaign were affiliated with the local-Jackson, Mississippi media . . ." Thus, for these individuals, hotel accommodations were totally unnecessary. The Commission need only be reminded of the Berryhills' previous claim concerning the use by Congressman Dowdy of cash to pay for radio spots in two towns which had no radio stations. It should be plain, as each allegation is herein addressed, that one fabrication follows another, only to be followed by another.

d. Payments Allegedly Made by the Berryhills to Cover Compensation for "Campaign Workers"

The Berryhills' claim that "pursuant to and at the behest of the defendant Dowdy," they arranged for the payment of salaries to various campaign workers who would function on behalf of the Committee. The Berryhills recite the names of these workers, and the amounts allegedly paid to each. Congressman Dowdy has testified that he "never met" five of the seven campaign workers "reportedly paid" by the Berryhills and that he, in any event, never authorized payment to these individuals as compensated workers on the campaign. See Dowdy October 8th affidavit.

The Congressman's testimony is corroborated by Treasurer Darville, who denies that any authorization was extended to the Berryhills or any other persons to pay the named "workers." If the Berryhills undertook to pay these individuals, they did so entirely on their own authority, outside the channels of authorization established by the Committee, under the direction of Mr. Darville. See Darville affidavit.

8 4 0 4 0 1 4 5 1 5 7

e. Alleged Berryhill Payment of $351.08 in Copier Supplies

Although the amount in question is minor, the allegation with respect to copier supplies, perhaps more than the others, demonstrates the length to which the Berryhills will go to establish a false case against Congressman Dowdy. In support of this claim, the Berryhills offer "evidence" in the form of a receipt, which consists of a handwritten acknowledgement on a sheet of paper apparently signed by someone named "Jill."

The difficulty with the Berryhills' claim on this score begins, in the first instance, with the fact that copier supplies were not needed by the campaign. The campaign headquarters in Jackson, Mississippi, where such supplies were allegedly delivered, "had no copier machine or duplicating machine, nor did the Committee employ any such machine in any office." See Dowdy January 31st affidavit. Congressman Dowdy's testimony to this effect has been corroborated by Mr. Darville, the Committee Treasurer, who testifies in his January 28th affidavit that the purchase of copier supplies was "not authorized, directed or allowed" by the Committee, and that these were, not in any event, needed in a campaign where no copiers had been leased or used in any of the campaign headquarters. See Darville affidavit.

The question than naturally arises: where does the "receipt" come from? Only the plaintiffs who have provided it can answer this question, but there is evidence that suggests that the worst suspicions about the origins of this "receipt" should not be lightly dismissed. These same suspicions naturally arise in the case of other documentary "evidence" offered by the Berryhills, such as the "statement" for hotel accommodations and a "bill" for catfish to be discussed below.

On this question, the Commission is referred to the case of Little Dixie Supermarkets, Inc. v. Bank of Hazelhurst, a matter pending in bankruptcy court in the Southern District of Mississippi in connection with the Chapter 11 bankruptcy proceedings involving Little Dixie.7/ The background to this action is significant. As appears fully in Bank of Hazelhurst v. Berryhill et al. (Hinds County, Civ.

7/See Appendix.

Action No. 29-022),[8] the Berryhills have accumulated substantial debts to the Bank of Hazelhurst over a period of a number of years, now totalling $186,245.82. This full amount was guaranteed by Herbert Berryhill and his two sons Clifford and Lowery in a guarantee agreement dated July 9, 1979. In the face of mounting default on their loans to the Hazelhurst Bank, which ultimately led to the institution of a lawsuit by the bank against the Berryhills, the Berryhills resorted to a familiar tactic. They struck out against the bank.

In Little Dixie Supermarkets, Inc. v. Bank of Hazelhurst, the Berryhills maintained that the bank of Hazelhurst had somehow misplaced or failed to credit to the Berryhills' account a $93,000 deposit. In support of their claim, the Berryhills offered "documentary proof" in the form of a stamped deposit ticket evidencing the deposit in question. Also significant were sworn affidavits in support of their claim submitted by Herbert and Lowery Berryhill, and the same Ray Barfield who "witnessed" Congressman Dowdy paying cash to radio stations that didn't exist. Unfortunately for the Berryhills, when the Bank of Hazelhurst sought supporting documents which would establish the origins of this substantial deposit, the Berryhills refused or were unable to produce any substantial supporting material whatever. The case was accordingly dismissed.

The Berryhills then counterattacked by accusing their counsel of failing to adequately represent them, with the result that new counsel was retained to make a motion to vacate the order of dismissal. A transcript of the hearing on this motion to vacate has been provided to the Commission as part of this response, because it offers a clear and definitive picture of the Berryhills, their way of doing business, and the large tablets of salt with which their allegations must be taken. Thus, for example, the trustee in bankruptcy acting on behalf of Little Dixie testifies at pages 31-32 that he was never convinced that "a viable cause of action existed and could never document it. . . ." He stated further that, in his view, the Berryhills' claim against the bank had no merit, and "I told them I wasn't going to prosecute the action and, if it had to be prosecuted, that they [Berryhills] had to prosecute it." The trustee further testified that "the debtor's affairs were in a jumble," and that no documents were available to support

---

[8] See Appendix.

the allegations made by the Berryhills with respect to the "missing $93,000." It is noted, finally, that the trustee testified that:

> The only thing I know about the debtor and his records is that everything I have ever asked for I have not received. And the only reason I have ever been given is I already have them and I know I didn't. . . . And if you ask somebody for something and they won't give it to you and they keep telling you you have it and you know you don't have it, what do you do?

Tr. at pp. 39-40.

At the oral hearing on the motion to vacate, witness after witness testified in support of the bank with only the Berryhills demurring. The motion was denied. The finding of the court was, simply, that notwithstanding the alleged "deposit" at the bank, no serious or viable claim could be made out by the Berryhills. As the court summarized the matter in its Order of Dismissal, "plaintiff [Berryhills] has failed to support its claim by making a more definite statement and by failing to produce documents supporting its claim as ordered by this Court." So much for "evidence."

There is a further lesson to be learned about the Berryhills from the outcome of Little Dixie Supermarkets v. Bank of Hazelhurst. As the trustee and bankruptcy pointed out, the Berryhills' business affairs were in a "jumble." There were few records. More significantly, the Berryhills constantly insisted that records existed which did not. They were producing evidence which, it turned out, was not evidence at all. Surely the Commission must consider all the evidence bearing on the credibility of the Berryhills in its totality, and conclude that the allegations in this case hang on a thin reed indeed.

Finally, dubious "evidence" played a part in another well-known scandal involving the Berryhills, namely, Herbert Berryhill's use of county funds for personal expenses when he was an official of Hinds County District Fire. As reported in press reports at the time, attached to this response, Berryhill initialled a receipt indicating that a tractor repair was required and paid for by the county. The county, in fact, paid; but the tractor was Berryhill's, used solely in his own business. After the press uncovered the

8401470

story, Berryhill proclaimed his innocence and sued the paper in question for libel in Berryhill v. Mississippi Publishers Corporation (Hinds County Circuit Court, Civil Action No. 22466).9/ Verdict by the jury: in favor of the paper. The verdict on Berryhill could not have been clearer.

e. Alleged Berryhill Payment for Liquor

The Berryhills insist that, among other "services," they purchased liquor for election night. The money, they state, was provided to Congressman Dowdy.

Again, fabrication followed by fabrication, only to be followed by another fabrication. As the affidavits of Congressman Dowdy and Treasurer Darville indicate, all liquor for the Committee was purchased with campaign funds. Their testimony is supported by cancelled checks, Nos. 259 and 496, attached to the Darville affidavit as exhibits. These checks covered all campaign liquor purchases for election night events.

If the Berryhills purchased liquor, on election night or at any other time, in "connection with" the campaign, they did so solely on their own authority, which was not the authority of the Committee.

f. Catfish

Now, the catfish. The Berryhills insist that they provided valuable intermediary services in arranging for, and paying for, 750 pounds of catfish provided by the Country Kitchen, a business operated by Herbert Berryhill's wife. Naturally, the Berryhills maintain that Congressman Dowdy negotiated this catfish acquisition, and that he represented that he would make full payment, if Herbert Berryhill would advance the money. Naturally, a "bill" in the amount of $1,500, allegedly reflecting this transaction, has been attached as an exhibit to the Berryhills' civil complaint.

About this claim, the Committee has no more to say than it did about the allegations relating to "copier supplies." Congressman Dowdy categorically denies that any such negotiation was held with the Berryhills over the acquisition of catfish. Indeed, Congressman Dowdy states that he "can solemnly state under oath" that he did not waste

---

9/ See Appendix.

8401451-71

valuable campaign time "haggling over the price of catfish." The assertion is simply "ludicrous." See Dowdy January 31st affidavit. Treasurer Darville has supplemented Congressman Dowdy's testimony with the sworn assertion that "no bill for any quantity of catfish delivered to the campaign committee has ever been received by me and no demand has ever been placed upon me as treasurer for payment to the Berryhills of any such alleged debt." See Darville affidavit.

Any interest on the Commission's part about the origins of the "bill" for catfish should refer once again to Little Dixie Supermarket v. Hazelhurst, supra and the discussion above in reference to the alleged $351.08 payment for copier supplies.

2. Travel On Corporate Aircraft Owned By The Berryhills And/Or Their Businesses

The Berryhills claim that Congressman Dowdy negotiated a rate for the use of corporate aircraft jointly owned by Berryhill Farms, Inc. and Little Dixie Supermarket. The Berryhills then identify a series of occasions when this aircraft was used, the charges accumulated, and the alleged failure of Congressman Dowdy or the Committee to pay the $4,000 owing for the transportation in question.

In his October 8th affidavit, Congressman Dowdy states that he did, in fact, use the Berryhill corporate plane "on at least two, and possibly three occasions . . . ." He denies, however, that any agreement on charges, such as that detailed by the Berryhills, was ever reached with him. As the Congressman states, "a bill for the plane was requested, and when the bill was submitted, it was promptly paid . . . ." See Dowdy October 8th affidavit. Treasurer Darville concurs that "the Committee has paid every bill submitted to it for air travel by the candidate or authorized campaign personnel." See Darville affidavit.

If the Berryhills billed the Committee at less than the actual charge, or billed them for fewer occasions than the plane was actually used, the fault lies with the Berryhills, not with the campaign. The Committee would always have been prepared to pay the true cost of the transportation used, and indeed their payment of the one bill submitted for this transportation confirms this point. Now, however, with the inflation, exaggeration, and outright falsehood which characterizes all of their claims, the Berryhills are developing new demands for payment of the air transportation.

8400145172

If substantiating documents can be produced, the Committee, will, of course, make all necessary payments to avoid a violation of 2 U.S.C. § 441b. Until such time, however, the Committee will approach this matter with caution in light of the other unsupported allegations made against them by the Berryhills. It awaits further guidance from the Commission.

CONCLUSION

The Committee has demonstrated beyond any doubt that with the qualified exception of corporate plane travel, the allegations underlying the Jacquelin Smith Pierce complaint are based on a source which is not credible. The Berryhills' past practice and the internal contradictions running through the allegations made against the Committee, all point to untrustworthy testimony upon which the Commission cannot base a probable cause to believe finding. If, in fact, expenditures were made by the Berryhills in connection with the campaign, other than those known to the Committee and publicly reported, these were made utterly without authority. It appears more likely, however, that these expenditures were not made, and that the current lawsuit is a fabrication designed solely as a defensive maneuver by parties whose desperate business and financial situation has apparently led them into the practice of false witness.

Accordingly, the Committee requests immediate dismissal of this matter. In the event that the Commission determines that more was owing for corporate plane travel than was actually paid, the Committee is prepared to entertain appropriate evidence and to make payment accordingly. The Committee's failure, however, to pay bills which were never submitted, especially bills tendered by the likes of the Berryhills, does not rise to the level of a significant violation of the Act. Any restitution required can be made promptly and informally, outside the procedures of the enforcement process. The Committee must insist, however, that adequate proof be proffered of the substance of any claim for corporate plane travel, for it will not and cannot pay ransom to the plaintiffs on the basis of raw and unsupported allegations motivated by desparate financial straits and a personal vendetta.

Respectfully submitted,

Robert F. Bauer
Counsel, Dowdy for Congress
Committee

RFB/peg
Attachments
cc: Dwayne Brown

8 4 0 1 4 5 1 7 3

(21)

Attachments to Dowdy Response are Numbered 1 - 178

		Pages
I	Berryhill v. Dowdy	1-13
II	Chapter II Petition	14-15
III	Dowdy Affidavit of October 8	16-23
IV	Dowdy Affidavit of January 31	24-27
V	Robert Darville Affidavit	28-44
VI	Susan Dowdy Affidavit	45-48
VII	Bank of Hazelhurst v. Berryhill	49-63
VIII	Berryhill v. Hazelhurst	64-145
IX	Berryhill v. Mississippi Publishing Corp.	146-178

8404014517 4

4040145175

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL, LOWERY BERRYHILL AND BERRYHILL FARMS, INC. — PLAINTIFFS

FILED
SEP 7 1932
W.E. McKINLEY
CIRCUIT CLERK
D.C.

VS. — NO. 28991

CHARLES WAYNE DOWDY — DEFENDANT

COMPLAINT

COME NOW the Plaintiffs in the above styled and numbered cause, by and through their attorneys of record, and file this their Complaint against Charles Wayne Dowdy, Defendant herein, and for their respective causes of action would show unto the Court the following, to wit:

I.

Plaintiffs, Herbert Berryhill and Lowery Berryhill, are adult resident citizens of Terry, First Judicial District of Hinds County, Mississippi. Plaintiff, Berryhill Farms, Inc., is a Mississippi corporation domiciled in Terry, First Judicial District of Hinds County, Mississippi.

II.

Defendant, Charles Wayne Dowdy, is an adult resident citizen of Pike County, Mississippi, currently serving as United States Congressman for the Fourth Congressional District of Mississippi. Said Defendant may be served with process of this Honorable Court at his permanent residence located at Route 3, Box 221, Summit, Mississippi 39666.

III.

Plaintiffs' causes of action arise out of the breach by Defendant of certain oral agreements and contracts entered into in the First Judicial District of Hinds County, Mississippi, and which were to be performed in whole or in part in said jurisdiction and venue, all as more fully appears hereinafter.

IV.

On or about March 17, 1981, Defendant, Charles Wayne Dowdy, embarked upon an endeavor to run and be elected to fill the unexpired term for the Congressional seat of the United States House of Representatives, Fourth Congressional District of Mississippi, previously held by Representative Jon Hinson. Defendant, prior to this time, practiced law in McComb, Mississippi, and had participated in local politics, having become Mayor of the City of McComb, but was little known, if not unknown, by the electorate of Hinds County, Mississippi. Defendant, therefore, sometime between March 17, 1981, and May 24, 1981, travelled several times to Jackson, Mississippi, one of the county seats of Hinds County, and the most populous city in this State, in an effort to solicit and entice persons to assist him in getting his foot in the door and entrenching himself with and among voters in this county that would not only vote for him but aid and assist him in making contacts with other voters and in raising the necessary funds for a Federal election campaign.

V.

Plaintiff, Herbert Berryhill, previously had served as a duly elected supervisor of the Fifth District of Hinds County, Mississippi, and had been engaged in politics in Hinds County

and both he and his following had engaged in said politics in Hinds County for many years; Defendant sought an introduction to the Plaintiff, Herbert Berryhill, and his sons and the Defendant travelled to The Country Kitchen restaurant in Byram, Mississippi, a small restaurant owned by Plaintiff, Herbert Berryhill's, wife, whereupon the Plaintiff, Herbert Berryhill, was introduced to the Defendant Dowdy. The Defendant Dowdy presented his desires to be elected, his programs, his hopes and ambitions to the Plaintiffs and the Plaintiffs, believing him to be an honest man of his word, were totally mesmerized by the Defendant Dowdy and commencing May 24, 1981, Plaintiffs entered the Defendant's campaign, recommending him to the electorate of Hinds County and particularly to the South and West Jackson communities of Hinds County, and worked in the campaign tirelessly in order to seek the election of the Defendant as a Congressman from Mississippi.

VI.

During the course of Defendant's campaign for Congress, both the first and second primaries, Plaintiffs provided Defendant with large sums of cash money, travel expenses, supplies, labor, and even the use of an airplane and commercial pilots that chauffeurred Defendant from town to town throughout the District, all as more fully appears hereinafter.

VII.

During the course of Defendant's campaign, the Plaintiff, Lowery Berryhill, worked practically full time for the Defendant in conjunction with another campaign worker out of the State Campaign Headquarters on Capital Street in Jackson, Mississippi. The other campaign worker, whose name will be furnished the Court upon a hearing hereof, was prominent in the campaign of

the Defendant Dowdy and was also instrumental in collecting funds for the Defendant and in organizing the campaign and administratively handling large numbers of campaign employees throughout the District and further paid many and sundry bills and expenses of the campaign with monies furnished to him by these Plaintiffs and with monies furnished to him by the campaign treasurer out of McComb, Mississippi. That said campaign official at all times was acting in behalf of and at the behest of the Defendant Dowdy and had many public and secret meetings with the Defendant Dowdy.

VIII.

During the course of Defendant's campaign, (a) campaign official approached Plaintiff, Lowery Berryhill, to cash certain checks, copies of which are attached hereto collectively as Exhibit "A" and incorporated hereby by reference. The campaign worker represented to Plaintiff, Lowery Berryhill, that Defendant was in need of the funds represented by the face amount of each of the four aforesaid checks, totalling $5,900.00, for the campaign. The campaign worker informed Plaintiff, Lowery Berryhill, that the said checks were not "good", but for him "to go on and put them in" and the money would be reimbursed immediately by Defendant. Based upon these representations, Plaintiff Lowery Berryhill, cashed said checks and tendered to the campaign worker on behalf of Defendant the sum of $5,900.00, all from the personal funds of Plaintiff, Herbert Berryhill. That notwithstanding repeated requests by Plaintiff, Herbert Berryhill, to Defendant to repay said sum, Defendant has refused to do so and is liable to Plaintiff, Herbert Berryhill, in the sum of $5,900.00.

IX.

That during the course of Defendant's campaign, he, as well as employees and agents under his control, solicited the assistance of Plaintiff, Herbert Berryhill, to arrange for said Plaintiff's wife, Velma, to supply Defendant, through a business operated by her, named The Country Kitchen, with 750 pounds of catfish for several campaign fish fries on Defendant's behalf. Defendant misrepresented to Plaintiff, Herbert Berryhill, that he would pay said Plaintiff's wife for said catfish, whereupon Defendant was presented with a bill therefor in the sum of $1,500.00, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference. That the sum of $2.00 per pound for said catfish was a fair and reasonable sum, yet Defendant failed to pay said agreed upon debt. That Defendant misrepresented to Plaintiff, Herbert Berryhill, that if said Plaintiff would "take care of" the said bill with Mrs. Berryhill that Defendant would pay said Plaintiff therefor. That based upon said representation, Plaintiff, Herbert Berryhill, paid to The Country Kitchen the sum of $1,500.00. That notwithstanding said consideration and representation, Defendant Dowdy has refused to pay any of said debt to Plaintiff, Herbert Berryhill, and is liable to said Plaintiff in the principal sum of $1,500.00.

X.

That during the course of Defendant's campaign, Defendant requested Plaintiff, Lowery Berryhill, to provide hotel accommodations for Defendant's staff and the press representatives, and that Defendant would reimburse said Plaintiff for these expenses. That said Plaintiff did, in fact, provide Defendant such accommodations; however, on over half of these occasions the rooms were

utilized by Defendant and his family within which to rest and get some privacy. Under the understanding that he would be repaid therefor by Defendant, Plaintiff, Lowery Berryhill, paid for said accommodations on his American Express Credit Card, and authorized the wife of Defendant, Susan Dowdy, to sign his name to all such billings. One such occurrence took place on or about the 22nd day of June, 1981, whereby said Plaintiff paid the sum of $958.49, as evidenced by that bill attached hereto as Exhibit "C" and incorporated herein by reference. On a subsequent occasion, on or about the 7th day of July, 1981, the day of the election, said Plaintiff paid the sum of $283.39 for Defendant's said hotel accommodations at the Downtown Holiday Inn in Jackson, as evidenced by the bill attached hereto as Exhibit "D" and incorporated herein by reference. That notwithstanding Defendant's many promises and representations, and despite repeated requests for payment, Defendant has failed to repay said sums to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff for same in the principal sum of $1,241.88.

XI.

Plaintiffs, Berryhills', business, Little Dixie Supermarket, Inc., owned a twin engine airplane jointly with Berryhill Farms, Inc. prior to this campaign. Throughout Defendant's campaign, Plaintiff, Berryhill Farms, Inc., furnished Defendant and his staff at the fair and reasonable agreed upon rate of $200.00 per hour of flight time and $50.00 an hour of waiting time, said Plaintiff's airplane and two commercial pilots to take Defendant and various members of his staff throughout the District and State, as well as Louisiana and Tennessee. One such occasion involved a round trip for Defendant from Hawkins Field in Jackson, Mississippi, to New Orleans, Louisiana, for a taping session. Actual flight time for said trip was 2 1/2 hours for the sum of $500.00, together with 5 hours waiting time for the additional

sum of $250.00 for a total of $750.00. Another trip to New Orleans, Louisiana, was made on Defendant's behalf to pick up Defendant's campaign literature. Actual flight time for this trip was 2 1/2 hours and involved no substantial waiting time for which the total sum of $500.00 was charged by Plaintiff, Berryhill Farms, Inc., and incurred by Defendant. A third trip was for the purpose of flying Defendant, round trip, from Jackson to McComb to appear at a campaign rally and fish fry. Actual flight time for said trip was 2 hours for the sum of $400.00. A fourth trip was to take several of Defendant's staff, round trip, from Jackson to Memphis, Tennessee. Actual flight time was three (3) hours for the sum of $600.00. A fifth trip was for Defendant to attend a rally at The Armstrong Tire Company facility in Natchez, Mississippi. The round trip flight time from Jackson to Natchez was 2 hours for the sum of $400.00, and waiting time in Natchez was 4 hours for the additional sum of $200.00 for a total of $600.00. There were, in addition, subsequent similar trips made from Jackson to Tylertown, McComb, Natchez, and Vicksburg, the actual flight time of which was a total of 5 3/4 hours for the sum of $1,150.00. That the grand total of the aforesaid sums amounts to $4,000.00 for which Defendant obligated himself to pay Plaintiffs, Berryhill Farms, Inc., and for which he is liable to said Plaintiff, Berryhill Farms, Inc. That Plaintiff, Herbert Berryhill, Plaintiff, Lowery Berryhill, and Clifford Berryhill, all have, and did have throughout the campaign of Defendant, a license to fly the said Plaintiff corporation's airplane, provided that the use thereof was not for hire, but rather to be free of charge. Thus, if the use of said aircraft was to have been free of charge for Defendant, there certainly would have been no sane reason why two commercial pilots would have been hired to transport Defendant when any one of the Berryhills could have done so. The truth of the matter is that it was agreed upon between said corporate Plaintiff and

the Defendant that the aforesaid rates would be charged and paid, for which Defendant would be liable, and since such rates can be charged only if the aircraft is being flown by a pilot with a commercial license, which none of the Berryhills have, two such pilots were hired. Notwithstanding frequent demand therefor by Plaintiff, Berryhill Farms, Inc., Defendant has refused to pay same and is liable to said Plaintiff in the principal sum of $4,000.00.

XII.

That on or about May 28, 1981, pursuant to the request of Defendant Dowdy, Plaintiff, Lowery Berryhill, agreed to pay for certain copier supplies for Defendant's campaign headquarters, provided the funds spent therefor were repaid to said Plaintiff. Upon the representation of Wayne Dowdy that said money would be repaid, Plaintiff, Lowery Berryhill, paid to Defendant the sum of $351.08 for such copier supplies. Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the receipt given to said Plaintiff on the aforesaid date evidencing said payment. Despite repeated demand upon Defendant by said Plaintiff, Defendant has totally failed to repay said sum and is liable to Plaintiff Lowery Berryhill in the principal sum of $351.08.

XIII.

That during the second primary campaign of Defendant, Defendant once again returned to the gravy train and obtained a loan from Plaintiff, Herbert Berryhill, in the sum of $18,000.00, every dollar of which was in cold cash. Said loan was made solely upon Defendant's representation that it would be repaid. Not only has this money not been repaid to said Plaintiff, but a large amount of it appears to have been unreported

and unaccounted for. Said Plaintiff was informed by a member of Defendant's campaign staff that the money was used for various salaries and expenses evidenced by certain vouchers, copies of which are attached hereto collectively as Exhibit "F" and incorporated herein by reference. Said vouchers, however, total only the sum of $11,657.49, some $6,342.51 less than the $18,000.00 loaned by Plaintiff, Herbert Berryhill. Defendant informed Plaintiff, Lowery Berryhill, that the rest of the receipts would be coming in the next few days. It became evident, however, that cash money was being spent in the campaign by Dowdy, himself, that was unreported. For instance, on July 6, 1981, the day before the election, Clifford Berryhill and one Ray Barfield transported Defendant Dowdy from Jackson to Tylertown, McComb, Meadville, Liberty, Natchez and Vicksburg, to various radio stations in each of said towns. On each and every one of these stops, said Berryhill and Barfield witnessed Congressman Dowdy personally pay cash to persons at these stations for radio spots the day before the election. On many of said occasions, Defendant and his entourage were not even out of town when they heard the spots being given over the radio. Defendant Dowdy told Plaintiff, Herbert Berryhill, that he (Dowdy) would amend his report to the Federal Election Commission to show that the aforesaid $18,000.00 as provided to him by said Plaintiff was, in fact, a loan; that he (Dowdy) had until December of 1981 to so amend it and that it would be done. This promise, like so many others made by Dowdy during his campaign, was a mere means to an end and nothing else. Said funds have not been repaid, Defendant's misrepresentations that it would be reported and repaid have proven fruitless. Plaintiffs learned in June,1982, by going to the Secretary of State's office and by receiving and purchasing a copy of the FEC filings of the Defendant Dowdy that

his returns had not been amended but as previously reported by the newspaper the campaign official that Plaintiff, Berryhill, had cashed checks for had allegedly received compensation for the sum of $15,500.00; that upon contacting that campaign worker, it was learned that he had not received a salary but that checks had been made out to him from which he made expenditures for the campaign in cash and reported same on a voucher system to the treasurer of the campaign and that worker notified Plaintiffs that he, too, had been promised that the return would be amended to the FEC correctly indicating where these expenditures were made and that all vouchers had been properly forwarded to the Defendant showing where these expenditures had been made.

XIV.

That during the month of July, 1981, Defendant, Lowery Berryhill, gave to the Defendant, Wayne Dowdy, the sum of $800.00 cash to use for the purchase of alcoholic beverages for the party after the election, which Defendant Dowdy was to reimburse the Plaintiff, Lowery Berryhill. That notwithstanding said promise to reimburse Defendant, Lowery Berryhill, Defenant Dowdy has refused to pay any of said debt to Plaintiff, Lowery Berryhill, and is liable to said Plaintiff in the principal sum of $800.00.

XV.

Plaintiff, Berryhills, pursuant to and at the behest of the Defendant Dowdy gave to him paid campaign workers for which the Plaintiffs were to be reimbursed and for which the Defendant failed to report in his FEC filings, in particular the following named employees worked in the campaign for Dowdy and Plaintiff asserts that he paid unto said workers the sum of $5,174.00 namely:

Ray Barfield	1,500.00
Tom Knight	1,500.00
Stephen Jones	1,000.00
Olga Lynn Jones	280.00
Melvin Howell	307.00
Dennis Reese	307.00
Beverly Whitehead	280.00 for a total of $5,174.00.

XVI.

Plaintiff, Herbert Berryhill, asserts that in addition to all of the above amounts that he treated the Defendant, his family and friends on at least five occasions to dinner at his wife's restaurant, but these charges were gifts from the Plaintiff and no claim is asserted for these amounts. The Defendant was accompanied by newspaper reporters on at least one of these occasions who took pictures of the Defendant and his father at the restaurant.

COUNT I.

XVII.

Defendant Dowdy is liable to Plaintiff, Herbert Berryhill, in the total principal sum of $25,400.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT II.

XVIII.

Defendant Dowdy is liable to Plaintiff, Berryhill Farms, Inc., in the total principal sum of $10,174.00, for the aforesaid damages, together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

COUNT III.

XIX.

Defendant Dowdy is liable to Plaintiff, Lowery Berryhill, in the total principal sum of $2,392.96 , together with interest thereon at the legal rate of interest from and after date of judgment until paid in full, and all costs of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment of and against Defendant in the total sum of $37,966.96 together with interest thereon at the legal rate from and after date of judgment until paid in full, and all costs of this action.

Respectfully submitted,

Herbert Berryhill
HERBERT BERRYHILL

Lowery Berryhill
LOWERY BERRYHILL

BERRYHILL FARMS, INC.

BY Herbert Berryhill

BINDER, KIRKSEY & DeLAUGHTER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

FORM NO. 1

VOLUNTARY CASE: DEBTOR'S PETITION

United States Bankruptcy Court

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

In re

LITTLE DIXIE SUPERMARKETS, INC.,
Debtor [include here all names used by Debtor within last 6 years]

Case No. [illegible]

VOLUNTARY CASE: DEBTOR'S PETITION

1. Petitioner's post-office address is P. O. Box 10, Terry, Mississippi

2. Petitioner has had his principal place of business within this district for the preceding 180 days [or].

3. Petitioner is qualified to file this petition and is entitled to the benefits of title 11, United States Code as a voluntary debtor.

4. Petitioner intends to file a plan pursuant to chapter 11 of title 11, United Stated Code].

WHEREFORE, petitioner prays for relief in accordance with chapter 11 of title 11, United States Code.

Signed: William B. Kirksey
Attorney for Petitioner.

Address 511 East Pearl Street
P. O. Box 25
Jackson, MS 39205

[Petitioner sign if not represented by attorney.]

Petitioner

[illegible] 00000000
$1200 pd
1:40 p

I, _____, the petitioner named in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct.

Executed on _____

Signature: _____
Petitioner

Verification attached hereto as Exhibit "C".

U. S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
AUG 24 1981
MOLLIE C. JONES, CLERK
BY [illegible]

NOTE: This form may be used to commence a voluntary case under chapter 7, 11 or 13 of the Bankruptcy Code. A chapter 9 petition requires additional allegations (see 11 U.S.C. § 109(c)) but this form may be adapted for such use.

The title of the case, in the caption of the form, should include other names used by the debtor, such as trade names, doing business names, married names and maiden names. This will help enable creditors to identify properly the debtor when notices and orders are transmitted to the creditors.

A joint petition, available for an individual and spouse, may be filed under chapter 7, 11 or 13. See 11 U.S.C. § 302. Form No. 2 may be used for this purpose.

The unsworn declaration at the end of the petition conforms with Public Law 94-550, 90 Stat. 2534, 28 U.S.C. § 1746 (1976) which permits the declaration to be made in the form indicated with the same force and effect as a sworn statement. The form may be adapted for use outside of the United States by adding the words "under the laws of the United States" after the word "perjury."

[illegible] 1978, FAIRVIEW HEIGHTS, ILL. 62208

STATE OF MISSISSIPPI

COUNTY OF PIKE

I, Wayne Dowdy, after being first duly sworn, state on my oath as follows:

The allegations in the complaint filed in the First Judicial District of Hinds County, Mississippi, against me by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., are untrue. I do not know, nor had I ever heard of Herbert Berryhill, Lowery Berryhill, or Berryhill Farms, Inc., until I became a candidate for United States Congress in 1981. At some time between March and August, 1981, I met Lowery Berryhill and Herbert Berryhill for the first time. I do not remember the date of this meeting.

Neither was ever asked to assume any role in the campaign other than volunteer workers. They had, no official capacity in the election, nor did they ever assume any official capacity in the campaign. Both men performed some volunteer services for the campaign, along with hundreds of other people. I rode with them in their automobiles on one or two occasions, and I was invited to dinner with the Berryhills and other members of their family on two occasions. Both men talked with me on several occasions about contacts made by them on my behalf. I believed that Herbert Berryhill and Lowery Berryhill were working for me as volunteer campaign workers, interested in my election, just as hundreds of other persons who were working as volunteers in the campaign.

8 4 0 4 0 1 4 5 1 9 8

I deny that I, or my campaign committee owes any money to Herbert Berryhill or Lowery Berryhill.

I deny that I received cash loans from Herbert Berryhill in the amount of $18,000.00, or in any amount, and I deny that these funds, which did not and do not exist, were used for campaign purposes, for radio advertising on "radio stations in Tylertown, Meadville, Liberty, Natchez, and Vicksburg," as stated in the Berryhills' complaint. Meadville and Liberty do not have radio stations. All records for advertising purchased on radio stations in Tylertown, Natchez, and Vicksburg are filed with the Federal Election Commission, including the amounts and dates of checks used for purchase of ads.

I deny that an un-named campaign worker approached Lowery Berryhill to cash four (4) checks for $5,900.00. All checks cashed by the campaign account are on file with the Federal Election Commission and no other checks were issued or authorized to any person.

I deny that the wife of Herbert Berryhill provided 750 pounds of catfish for a total value of $1,500.00, and I deny that any catfish in any amount was ever obtained from Berryhill, his wife, or any other member of his family.

I deny that Lowery Berryhill provided hotel accomodations for staff and press representatives in the amount of $958.49 from June 22 through June 25, 1981, and in the amount of $283.39 on July 7, 1981, or in any other amounts or on any other dates.

8401459

I also deny allegations that Lowery Berryhill authorized my wife, Susan Dowdy, to sign Lowery Berryhill's name to any document, including his credit card.

I used the Berryhill plane on at least two, and possibly three occasions, for which payment has been made, as shown on the reports which have been filed with the Federal Election Commission. I deny any agreement, oral or written, that the plane was to be used at a cost of $200.00 per hour air time and $50.00 per hour waiting time. These nor any other figures were ever discussed with Herbert Berryhill or Lowery Berryhill. The plane was offered by Herbert Berryhill for a trip to Natchez, Mississippi and on the day before the final election for a trip to Tylertown, Natchez and Vicksburg, Mississippi. A bill for the plane was requested, and when the bill was submitted, it was promptly paid and this payment is reflected on the records of my campaign committee and it is reflected on the committee's reports which have been filed with the Federal Elections Commission.

I deny that Lowery Berryhill agreed to pay for copy supplies or office supplies in the amount of $351.08 on May 28, 1981, or for office supplies in any amount on any date. Reports filed by my campaign committee with the Federal Election Commission reflect the committee's payment for all office supplies used in my campaign.

I deny the receipt of loans from Herbert Berryhill in the amount of $18,000.00 or in any amount whatever.

8401450

I deny that Lowery Berryhill gave me or my campaign $800.00 in cash, or in any amount, for the purchase of alcoholic beverages.

I deny that the Berryhills paid campaign workers $5,174.00, or any amount, for their work and services. I have never met Stephen Jones, Olga Lynn Jones, Melvin Howell, Dennis Reese, or Beverly Whitehead, who are listed as workers paid by the Berryhills. I did meet Ray Barfield and Tom Knight at various times during the campaign, but both were volunteer workers and no agreement was ever made that they would be paid workers.

After the election, and after assuming my office, I did not see the Berryhills for several weeks. I received a telephone call from Lowery Berryhill and Herbert Berryhill, who asked to meet with me. Both Berryhills drove to McComb for the meeting at some time in August, 1981. At that time, the Berryhills informed me that their businesses were going into bankruptcy, and that Lowery Berryhill should be given a job because of the work done by the Berryhills in the campaign. The Berryhills did not claim that any money was owed them at that time. I said that I would be back in touch with the Berryhills, and that I was unable to promise a job on the congressional staff to Lowery Berryhill at that time.

During September, 1981, Herbert Berryhill contacted me and asked to meet with me in my Jackson office in the Post Office Buidling. At this meeting, Herbert Berryhill again requested that his son be given a job. I again told Mr. Berryhill that I would not be able to give a job to Lowery Berryhill at that time.

8401451

I investigated the background of both Herbert Berryhill and Lowery Berryhill, and learned of many lawsuits in which they had been involved. I talked with an attorney about a suit filed by the Berryhills against a bank in Hazlehurst, Mississippi in the amount of $92,000.00 claiming the loss of a deposit slip by the bank in that amount. I also discussed with an attorney the bankruptcy petition filed by the Berryhills and learned of a large number of irregularities reflected by the petition. I talked with an attorney concerning a suit filed by Herbert Berryhill after his defeat for re-election as Supervisor in Hinds County.

Based on this information and other information I had learned, I decided I would not offer employment to Lower Berryhill, and I informed Herbert Berryhill of this decision by telephone at some time in either November or December, 1981.

I did not again talk to Herbert Berryhill or Lowery Berryhill until July or August, 1982. At that time, I was called by Lowery Berryhill and I spoke with him by telephone. Lowery Berryhill stated that he had tried to contact me on my occasions. To my knowledge, this is not true.

He then told me that unless I gave him either a job or payment for campaign services within three days, then he would go to the press with his claim that I owed the Berryhills money.

Lowery Berryhill stated, "I have met with the Republicans on this, and I could really hurt you."

8401452

I told Berryhill that I would not give him a job and I would not pay him money.

Three or four days after this conversation, I was contacted by members of the press about claims made by Lowery Berryhill to television reporters that he and his family were owed money.

8410145163

STATE OF MISSISSIPPI

COUNTY OF PIKE

This day personally appeared before me, the undersigned authority in and for said county and state, the within named WAYNE DOWDY, who, after being first duly sworn, states on his oath that the matters and things in the above and foregoing statement are true and correct as therein stated.

Wayne Dowdy

WAYNE DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this, the 8th day of October, A. D, 1982.

Susie D. Ross

NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 23, 1984

8404014351294

I, Wayne Dowdy, after being first duly sworn, state on my oath as follows:

The Complaint allegations relating to alleged disbursements of cash to representatives of radio stations in certain towns in the Fourth Congressional District of the State of Mississippi are false. Several of the certain towns listed by the Berryhills where these alleged transactions took place do not have radio stations, these towns include Meadville, Mississippi and Liberty, Mississippi. All radio advertisement and radio air time were purchased with campaign funds, and such advertisements and air time were purchased by check drawn on the campaign committee checking account as reflected by reports heretofore filed with the Federal Election Commission.

I paid for hotel accomodations at the Holiday Inn, Downtown, Jackson, Mississippi for June 23, 1981 and June 24, 1981, these being the date of the 1981 special election primary and date following. The payment for accomodations was made by personal American Express card, which was signed by my wife, Susan Dowdy with my knowledge and consent. My wife had no separate source of income and the funds paid for these accomodations were in fact my personal funds. The total charges for these accomodations which included hotel suite, telephone services, restaurant services and banquet room services for the victory celebration on the evening of June 23, together with catering totaled $928.28. This bill may be further itemized to show that $301.52 was paid for the hotel suite and telephone services and the sum of $626.70 was paid for the Raintree Banquet Room and catering. No other hotel accomodations were provided anyone associated with the campaign committee. The committee paid a part of those expenses incurred on July 7 and July 8, 1981 and this expense, together with the expense paid personally by me, represented the only committee related accomodations. Berryhills' accomodations and expenditures, if any, were not authorized or requested by me or, to my knowledge by the treasurer who would have had to approve such an expenditure.

In addition to adopting and incorporating herein my sworn affidavit of October 8, 1982 relative to the allegations of payment by the Berryhills for "copier supplies", affiant would add that such supplies were not even needed by the campaign inasmuch as the campaign headquarters in Jackson, Mississippi, where such supplies were allegedly delivered, had no copier machine or duplicating machine, nor did the committee employ any such machine in any office.

Lowery Berryhill did not give me the sum of $800.00 cash to use for the purchase of alcoholic beverages for a victory party after the election on July 7, 1981, nor did he give me any sum of cash for this purpose or any other purpose at any time. On the election evening I ran no errands to the liquor store nor did I purchase any alcoholic beverages for any party after the election. To the contrary, I spent the evening meeting with various persons regarding the steps that would follow my election and on the day following my election, I traveled to Washington to assume my office in the United States Congress. The July, 1981 Federal Election Commission report filed by my campaign committee reflects an expenditure made for the purchase of alcoholic beverages and reflects payment of said expenditure by campaign committee check. No other such expenditure was authorized or made.

I did not negotiate with Mrs. Herbert Berryhill or any member of the Berryhill family or any other person for the purchase of catfish during the course of my campaign. I attempted to devote my time to meeting as many people in as many places in the district as possible and in the course of these efforts, negotiations for the purchase of catfish for a pre-election fish fry had no place. I and my wife worked during the course of this 1981 campaign from predawn hours to after midnight routinely and I can recall no rally and no campaign meeting at which I appeared or arrived on time and I can solemnly state under oath that such

schedule conflicts did not result because I idly spent my time while campaigning for a position in the United States Congress haggling over the price of catfish. Such an assertion is asinine and ludicrous.

I did not direct, instruct or authorize Lowery Berryhill, Herbery Berryhill or anyone else associated with my campaign to cash any checks drawn on any account other than the account owned by my campaign committee. No person was instructed or authorized or allowed to obtain any funds or execute any instrument on behalf of the campaign or on behalf of affiant personally and such conduct and efforts, if any, and proceeds realized therefrom, if any, bore no relation to my campaign nor served an purpose therein.

I did not receive $18,000.00 or any amount of cash from the Berryhills. It is ludicrous that such transactions would have occurred between acquaitances of only weeks and it is now a matter of public record that the Berryhills family business was then bankrupt, which further casts grave suspicions as to the financial abilities of the Berryhills to dole forth such advances.

Further, affiant sayeth not.

Wayne Dowdy
WAYNE DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this, the 31 day of January, A. D., 1983.

Mary Curtis Bowman
NOTARY PUBLIC

My Commission Expires:
May 30, 84

AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF PIKE

I, Robert H. Darville, Jr., after being duly sworn, state on my oath as follows:

I was the treasurer of the Wayne Dowdy for Congress Committee for the 1981 Special Election held in the Fourth Congressional District of the State of Mississippi.

I did not receive $18,000.00 or any amount of cash from the Berryhills in my capacity as treasurer of the Wayne Dowdy for Congress Campaign Committee. I know of no sum of cash whatsoever paid into the campaign by the Berryhills. I did not on behalf of the committee, or otherwise, direct, instruct or authorize Lowery Berryhill, Herbert Berryhill or anyone else associated with the committee to cash any checks drawn on any account other than the account owned by the election committee. No person was instructed, authorized or allowed to obtain any funds or execute any instrument on behalf of the campaign or, to my knowledge, on behalf of the candidate personally and such conduct and efforts, if any, and proceeds realized therefrom, if any, bore no relation to the effort of the campaign committee nor served any purpose therein.

All expenditures made for the purchase of radio advertisement and radio air time were from campaign funds, the same being purchased by check drawn on the campaign committee checking account as reflected by reports heretofore filed with the Federal Election Commission. Unreported cash expenditures for the purchase of air time or other media advertisement were in no fashion made.

Lowery Berryhill and Herbert Berryhill made no cash expenditures on behalf of the Wayne Dowdy Campaign Committee for hotel accomodations at any time during the course of the 1981 campaign. Such expenditures, if any, by them bore no relation to the efforts of the campaign committee or campaign committee personnel. Attached hereto as Exhibit "A" is a photocopy of the statement of

Holiday Inn Downtown, Jackson, Mississippi for its services July 7, 8 and 9, 1981. This bill was paid by campaign check no. 455 with campaign funds and represented charges for all hotel accomodations except the banquet room. Charges for the Delta III banquet room totalled $961.17, were paid by Susan Dowdy with the American express car of her husband Wayne Dowdy, and no reimbursement was made by the committee. Exhibit "B" attached hereto reflects the itemized charges for banquet room services which were paid by Wayne Dowdy's American Express Card.

Expenditures to provide hotel accomodations for staff and press representatives were not authorized or made. It was unnecessary that such an expense be incurred and such an expenditure be made since all salaried staff members were residents of the Jackson - Hinds County, Mississippi area and all press representatives known to the affiant to have covered the two election nights during the 1981 campaign were affiliated with the local - Jackson, Mississippi - media and such accomodations were totally unnecessary. Exhibit "A" to the Complaint filed herein reflects the Complaint of Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc. and attached to said Complaint now pending in the Circuit Court of Pike County, Mississippi after transfer from the Circuit Court of the First Judicial District of Hinds County, Mississippi is Exhibit "C" thereto which those abovenamed Plaintiffs assert bears the signature of the wife of Wayne Dowdy, Susan Dowdy as having signed an American Express Card receipt dated June 22, 1981 allegedly in the sum of $958.49, the same constituting the bill for hotel accomodations provided the Dowdys by the Berryhills. In fact, said Exhibit "C" to said lawsuit is in the sum of $938.49, bears folio number 138 127, bears the guest's name "Berryhill, L." and in fact bears the signature of Lowery Berryhill and not that of Susan Dowdy. Any and all other such bills for hotel accomodations bear no relationship whatsoever to the campaign and allegations to the contrary are as absurd and

baseless as the Berryhills' Exhibit "C" to their Complaint.

The committee has paid every bill submitted to it for air travel by the candidate or authorized campaign personnel. No bill has ever been received and no demand has ever been made to the committee for payment of any flight time or waiting time and absent credible and substantiated documentation, such an expenditure is believed to be improper and inappropriate, and I know of no authority to extend such payment.

Lowery Berryhill was not authorized, directed or allowed to purchase office supplies of any sort for the campaign committee. Copier supplies were not required by the campaign committee since the committee had no copier machine or duplicating machine in its headquarters in Jackson, Mississippi, or in any other campaign office.

No employee, agent or campaign worker was authorized or directed to purchase from Velma Berryhill or any Berryhill business catfish for use in the campaign effort. All such authority for such expenditures was vested solely within me and no such requests were received by me and no such approval was extended to anyone associated with the campaign committee to contract for the purchase of catfish from the Berryhills. Additionally, no bill for any quantity of catfish delivered to the campaign committee has ever been received by me and no demand has ever been placed upon me as treasurer for payment to the Berryhills of any such alleged debt.

All payments to campaign workers for the polling effort immediately before the final election were made from campaign funds. Such expenditures were verified by vouchers and these vouchers are in the custody of the campaign committee. Attached hereto as Exhibit "C" is an explanation provided Ms. Benita Marcus Adler, Reports Analyst, Federal Election Commission, Washington, D. C., this explanation of the voucher system employed by the committee being dated April 1, 1982. The explanation was given in response to an inquiry directed to me as treasurer of the

Wayne Dowdy for Congress Committee, the inquiry from Ms. Adler being dated March 23, 1982. I hereby adopt under oath my explanation afforded the Commission in my telephone conversation with Ms. Adler and in my correspondence which confirmed that conversation of March 30, 1982. No other expenditures by the Berryhills and no other vouchers have any relationship whatsoever with the campaign committee or the candidate to my knowledge.

No payment, if any, from the Berryhills to any person or persons in any fashion associated with the campaign committee and election effort were known to or sought, requested, authorized, directed, ratified or accepted by the committee.

No payment in the amount of $800.00 was made by Lowery Berryhill on behalf of the committee for the purchase of alcoholic beverages. The committee paid checks no. 256 and no. 496 totalling $830.00 for the purchase of alcoholic beverages on the two election nights. Check number 256 reimbursed Sam Brand for his purchase of such supplies for the election night of June 23, 1981. Said checks are attached as Exhibit "D" and Exhibit "E".

Alleged employees Ray Barfield, Tom Knight, Stephen Jones, Olga Lynn Jones, Melvin Howell, Dennis Reese and Beverly Whitehead were not salaried employees of the committee and have never been paid by the committee so there is nothing to report. Payment by the Berryhills, if any, not authorized or directed. Of these, only Tom Knight is known to the Affiant.

This affiant, all authorized campaign personnel, and the candidate endeavored to comply with the letter and spirit of the Federal Election Campaign Act and Federal Election Commission Regulations. On numerous occasions, I solicited information from the Commission and on numerous occasions, I made inquiries seeking general assistance from the Commission office and endeavored to act in accordance with such information and instruction.

And, further, affiant sayeth not.

Robert H. Darville Jr.
ROBERT H. DARVILLE, JR.,
Treasurer, Wayne Dowdy for
Congress

SWORN TO AND SUBSCRIBED BEFORE ME, this the 28th day of January, A. D., 1983.

Susie D. Ross
NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 23, 1984.

STATEMENT

Holiday Inn® JACKSON DOWNTOWN
200 EAST AMITE ST.
JACKSON, MISSISSIPPI 39201

DOWDY CAMPAIGN HEADQUATERS
ATTN: MRS. SUSAN DOWDY
ROUTE 3, BOX 221
SUMMIT, MS. 39666

7-15-81

DETACH & RETURN UPPER PORTION WITH YOUR PAYMENT

AMOUNT ENCLOSED $_____

DATE	DESCRIPTION	CHARGES	BALANCE
7-8-81	FOLIO#139623	$ 961. 17	
7-9-81	FOLIO#139615	227. 91	
7-9-81	FOLIO#139614	13. 05	
	TOTAL DUE:		$1202. 13

Pd.
CK.# 455

WE SINCERELY THANK YOU FOR THIS NICE BUSINESS.
IF WE CAN BE OF ANY SERVICE IN THE FUTURE PLEASE
CALL US.

Holiday Inn JACKSON DOWNTOWN

EXHIBIT "A"

PRESS HARD - YOU ARE MAKING 5 COPIES

FORM NO HH-E-35

(LAST) NAME (FIRST) (INITIAL)

RM. 132 | Dowdy Reception | RATE | OUT | FOLIO NUMBER 10623

ADDRESS OR FIRM Attn: Susan Dowdy | STATE | ZIP | GUESTS A C | FROM FOLIO

Route 3, Box 221

CLK. TRAVEL PROGRAM Summit, Ms. 39666 | IN | TO FOLIO

INN COPY | ADVANCE PAYMENT

[redacted]

0132		RESTR	[illegible]
0132	3956	07/07BL	[illegible]
0132		7/07/81 PRBL	[illegible]
013		RESTR	[illegible]
0132	3957	07/07BL	961.17 36
0132		7/07/81 PRBL	961.17 36
0132	4163	07/07BL	961.17 36
0132		7/08/81 PRBL	961.17 36
T0132	3516	07/08BL	961.17 36
0132		7/09/81 PRBL	961.17 36
0132		OBILL	961.17-
0132	3960	07/09BL	961.17 36

ROOM ____

RATE [redacted]

SPECIAL BILLINGS Send bill to Dowdy Construction Co.

Rt. 3, Box 221
Summit Ms.

Holiday Inn
Downtown
200 East Amite Street
Jackson, MS 39201
Phone (601) 969-5100

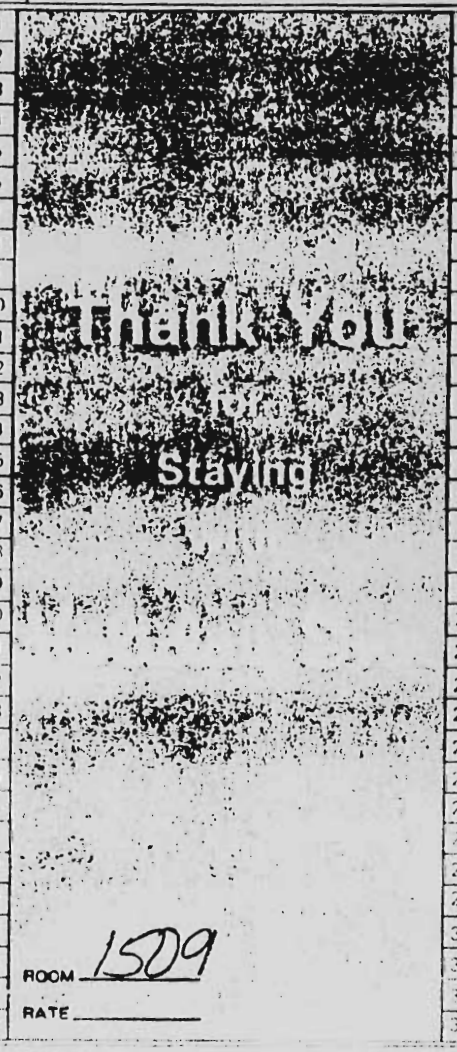
SAFETY DEPOSIT BOX NO.

PRESS HARD - YOU ARE MAKING 5 COPIES

FORM NO. HH-E-35

(LAST) NAME	(FIRST) (INITIAL)	RATE	OUT	FOLIO NUMBER
624 625 1509 Dowdy	Wayne			139614
ADDRESS OR FIRM	STATE ZIP	GUESTS A C		FROM FOLIO
CLK. TRAVEL PROGRAM			IN	TO FOLIO
CR				ADVANCE PAYMENT

INN COPY



ROOM 1509

RATE

1	1509		RESTR	5.25
2	1509	3935	07/078L	5.25 70
3				
4	1509		7/07/81 PR8L	56
5	T1509	4162	07/078L	6[illegible]
6	1509		7/08/81 PR8L	6.[illegible] 6[illegible]
7	• 1509		LOIST	8.[illegible]
8	• 1509	4185	07/088L	8.45 70
9	1509		7/08/81 PR8L	8.45 [illegible]
10	• 1509		LOIST	8.[illegible]
11	1509	4192	07/088L	10.[illegible] [illegible]
12	1509		7/08/81 PR8L	10.[illegible] [illegible]
13	1509	4254	07/088L	10.[illegible] 25
14	1509		7/08/81 PR8L	10.65 25
15	• 1509		6/PHONE	2.80
16	1509	4251	07/088L	10.[illegible] 70
17	1509		7/08/81 PR8L	10.[illegible] 70
18	T1509	3528	07/088L	13.[illegible] 70
19				
20	1509		7/09/81 PR8L	13.[illegible] 70
21	1509		DBILL	13.[illegible]-
22	1509	3952	07/098L	13.[illegible] 70
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				

SPECIAL INSTRUCTIONS

[illegible] Holiday Inns, Inc. T/A

Holiday Inn®

Downtown
200 East Amite Street
Jackson, MS 39201
Phone (601) 969-5100

SAFE DEPOSIT BOX NO.

PRESS HARD - YOU ARE MAKING 5 COPIES

FORM NO 07 MB-E-35

RM.	(LAST) NAME (FIRST) (INITIAL)	RATE	OUT	FOLIO NUMBER
1509	Bowdy, Wayne	205	7/8	139615

ADDRESS OR FIRM	STATE	ZIP	GUESTS A : C	FROM FOLIO
625				

CLK.	TRAVEL PROGRAM	IN	TO FOLIO
VP	INN COPY	7/7	ADVANCE PAYMENT

Thank You

ROOM _____

RATE _____

1	1509	ROOM	205.00
2		RTAX	10.25
3	T1509 4161 07/07BL		215.25 T
4	1509 7/08/81 PRBL		215.25 T
5	1509	RESTR	7.81
6	1509 8405 07/08BL		222.06 T
7	1509 7/08/81 PRBL		222.06 T
8	1509	RESTR	5.25
9	1509 8490 07/08BL		227.31 T
10	1509 7/08/81 PRBL		227.31 T
11	T1509 3527 07/08BL		227.91 T
12	1509 7/09/81 PRBL		227.91 T
13	1509	OBILL	227.91-
14	1509 3951 07/09BL		227.91 T

SPECIAL BILLINGS

Holiday Inn®
Downtown
200 East Amite Street
Jackson, MS 39201
Phone (601) 969-5100

WAYNE DOWDY FOR CONGRESS
CAMPAIGN FUND
915 DELAWARE AVE.
MC COMB, MISS. 39648

455

Aug. 21, 1981

86-92
653

PAY TO THE ORDER OF Holiday Inn - Jackson $ 1202.13

One thousand two hundred two and 13/100 DOLLARS

DEPOSIT GUARANTY NATIONAL BANK
Grow With Us
McComb, Miss. 39648

FOR

Robert W Dowdy Jr

⑆065300923⑆ ⑈393⑈589⑈7⑈ ⑈0000120213⑈

Holiday Inn®

RESTAURANT

BANQUET CHECK

(PAYMENT BY AMERICAN EXPRESS)

CHARGE TO COMPANY — CARD # 372946638711006

BY — THE DOWDY RECEPTION
ATTN: MRS. SUSAN DOWDY

STREET — ROUTE 3, BOX 221

CITY — SUMMIT, MISS. 39666

DATE	SERVER	ROOM NO.	
7/7/81	Sarah	DELTA III 500/600	11004

1	SERVE AT 7PM --	
2		
3	432 COKES, 7 UPS, SPRITES @$.75	$324.00
4	EACH DRINK	
5	+15% SERVICE CHARGE	48.60
9		372.60
7	+ 5% SALES TAX	18.63
8	391.23	$391.23
6		
01		
11		
12		
13		

Holiday Inn®

RESTAURANT

569

BANQUET CHECK

(PAYMENT BY AMERICAN EXPRESS)

CHARGE TO COMPANY — # 372946638711006

DOWDY RECEPTION

BY — ATTN: MRS. SUSAN DOWDY

STREET — ROUTE 3, BOX 221

CITY — SUMMIT, MISS. 39666

DATE	SERVER	ROOM NO.	
7/7/81	Sarah	DELTA III 500/600	11003

1	SERVE AT 7PM --	
2	100 CHICKEN DRUMETTES	$ 50.00
3	@ $50.00 PER 100	
4	300 ASSORTED FINGER SAND-	150.00
5	WICHES @ $50.00 PER 100	
9	300 SWEDISH MEATBALLS @$55.00	165.00
7	PER 100	
8	5 DIP & CHIP TRAYS @$15.00	75.00
6	PER TRAY	
01	4 LB. PEANUTS @ $8.00 PER LB.	32.00
11		478.00
12	+15% SERVICE CHARGE	70.00
13	+ 5% SALES TAX	549.00
		27.44
		$569.44

EXHIBIT "B"

WAYNE DOWDY
CONGRESS

R. S."Sonny" Weir
CAMPAIGN MANAGER

April 1, 1982
(Dictated: March 31, 1982)

Ms. Benita Marcus Adler
Reports Analyst
Reports Analysis Division
Federal Election Commission
Washington, D. C. 20463

Re: Identification Number: C00140913
30 Day Post Special General Report
(6/17/81-7/27/81)

Dear Ms. Adler:

This letter will confirm our conversation of yesterday's date regarding the captioned report filed by the Wayne Dowdy for Congress Campaign Committee. Pursuant to our agreement reached in that conversation, I will undertake to explain the distribution of the $36,000.00 expenditures cited in your correspondence of March 23, 1982.

As we discussed, these funds were paid to individual staff members during the last three to five days of the campaign, which was concluded on July 7, 1981. this being the date of the special election involved. The checks drawn on the campaign account as reflected by the report and your letter were payable to staff members, but these funds were then disseminated by staff members to individual workers throughout the 4th Congressional District. This manner of distribution was necessitated by the fact that the election immediately followed the Fourth of July weekend and many banking institutions were unaccessible because of the holiday, this resulting from the closing of some banks in observance of the holiday on the Friday before the Fourth, July and others closing on the following Monday, the day before the election.

During this period of time immediately prior to the election, the campaign involved [illegible] working in the field to deliver campaign literature [illegible] deliver the [illegible] the following Tuesday. The [illegible] of these funds [illegible] per individual [illegible] in the field.

[illegible] 501-[illegible]

EXHIBIT "C"

8140014529

These figures, as to individuals involved and as to expenditures, are documented by vouchers which were maintained on a daily basis.

Again, when the $36,000.00 was distributed to individual workers throughout the district, the average per person expenditure ranged from $20.00 to $60.00. And, this is why the report does not in every instance disclose the date, amount, and purpose of the payment, as the payment did not exceed the $200.00 limit, [illegible] I understood that these ultimate expenditures to ultimate p[illegible]ees were therefore without reporting consequence.

I sincerely appreciate your interest in this matter and your direction and instruction. In the event that additional information is required, please advise.

With kind regards, I remain,

Very truly yours,

Robert H. Darville, Jr.

Robert H. Darville, Jr.,
Treasurer, Wayne Dowdy for Congress

RHD, Jr./sdr

8401452 10

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

23 March 1982

Mr. Robert H. Darville, Jr., Treasurer
Wayne Dowdy for Congress
P.O. Box 686
McComb, MS 39648

Identification Number: C00140913

Reference: 30 Day Post Special General Report (6/17/81-7/27/81)

Dear Mr. Darville:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Expenditures for gas, travel, food, pollwatchers, etc. totalling approximately $36,000 have been attributed to various staff members. Payments must identify the ultimate payee from whom you have purchased an item or service. You should disclose the date, amount, and purpose of the payment if you have paid more than $200 to this vendor. (11 C.F.R. 104.9)

An amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Benita Marcus Adler

Benita Marcus Adler
Reports Analyst
Reports Analysis Division

8 4 0 0 1 4 5 2 1 1

8 4 0 1 4 5 2 1 2

WAYNE DOWDY FOR CONGRESS
CAMPAIGN FUND
915 DELAWARE AVE.
MC COMB, MISS. 39648

256

85-92
653 O

June 24 1981

PAY TO THE ORDER OF Sam Bryand $ 400.00

Four hundred dollars and 00/100 ---------- DOLLARS

DEPOSIT GUARANTY NATIONAL BANK
Grow With Us
McComb, Miss. 39648

For Hospitality room/Election Night

Robert H. Dowdy 16/RMT

:065300928: 873-589-7# 0000040000

EXHIBIT "D"

WAYNE DOWDY FOR CONGRESS
CAMPAIGN FUND
915 DELAWARE AVE.
VC COMB MISS. 39648

496

1/20/ 19 52 55-22 653

Pay to the order of Package Liquor Store $ 100.00
One hundred thirty and No/100 ——— Dollars

DEPOSIT GUARANTEED NATIONAL BANK
Grow With Us
McComb, Miss.

For Purchases

0 8 4 0 4 0 1 4 5 2 1 3

EXHIBIT "E"

STATE OF MISSISSIPPI

COUNTY OF PIKE

I, Susan Dowdy, after being duly sworn, state on my oath as follows:

The allegations in the complaint filed in the First Judicial District of Hinds County, Mississippi, against me and my husband, Wayne Dowdy, by Herbert Berryhill, Lowery Berryhill and Berryhill Farms, Inc., are untrue. I have never been authorized, directed, instructed, or requested by Lowery Berryhill or Herbert Berryhill or any representative of Berryhill Farms, Inc., to sign Lowery Berryhill's name to any document, credit card or other account of any nature.

I have never executed any document or signed any credit card or other account owned by any of the Berryhills.

All campaign expenses were paid by the Wayne Dowdy Campaign Committee and all bills submitted to the committee were promptly paid as reflected by each campaign committee report filed with the Federal Election Commission.

Prior to my husband's candidacy for United States Congress in 1981, I did not know nor had I ever heard of Herbert Berryhill, Lowery Berryhill or Berryhill Farms, Inc.

Subsequent to my husband's election to the United States Congress in July, 1981, I had no further contact with any of the Berryhills. And further, affiant sayeth not.

8410145214

STATE OF MISSISSIPPI

COUNTY OF PIKE

This day personally appeared before me, the undersigned authority in and for said county and state, the within named SUSAN DOWDY, who, after being first duly sworn, states on his oath that the matters and things in the above and foregoing statement are true and correct as therein stated.

SUSAN DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this, the 8th day of October, A. D, 1982.

NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 23, 1984.

8401452 15

4040445211

AFFIDAVIT

I, Susan Dowdy, after being duly sworn, state on my oath as follows:

Charges for hotel accomodations incurred on behalf of my husband, Congressman Wayne Dowdy, on the night of June 23, and June 24, 1981 and July 7 and July 8, 1981 were paid by American Express card owned by my husband, Wayne Dowdy. I personally presented this card in payment for all charges on these two occasions and personally signed the payment receipt making these charges to my husband personally with his consent and under his direction. I had nor have any separate income and all such payment was made from my husband's personal funds. Charges for the special primary election incurred for hotel accomodations totaled $928.28 and charges for hotel accomodations on the election night of July 7 and July 8, 1981 totaled $961.17.

Further, Affiant sayeth not.

SUSAN DOWDY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 31st day January, 1983.

NOTARY PUBLIC

My Commission Expires:

January 15, 1985

8 4 0 4 0 1 4 5 2 1

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BANK OF HAZLEHURST — PLAINTIFF

VS. — NO. [illegible]

HERBERT BERRYHILL, HERBERT LOWERY BERRYHILL AND CLIFFORD LAMONT BERRYHILL — DEFENDANTS

COMPLAINT

Comes now the plaintiff, Bank of Hazlehurst, a banking corporation organized and authorized to do business under the laws of the State of Mississippi, whose address is 210 West Gallatin Street, Hazlehurst, Mississippi, by and through its attorneys, and brings this cause of action against the defendants, and in support thereof would show unto the Court the following:

1.

The defendant, Clifford Lamont Berryhill (hereinafter referred to as Clifford Berryhill), is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, who may be served with process at Cherry Grove Road, Terry, Mississippi. The defendant, Herbert Berryhill, is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, who may be served with process at Cherry Grove Road, Terry, Mississippi. The defendant, Herbert Lowery Berryhill (hereinafter referred to as Lowery Berryhill), is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, who may be served with process at Cherry Grove Road, Terry, Mississippi.

2.

On or about May 5, 1981, Little Dixie Supermarkets, Inc. executed a promissory note secured by certain equipment and real estate, whereby Little Dixie Supermarkets, Inc. agreed to pay the plaintiff the sum of $215,000.00 on demand, or if no demand, then on August 3, 1981, with interest thereon at the rate of 19.5% from May 5, 1981, and whereby Little Dixie Supermarkets, Inc. agreed to additional terms and conditions as set out in said note, including the payment of reasonable attorney fees in the event of default, and a copy of said promissory note is attached hereto as Exhibit "A" and incorporated herein.

3.

Little Dixie Supermarkets, Inc. has defaulted in the payment of said note, and the plaintiff lawfully repossessed and sold the equipment described in the note to the highest and best bid and applied the proceeds to the unpaid balance, and the plaintiff lawfully foreclosed upon and sold the real estate described as security for said note and applied the proceeds to the unpaid balance. The principal amount of $140,253.81 plus interest of $40,211.77, all as shown on Exhibit "B" attached hereto and incorporated herein, for a total amount of $180,465.58 as of October 5, 1982, remains past due and owing under the terms and conditions of said promissory note, and Little Dixie Supermarkets, Inc. has failed, neglected and refused to pay said amount although demand has often been made therefor and has filed bankruptcy.

4.

On or about May 25, 1979, Little Dixie Supermarkets, Inc. executed a Combination Note and Disclosure Statement whereby Little Dixie Supermarkets, Inc. agreed to pay plaintiff the sum of $41,305.68, payable in thirty-six (36) monthly installments of $1,147.38 each, beginning on June 25, 1979, and on the same day of each successive month thereafter until paid, with interest to run thereon at the rate of 6% per annum after maturity, and whereby Little Dixie Supermarkets, Inc. agreed to additional terms and conditions as set out in said note, including the payment of reasonable attorney fees in the event of default, a copy of which note is attached hereto as Exhibit "C" and incorporated herein.

5.

Little Dixie Supermarkets, Inc. has defaulted in the payment of said Combination Note and Disclosure Statement and the amount of $3,442.14 is past due and owing under the terms and conditions of said Combination Note and Disclosure Statement, and Little Dixie Supermarkets, Inc. has failed, neglected and refused to pay said amount although demand has often been made therefor.

6.

Little Dixie Supermarkets, Inc. opened checking account number 631-674-9 with Bank of Hazlehurst and became indebted to Bank of Hazlehurst for overdrafts in said account in the amount of $2,338.10.

7.

On or about August 24, 1981, Little Dixie Supermarkets, Inc. filed a petition for relief under 11USC Chapter 11 in the United States Bankruptcy Court for the Southern District of Mississippi, Jackson Division.

8.

On or about July 9, 1979, defendant, Lowery Berryhill, executed a Continuing Guaranty Agreement in order to induce and encourage plaintiff to extend credit to Little Dixie Supermarkets, Inc. whereby Lowery Berryhill agreed to pay in full to Bank of Hazlehurst all charges of whatever nature and kind of any indebtedness, including all interest, attorney fees, and other fees which Little Dixie Supermarkets, Inc. owed to Bank of Hazlehurst up to the amount of $245,000.00, and whereby Lowery Berryhill agreed to the additional terms and conditions as contained in the Continuing Guaranty Agreement, a copy of which is attached hereto as Exhibit "D" and incorporated herein.

9.

On or about July 9, 1979, defendant, Clifford Berryhill, executed a Continuing Guaranty Agreement in order to induce and encourage plaintiff to extend credit to Little Dixie Supermarkets, Inc. whereby Clifford Berryhill agreed to pay in full to Bank of Hazlehurst all charges of whatever nature and kind of any indebtedness, including all interest, attorney fees, and other fees which Little Dixie Supermarkets, Inc. owed to Bank of Hazlehurst up to the amount of $245,000.00, and whereby Clifford Berryhill agreed to the additional terms and conditions as contained in the Continuing Guaranty Agreement, a copy of which is attached hereto as Exhibit "E" and incorporated herein.

10.

On or about July 9, 1979, defendant, Herbert Berryhill, executed a Continuing Guaranty Agreement in order to induce and encourage plaintiff to extend credit to Little Dixie Supermarkets, Inc. whereby Herbert Berryhill agreed to pay in full to Bank of

Hazlehurst all charges of whatever nature and kind of any indebtedness, including all interest, attorney fees, and other fees which Little Dixie Supermarkets, Inc. owed to Bank of Hazlehurst up to the amount of $245,000.00, and whereby Herbert Berryhill agreed to the additional terms and conditions as contained in the Continuing Guaranty Agreement, a copy of which is attached hereto as Exhibit "F" and incorporated herein.

11.

As indicated above, Little Dixie Supermarkets, Inc. is indebted to Bank of Hazlehurst as a result of the promissory note, Exhibit "A", in the amount of $180,465.58 , and Little Dixie Supermarkets, Inc. is indebted to Bank of Hazlehurst on the Combination Note and Disclosure Statement, Exhibit "C", in the amount of $3,442.14 , and Little Dixie Supermarkets, Inc. is indebted to Bank of Hazlehurst based on the overdraft of their account with Bank of Hazlehurst in the amount of $2,338.10 . Therefore, Little Dixie Supermarkets, Inc. is currently indebted to Bank of Hazlehurst in the amount of $186,245.82.

12.

The defendant, Lowery Berryhill, has defaulted in the payment of the amount of $186,245.82 , even though the same is past due and owing under the terms and conditions of the Continuing Guaranty Agreement and has refused, failed and neglected to pay said amount although demand has often been made therefor.

13.

The defendant, Clifford Berryhill, has defaulted in the payment of the amount of $186,245.82 , even though the same is past due and owing under the terms and conditions of the Continuing Guaranty Agreement and has refused, failed and neglected to pay said amount although demand has often been made therefor.

14.

The defendant, Herbert Berryhill, has defaulted in the payment of the amount of $186,245.82 , even though the same is past due and owing under the terms and conditions of the Continuing Guaranty Agreement and has refused, failed and neglected to pay said amount although demand has often been made therefor.

15.

In seeking to collect the current balance due and owing under said Continuing Guaranty Agreements and under said note, Exhibit "A", and under said note, Exhibit "C", it has been necessary for the plaintiff to employ the services of Henley, Lotterhos & Henley, and plaintiff is entitled to recover reasonable attorney fees as provided for in said notes and guaranty agreements in the amount of $15,000.00.

WHEREFORE, plaintiff sues and demands judgment of and from the defendants, Clifford Lamont Berryhill, Herbert Berryhill, and Herbert Lowery Berryhill, jointly and severally, in the amount of $186,245.82 together with reasonable attorney fees in the amount of $15,000.00 for a total of $201,245.82, plus all lawful interest and all costs of Court incurred herein.

Respectfully submitted,

HENLEY, LOTTERHOS & HENLEY
ATTORNEYS FOR PLAINTIFF

BY: Brand Henley
BRAND HENLEY

HENLEY, LOTTERHOS & HENLEY
990 Deposit Guaranty Plaza
P. O. Box 326
Jackson, Mississippi 39205
(601) 948-5131

4040145227

HAZLEHURST, MISSISSIPPI | LITTLE DIXIE SUPERMARKETS, INC.

On Demand, If No Demand Then

May 5, 1981 (DATE OF NOTE) | August 3, 1981 (DUE DATE) | $ 215,000.00 (AMOUNT OF NOTE)

On Demand, If No Demand Then 90 days after date, the undersigned (jointly and severally, if more than one) hereinafter called Maker, promise to pay

BANK OF HAZLEHURST, 210 West Gallatin St., Hazlehurst, Miss. or order

Two hundred fifteen thousand and 00/100---------- DOLLARS

with interest thereon at the rate of 19.5% per cent per annum from date until paid.

Maker has deposited with Bank as collateral for payment of this and any and all other liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter called "obligations"), the following property listed below and on the reverse side hereof, hereinafter called Collateral:

Security Agreement dated July 9, 1979, and Financing Statement covering equipment as follows, housed in Little Dixie Supermarket located on corner of Thousand Oak Drive, Hwy 18, 1/2 mile West of Jackson City limits, Hinds County, MS:

5 - BAS12L Dairy Cases, Serial No. 82774, 82777, 82775, & 82778
4 - CVH12 Refrigerated Produce Cases Serial No. 83832, 83833, 83856, & 83831
1 - CVHN1212 Dry Produce Case, Serial #83857

(Over, please - list continued)

Any pledgee or transferee of this note and the Collateral shall have all rights of Bank hereunder and Bank shall thereafter be relieved from any liability with respect to any Collateral so pledged or delivered.

Maker shall take all necessary steps to preserve rights against prior parties to instruments or chattel paper constituting Collateral and shall be responsible generally for its preservation.

Upon the happening of any of the following events, each of which shall constitute a default hereunder, all liabilities of each Maker to Bank shall become immediately due and payable at the option of Bank: (1) failure of any Obligor (which shall include each Maker, endorser, surety and guarantor of this note) to perform any agreement hereunder or pay any obligation secured hereby when due; (2) death of any Obligor; (3) filing of any petition in bankruptcy by or against any Obligor; (4) application for appointment of a receiver for, making of a general assignment for the benefit of creditors by, or insolvency of any Obligor, or (5) determination by any officer of Bank that a material adverse change has occurred in the financial condition of any Obligor. Upon occurrence of any such event or at any time thereafter, Bank shall have the remedies of a secured party under the Uniform Commercial Code of Mississippi. Any notice of sale or other intended disposition of the Collateral sent to Maker at least five days prior to such action shall constitute reasonable notice to Maker. Bank may waive any default before or after the same has been declared without impairing its right to declare a subsequent default hereunder, this right being a continuing one.

In case of a decline in the market value of the Collateral or if the Collateral shall at any time become unsatisfactory to Bank, Maker agrees upon demand of Bank to deposit with Bank within two hours after demand additional collateral of quality and value satisfactory to it and to create a security interest in the additional collateral in favor of Bank.

This note, or any renewal thereof, may be extended without notice and without affecting the liability of any Obligor or any Collateral. The Bank may at its discretion surrender any Collateral without affecting the liability of any Obligor.

Bank is hereby given a lien upon and a security interest in any moneys or property, including any deposits, at any time in possession of Bank belonging to each Obligor, all of which shall be treated as security for payment of this note. Bank may, at its option in event of default, set off such moneys, property or deposits against this note or any other obligation of Maker.

All Obligors waive protest of this note. If this note is not paid when due, all Obligors agree to pay all costs and expenses of collection, including reasonable attorneys' fees and legal expenses, all of which are secured by the Collateral. Bank shall in no event be liable to any party hereto for failure to collect this note, in whole or in part.

Any demand upon or notice to Maker shall be sufficiently served for all purposes if personally delivered or placed in the mail addressed to the address shown below or such other address as may be shown on the Bank's records.

* MINIMUM CHARGE: If the interest earned is less than $10.00, the amount charged by the bank will be $10.00, the banks minimum charge.

BORROWER ADDRESS

P. O. Box or Street Address		
P. O. Box 10		
City	State	
Terry	MS	
Zip Code 39175	Telephone Number	
OFFICER'S INITIALS	TELLERS INITIALS	SOCIAL SECURITY NUMBER
LF	pjb	

LITTLE DIXIE SUPERMARKETS, INC.
BY Lowery K. Berryhill, Sec.
MR. LOWERY BERRYHILL, SECRETARY

4 - [illegible] 82877, 82878, 82879, & 82880
1 - AIC 12 [illegible] Case Serial No. 72877
4 - AIC 12 Freez[illegible] Cases Serial No. 82817, 82818, 82819, & 82820
1 - CC12 Freezer [illegible] Cases Serial No. 82741
2 - THN-760-S Compressors complete, Serial No. 76066 & 76067
1 - THN 460 S Compressor complete, Serial No. 76072
1 - THN-300-S Compressor complete Serial No. 76070
4 - THN-760-S Compressors complete Serial Nos. 76068, 76074, 76075, & 76073
1 - THN-460-S Compressors complete Serial No. 7606F
2 - THN-300-S Compressors complete Serial Nos. 76073 & 76069
1 - THN-150-S Compressor complete Serial No. 76065
1 - THN-300-H Compressor complete Serial No. 76071
6 - THN Twosome Racks
1 - THN Single Rack
1 - APD055BV Remote Condensor Serial No. 43885
1 - APD065BV Condensor Serial No. 42886
2 - Fantrol Packages
1 - 12' x 54' x 6'5" Combination Cooler & Freezer Serial No. 82794
- TLS-140-BE Coil for Freezer Section Serial No. 43879
-TSL-100-BH Coil for Dairy Section Serial No. 43877
- GSA087BH Coil Produce Section Serial No. 43872
- 16' x 10'5½" Combination Serial No. 82793
- TA087BE Coil Serial No. 43873
-TSA120BE Coil for Meat Section Serial No. 42875
-TSA120BH for prep room Serial No. 43874
-TLS105BE Coil for Baker Freezer Section Serial No. 43878
1 -TLS050BH Coil for Deli Cooler Section Serial No. 43876

Deed of Trust on Real Estate, recorded in Book 2675, Page 372, Hinds County, MS; Continuing Guaranties on Lowery Berryhill, Clifford Berryhill, and Herbert Berryhill; Assignment of Life Insurance on Lowery Berryhill.

WITH MONTHLY REDUCTION OF $5,000.00 PLUS INTEREST.

"The proceeds of this loan are to be used for Business purposes."

LITTLE DIXIE SUPERMARKETS, INC.

Signature: [signature]

May 5, 1981

MR. LOWERY BERRYHILL, SECRETARY

STATEMENT OF TRANSACTIONS
SEPTEMBER 24, 1982
LITTLE DIXIE SUPERMARKETS, INC.
NOTE NUMBER 7932 - DATED 5/5/81 - DUE 8/13/81

POSTING DATE	INTEREST PAYMENT	PRINCIPAL PAYMENT	PRINCIPAL ADDITION	BALANCE	EXPLANATION
5/8/81				215,000.00	Note Booked
7/17/81	3,265.32	5,000.00		210,000.00	Note Payment
8/14/81	11,601.17			210,000.00	Interest Payment
8/17/81	(3,265.32)		5,000.00	215,000.00	7/17/81 Payment Returned NSF
10/23/81			150.00	215,150.00	Commercial Equipment Company Appraisal of Equipment
1/5/82			500.00	215,650.00	James Kelly-Appraisal of Land
1/8/82			60.00	215,710.00	Court Costs
2/11/82			175.00	215,885.00	Henley Firm-Attorney Fee
2/11/82			1,514.50	217,399.50	Henley Firm-Attorney Fee
2/12/82		175.00		217,224.50	Overpayment Henley Firm-Attorney Fee
3/9/82	6,000.00			217,224.50	Note Payment
4/26/82			350.00	217,574.50	Commercial Equipment
5/4/82			75.00	217,649.50	James Kelly-Court Appearance
6/9/82		84.81		217,564.69	Closed Account No. 631-678-0
6/29/82			1,629.30	219,193.99	Henley Firm-Attorney Fe
8/2/82		4,000.00		215,193.99	Sale of Building
8/19/82		75,000.00		140,193.99	Sale of Equipment
8/26/82			59.82	140,253.81	Thompson & Son-Locksmit for Keys

Interest due thru 9/24/82 is $39,462.77, with interest at $74.90 per day thereafter.

Exhibit "B"

4040145226

LITTLE DIXIE SUPER MARKETS, INC.

BY: C. H. Berryhill

CLIFF (BERRYHILL), INDIVIDUALLY

Lowery Berryhill

LOWERY BERRYHILL, INDIVIDUALLY

Herbert Berryhill

HERBERT BERRYHILL, INDIVIDUALLY

4040145224

COMBINATION NOTE AND DISCLOSURE STATEMENT

LITTLE DIXIE SUPER MARKETS, INC.
BORROWER NAME

Hazlehurst, Miss. May 25, 1979

The undersigned (jointly and severally if more than one) hereinafter called Maker, promises to pay to the order of

BANK OF HAZLEHURST
210 West Gallatin Street
Hazlehurst, Mississippi 39083

No. 410-703-0 Due May 25, 198

FORTY ONE THOUSAND THREE HUNDRED FIVE DOLLARS AND 68/100 DOLLARS

Principal, $ 41,305.68

Payable in 36 monthly installments of $ 1,147.38 on June 25, 19 79, and $ 1,147.38 on the same day of each successive month thereafter until this note is fully paid with interest thereon at the rate of six per cent. per annum from maturity. All installments shall become due and payable, at the option of the holder, if any installment is not paid when due.

Collateral for this note is:

F/S

MONTHLY PAYMENTS TO BE MADE BY AUTOMATIC CHARGE TO ACCOUNT #631-445-4

Any pledgee or transferee of this note and the Collateral shall have all rights of Bank hereunder and Bank shall thereafter be relieved from any liability with respect to any Collateral so pledged or delivered.

Maker shall take all necessary steps to preserve rights against prior parties to instruments or chattel paper constituting Collateral and shall be responsible generally for its preservation. If the collateral shall at any time become unsatisfactory to Bank, Maker shall within twenty-four hours after demand, pledge as part of the Collateral additional property which is satisfactory to Bank.

Upon the happening of any of the following events, each of which shall constitute a default hereunder, all liabilities of each Maker to Bank shall become immediately due and payable at the option of Bank: (1) failure of any Obligor (which shall include each Maker, endorser, surety and guarantor of this note) to perform any agreement hereunder or pay any obligation secured hereby when due; (2) death of any Obligor; (3) filing of any petition in bankruptcy by or against any Obligor; (4) application for appointment of a receiver for, making of a general assignment for the benefit of creditors by, or insolvency of any Obligor, or (5) determination by any officer of Bank that a material adverse change has occurred in the financial condition of any Obligor. Upon occurrence of any such event or at any time thereafter, Bank shall have the remedies of a secured party under the Uniform Commerical Code of Mississippi. Any notice of sale or other intended disposition of the Collateral sent to Maker at least five days prior to such action shall constitute reasonable notice to Maker. Bank may waive any default before or after the same has been declared without impairing its right to declare a subsequent default hereunder, this right being a continuing one.

This note, or any renewal thereof, may be extended without notice and without affecting the liability of any Obligor or any Collateral. The Bank may at its discretion surrender any Collateral without affecting the liability of any Obligor.

Bank is hereby given a lien upon and a security interest in any moneys or property, including any deposits, at any time in possession of Bank belonging to each Obligor, all of which shall be treated as security for payment of this note. Bank may, at its option in event of default, set off such moneys, property or deposits against this note or any other obligation of Maker. Any provision for a charge herein in excess of that authorized by law is expressly deleted.

All Obligors waive protest of this note. If this note is not paid when due, all Obligors agree to pay all costs and expenses of collection, including reasonable attorneys' fees and legal expenses, all of which are secured by the Collateral. Bank shall in no event be liable to any party hereto for failure to collect this note, in whole or in part.

Any demand upon or notice to Maker shall be sufficiently served for all purposes if personally delivered or placed in the mail addressed to the address shown below or such other address as may be shown on the Bank's records.

The Security Agreement will secure future indebtedness.

The Deed of Trust will secure future indebtedness.

CREDIT LIFE AND DISABILITY INSURANCE are not required in connection with this loan.

The insurance checked below extends for the term of the loan.

- ☐ Life ..... $
- ☐ Disability (Accident and Health) ..... $
- ☐ Other (describe) ..... $

I DESIRE TO OBTAIN THE CREDITOR INSURANCE CHECKED ABOVE.

(Date) (Maker's Signature) (Co-Maker's Signature)

PROPERTY INSURANCE—The Maker may choose the person through whom any property or liability insurance is to be obtained. This insurance is not available through creditor.

REBATE FOR PAYMENT IN FULL. If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date or maturity date, the Bank may give a rebate of precomputed interest computed under the Rule of 78's.

DEFAULT CHARGE. Borrower shall be liable for all reasonable attorneys' fees, court costs and expenses of whatever kind incident to collection of said indebtedness and the enforcement and protection of any security interest held by the creditor.

Proceeds To Borrower	$ 35,000.00	Interest	$ 6,305.68
Credit Life Insurance		Credit Investigation Fee	
A&H Insurance		Credit Life Insurance	
Official Fees		Property Insurance	
Title Fees			
AMOUNT FINANCED	$ 35,000.00	FINANCE CHARGE	$ 6,305.68
TOTAL OF PAYMENTS	$ 41,305.68	ANNUAL PERCENTAGE RATE	11.09 %

By execution, this contract, Note and Disclosure Statement, the undersigned acknowledge receipt of a completely filled in copy hereof prior to execution.

BORROWER'S ADDRESS

P.O. Box 19

City State

LITTLE DIXIE SUPER MARKETS, INC.

BY: Chief Financial Officer

4 0 4 0 1 4 5 2 2

CONTINUING GUARANTY

In Consideration of BANK OF HAZLEHURST, HAZLEHURST, MISSISSIPPI, giving or extending credit to LITTLE DIXIE SUPERMARKETS, INC.

hereinafter called "debtor", I hereby give this continuing guaranty to the said Bank of Hazlehurst of Hazlehurst, Mississippi, hereinafter called "Bank" its transferees or assigns, for the payment in full, together with all interest, attorney fees, other fees, and charges of whatsoever nature and kind, of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of

--------TWO HUNDRED FORTY-FIVE THOUSAND AND NO/100 ---------- Dollars,

whether due or to become due, and whether now existing or hereafter arising. The Bank may, one or more times in its judgment, grant extensions, take and surrender securities, accept compositions, release or discharge indorsers, guarantor's or other parties, grant releases and discharges generally, make changes of any sort whatever in the terms of its contract or manner of doing business with the debtor and with other parties and securities in relation thereto without notice to the undersigned, such notice being hereby specifically waived. The Bank may, without any notice to or consent of the undersigned, also apply all moneys received from the debtor and others, or from securities, as it may think best, without in any way being required to marshal securities or assets, and any such application of moneys shall not in any way alter, affect, limit or lessen the liability of the undersigned under this Guaranty. The Bank shall not be bound to exhaust its recourse against the debtor or other persons or upon the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed. I do furthermore bind and obligate myself, my heirs and assigns, jointly and severally with said debtor, for payment of the said indebtedness precisely as if the same had been contracted and was due or owing by me in person, hereby agreeing to and binding myself, my heirs and assigns, by all terms and conditions contained in any note or notes signed or to be signed by said debtor, making myself a party thereto; hereby waiving all notice including notice of any such indebtedness and of demand, presentment, protest or notice of demand or non-payment and of notice of any act to establish the liability of any party on any commercial or other paper, indebtedness or obligation covered by this guaranty; I do further waive all notice and all pleas of discussion and division and I agree upon demand at any time, to pay to said Bank, its transferees or assigns, the full amount of said indebtedness up to the amount of this guaranty, together with interest, fees and charges, as above set forth, becoming subrogated in the event of payment in full by me to the claim of said Bank, its transferees or assigns, together with whatever security it or they may hold against said indebtedness.

In the event this Continuing Guaranty is executed by more than one individual, it is understood and agreed that each individual shall be bound by all of the provisions of this continuing guaranty and for the payment in full of the entire amount stated above, in the same manner as if each individual were the only person executing this continuing guaranty. It is also understood and agreed that this continuing guaranty does not supersede nor cancel any pre-existing guaranty or guaranties given by any of the undersigned on behalf of the borrower named above but to the contrary shall be in addition thereto.

It is expressly agreed that this continuing guaranty is absolute and complete, and that acceptance and notice of acceptance thereof by the Bank are therefore unnecessary and they are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be delivered to one of the executive officers of the said Bank, but such discontinuance shall not affect my liability on any debts and/or obligations of the debtor then existing nor the liability of any other party in the premises.

Witness my signature this 9th day of July, 1979

Lovery Berryhill

Special provision as to guaranty of corporate indebtedness on reverse side hereof.

Exhibit "D"

4 0 4 0 1 4 5 2 2

CONTINUING GUARANTY

In Consideration of BANK OF HAZLEHURST, HAZLEHURST, MISSISSIPPI, giving or extending credit to LITTLE DIXIE SUPERMARKETS, INC.

hereinafter called "debtor", I hereby give this continuing guaranty to the said Bank of Hazlehurst of Hazlehurst, Mississippi, hereinafter called "Bank" its transferees or assigns, for the payment in full, together with all interest, attorney fees, other fees, and charges of whatsoever nature and kind, of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of

TWO HUNDRED FORTY-FIVE THOUSAND AND NO/100 Dollars,

whether due or to become due, and whether now existing or hereafter arising. The Bank may, one or more times in its judgment, grant extensions, take and surrender securities, accept compositions, release or discharge indorsers, guarantor's or other parties, grant releases and discharges generally, make changes of any sort whatever in the terms of its contract or manner of doing business with the debtor and with other parties and securities in relation thereto without notice to the undersigned, such notice being hereby specifically waived. The Bank may, without any notice to or consent of the undersigned, also apply all moneys received from the debtor and others, or from securities, as it may think best, without in any way being required to marshal securities or assets, and any such application of moneys shall not in any way alter, affect, limit or lessen the liability of the undersigned under this Guaranty. The Bank shall not be bound to exhaust its recourse against the debtor or other persons or upon the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed. I do furthermore bind and obligate myself, my heirs and assigns, jointly and severally with said debtor, for payment of the said indebtedness precisely as if the same had been contracted and was due or owing by me in person, hereby agreeing to and binding myself, my heirs and assigns, by all terms and conditions contained in any note or notes signed or to be signed by said debtor, making myself a party thereto; hereby waiving all notice including notice of any such indebtedness and of demand, presentment, protest or notice of demand or non-payment and of notice of any act to establish the liability of any party on any commercial or other paper, indebtedness or obligation covered by this guaranty; I do further waive all notice and all pleas of discussion and division and I agree upon demand at any time, to pay to said Bank, its transferees or assigns, the full amount of said indebtedness up to the amount of this guaranty, together with interest, fees and charges, as above set forth, becoming subrogated in the event of payment in full by me to the claim of said Bank, its transferees or assigns, together with whatever security it or they may hold against said indebtedness.

In the event this Continuing Guaranty is executed by more than one individual, it is understood and agreed that each individual shall be bound by all of the provisions of this continuing guaranty and for the payment in full of the entire amount stated above, in the same manner as if each individual were the only person executing this continuing guaranty. It is also understood and agreed that this continuing guaranty does not supersede nor cancel any pre-existing guaranty or guaranties given by any of the undersigned on behalf of the borrower named above but to the contrary shall be in addition thereto.

It is expressly agreed that this continuing guaranty is absolute and complete, and that acceptance and notice of acceptance thereof by the Bank are therefore unnecessary and they are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be delivered to one of the executive officers of the said Bank, but such discontinuance shall not affect my liability on any debts and/or obligations of the debtor then existing nor the liability of any other party in the premises.

Witness my signature this 9th day of July, 1979

Clifford Berryhill
CLIFFORD BERRYHILL

Special provision as to guaranty of corporate indebtedness on reverse side hereof.

Exhibit "E"

4040145222

CONTINUING GUARANTY

In Consideration of BANK OF HAZLEHURST, HAZLEHURST, MISSISSIPPI, giving or extending credit to LITTLE DIXIE SOFTSHOES, INC.

hereinafter called "debtor", I hereby give this continuing guaranty to the said Bank of Hazlehurst of Hazlehurst, Mississippi, hereinafter called "Bank" its transferees or assigns, for the payment in full, together with all interest, attorney fees, other fees, and charges of whatsoever nature and kind, of any indebtedness, direct or contingent whether secured or unsecured, of said debtor to said Bank up to the amount of

---------TWO HUNDRED FORTY-FIVE THOUSAND AND NO/100 ---------- Dollars,

whether due or to become due, and whether now existing or hereafter arising. The Bank may, one or more times in its judgment, grant extensions, take and surrender securities, accept compositions, release or discharge indorsers, guarantor's or other parties, grant releases and discharges generally, make changes of any sort whatever in the terms of its contract or manner of doing business with the debtor and with other parties and securities in relation thereto without notice to the undersigned, such notice being hereby specifically waived. The Bank may, without any notice to or consent of the undersigned, also apply all moneys received from the debtor and others, or from securities, as it may think best, without in any way being required to marshal securities or assets, and any such application of moneys shall not in any way alter, affect, limit or lessen the liability of the undersigned under this Guaranty. The Bank shall not be bound to exhaust its recourse against the debtor or other persons or upon the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed. I do furthermore bind and obligate myself, my heirs and assigns, jointly and severally with said debtor, for payment of the said indebtedness precisely as if the same had been contracted and was due or owing by me in person, hereby agreeing to and binding myself, my heirs and assigns, by all terms and conditions contained in any note or notes signed or to be signed by said debtor, making myself a party thereto; hereby waiving all notice including notice of any such indebtedness and of demand, presentment, protest or notice of demand or non-payment and of notice of any act to establish the liability of any party on any commercial or other paper, indebtedness or obligation covered by this guaranty; I do further waive all notice and all pleas of discussion and division and I agree upon demand at any time, to pay to said Bank, its transferees or assigns, the full amount of said indebtedness up to the amount of this guaranty, together with interest, fees and charges, as above set forth, becoming subrogated in the event of payment in full by me to the claim of said Bank, its transferees or assigns, together with whatever security it or they may hold against said indebtedness.

In the event this Continuing Guaranty is executed by more than one individual, it is understood and agreed that each individual shall be bound by all of the provisions of this continuing guaranty and for the payment in full of the entire amount stated above, in the same manner as if each individual were the only person executing this continuing guaranty. It is also understood and agreed that this continuing guaranty does not supersede nor cancel any pre-existing guaranty or guaranties given by any of the undersigned on behalf of the borrower named above but to the contrary shall be in addition thereto.

It is expressly agreed that this continuing guaranty is absolute and complete, and that acceptance and notice of acceptance thereof by the Bank are therefore unnecessary and they are hereby expressly waived, and the same shall continue in force until written notice of its discontinuance shall be delivered to one of the executive officers of the said Bank, but such discontinuance shall not affect my liability on any debts and/or obligations of the debtor then existing nor the liability of any other party in the premises.

Witness my signature this 9th day of July, 1979

Herbert Berryhill

HERBERT BERRYHILL

Special provision as to guaranty of corporate indebtedness on reverse side hereof.

Exhibit "F"

0040145238

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

Bank of Hazlehurst

COMPLAINANT

VS

Herbert Berryhill, Herbert Lowery Berryhill and Clifford Lamont Berryhill

DEFENDANT

6 Oct 82

DATE: October 6, 1982

Case No. 29,072

SUMMONS

To the Sheriff of Hinds County, Greetings:

You are hereby commanded to Summons:

Herbert Berryhill - Cherry Grove Road, Terry, Ms.
Herbert Lowery Berryhill - Cherry Grove Road, Terry, Ms.
Clifford Lamont Berryhill- Cherry Grove Road, Terry, Ms.

WM. E. "BILL" McKINLEY
CIRCUIT CLERK

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS BY FILING YOUR ANSWER AS PROVIDED BY LAW AND/OR THE MISSISSIPPI RULES OF CIVIL PROCEDURE.

THIS ANSWER MUST BE FILED AS PROVIDED BY LAW AND/OR THE MISSISSIPPI RULES OF CIVIL PROCEDURE WITHIN 30 DAYS OF THE DATE YOU ARE SERVED OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

Brand Henley
ATTORNEY FOR PLAINTIFF
Post Office Box 326
Jackson, Mississippi
ADDRESS

948-5131
PHONE NUMBER

WILLIAM E. "BILL" McKINLEY
Circuit Clerk
Hinds County, Mississippi
Post Office Box 327
Jackson, Mississippi 39205

By _____ D. C.

RETURN

STATE OF MISSISSIPPI
COUNTY OF HINDS

I have this day received the within writ personally by delivering to the within named defendant HERBERT BERRYHILL

A true copy of the writ this the 7 day of Oct 1982

By Jean Glenn D.S.

STATE OF MISSISSIPPI
COUNTY OF HINDS

I have this day received the within writ personally by delivering to the within named defendant Herbert Lowery Berryhill

A true copy of the writ this the 7 day of Oct 1982

By Jean Glenn D.S.

STATE OF MISSISSIPPI
COUNTY OF HINDS

I have this day received the within writ personally by delivering to the within named defendant Clifford Lamont Berryhill

A true copy of the writ this the 7 day of Oct 1982

By Jean Glenn D.S.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: LITTLE DIXIE SUPERMARKETS, INC. DEBTOR
BANKRUPTCY NO. 8101974JC

LITTLE DIXIE SUPERMARKETS, INC. PLAINTIFF

VS. ADVERSARY PROCEEDING NO. 820091JC

BANK OF HAZLEHURST DEFENDANT

AMENDED

COMPLAINT TO REQUIRE SURRENDER OF ASSETS

COMES NOW the plaintiff, Little Dixie Supermarkets, Inc., a Mississippi corporation, by and through counsel, and files this, its Complaint to Require Surrender of Assets, and in support hereof would respectfully show unto this honorable Court the following, to-wit:

I.

That the plaintiff is debtor in the above entitled re-organization proceedings, and by order of has been continued in the possession of the estate.

II.

The defendant, the Bank of Hazlehurst, is a banking corporation, doing business in the State of Mississippi. That the defendant is the holder of funds amounting to ninety three thousand dollars ($93,000.00) which belongs to the plaintiff and received these funds under normal course of business on November 17, 1981 by way of the plaintiff depositing in said banking institution funds, but which funds were not credited to plaintiff's account by defendant. A copy of the deposit slip, as stamped by the defendnat bank, is attached hereto and incorporated herein as Exhibit "A" to this complaint.

III.

That the said funds were delivered to the Bank of Hazlehurst by an employee of the plaintiff, namely, Ray Barfield.

A true and correct Affidavit by said Ray Barfield is attached hereto and incorporated herein as Exhibit "B" to this complaint.

IV.

That the funds were prepared for deliverance and deposit to the Bank of Hazlehurst for safe keeping by Lowery Berryhill, an officer and the manager of plaintiff corporation. A true and correct Affidavit by said Lowery Berryhill is attached hereto and incorporated herein as Exhibit "C" to this complaint.

V.

That the plaintiff made demand upon the defendant on or about the 22nd day of February, 1982, with the appropriate officers of the said bank and the attorney for the bank at the office of the attorney in Hazlehurst, Mississippi, to credit said fund to plaintiff's account; but said defendant bank has failed and refused to comply with said demand.

WHEREFORE, plaintiff prays that upon a final hearing of this complaint, the defendant, Bank of Hazlehurst, be ordered to deliver unto the plaintiff the sum of ninety three thousand dollars ($93,000.00), which is being held by the defendant for the plaintiff, and plaintiff prays for such other and general relief as it may be entitled in the premises.

Respectfully submitted,

LITTLE DIXIE SUPERMARKETS, INC.

BY: Lowery Berryhill
LOWERY BERRYHILL

Sec.
title

STATE OF MISSISSIPPI

COUNTY OF HINDS

THIS DAY personally came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named LOWERY BERRYHILL, who, after being first duly sworn by me, state on oath that he is the duly qualified and

elected Secretary/Treasurer of Little Dixie Supermarkets, Inc.; that in such capacity he did sign the above and foregoing Complaint to Require Surrender of Assets after being first duly authorized so to do; and that the facts and matters set forth therein are true and correct as stated.

LOWERY BERRYHILL

SWORN TO AND SUBSCRIBED before me, this the [illegible] day of [illegible], 1982.

NOTARY PUBLIC

My commission expires:

[illegible]

CERTIFICATE OF SERVICE

I, the undersigned, Ron C. Smith, attorney for plaintiff herein, do certify that I have on this date, hand-delivered a true and correct copy of the foregoing Amended, Complaint to Require Surrender of Assets to the attorney of record for the defendant herein, Henley, Lotterhos and Henley, at their usual business address of Suite 990, Deposit Guaranty Plaza, Jackson, Mississippi 39201.

RON C. SMITH

OF COUNSEL:

RON C. SMITH
SMITH & WHITEHEAD
Attorneys and Counselors at Law
Suite 288, Highland Village
Jackson, MS 39211

HAROLD J. BARKLEY, JR.
Post Office Box 1482
Jackson, MS 39205

DEPOSITED WITH
BANK OF HAZLEHURST
TO THE CHECKING ACCOUNT OF

11-16-81

BANK OF HAZLEHURST

Berryhill #3

PLEASE FILL IN →

ACCOUNT NUMBER 1001

63[illegible]-0

RECEIVED BY

"NOTICE"

This Deposit Accepted Subject to the Rules and Regulations of the Bank Appearing on the Signature Card.

DEPOSIT TICKET

	DOLLARS	CENTS
CURRENCY	93000	00
COIN		
CHECKS		
USE OTHER SIDE FOR ADDITIONAL LISTING. TOTAL FROM OTHER SIDE		
TOTAL DEPOSIT	93000	00

DUPLICATE DEPOSIT TICKET

Exhibit "A"

STATE OF MISSISSIPPI

COUNTY OF HINDS

A F F I D A V I T

PERSONALLY came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named RAY BARFIELD, who, after being first duly sworn stated on oath the following:

"That on November 17, 1981, I hand delivered to the Bank of Hazlehurst in Hazlehurst, Mississippi, a deposit to be made to the account of Little Dixie Supermarkets, Inc., same being account number 631-678-0 for the sum of $93,000.00.

That the said funds were accepted by the bank and the deposit slip was stamped by the teller handling the transaction."

Ray Barfield
RAY BARFIELD

SWORN TO AND SUBSCRIBED before me, this the 10th day of February, 1982.

Vicki M. Alexander
NOTARY PUBLIC

My commission expires:
Feb. 17, 1986

EXHIBIT "B"

8 4 0 4 0 1 4 5 2 3

STATE OF MISSISSIPPI

COUNTY OF HINDS

A F F I D A V I T

PERSONALLY came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named LOWREY BERRYHILL, who, after being first duly sworn stated on oath the following:

"That on November 17, 1981, I prepared a deposit to be made with the Bank of Hazlehurst in Hazlehurst, Mississippi, for the total sum of $93,000.00 to be deposited in account number 631-678-0.

That I intrusted the funds to the care of Ray Barfield and instructed him to carry same to the Bank of Hazlehurst in Hazlehurst, Mississippi and deposit into the company bank account.

That Ray Barfield returned the original deposit slip to me after making the deposit with the bank and said slip was stamped indicating that the deposit had been transacted."

Lowrey Berryhill
LOWREY BERRYHILL

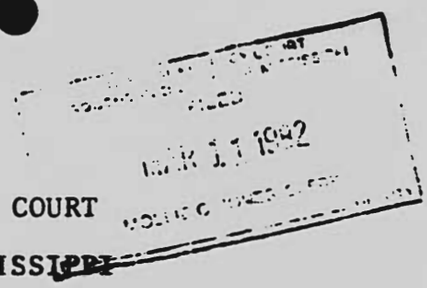
SWORN TO AND SUBSCRIBED before me, this the 10th day of February, 1982.

Vicki M. Alexander
NOTARY PUBLIC

My commission expires:
Feb 17, 1986

EXHIBIT "C"

8 4 0 4 0 1 4 5 2 3 8



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: LITTLE DIXIE SUPERMARKETS, INC. DEBTOR
BANKRUPTCY NO. 8101974 JC

LITTLE DIXIE SUPERMARKETS, INC. PLAINTIFF

VS. ADVERSARY PROCEEDING NO. 820091 JC

BANK OF HAZLEHURST DEFENDANT

REQUEST BY BANK OF HAZLEHURST FOR PRODUCTION OF DOCUMENTS

COMES NOW Bank of Hazlehurst, defendant in this adversary proceeding, pursuant to Rule 734 of the Bankrupty Rules and Rule 34 of the Federal Rules of Civil Procedure, and requests that the plaintiff, Little Dixie Supermarkets, Inc., produce for inspection and copying at the office of Peat, Marwick, Mitchell & Co., Suite 1600 Deposit Guaranty Plaza, Jackson, Mississippi, the material and documents described hereinafter on or before 9 o'clock a.m. on April 13, 1982, and to leave said material and documents in custody of Peat, Marwick, Mitchell & Co. for a sufficient number of days to allow them to complete a thorough review and audit of said material and documents. Alternatively, defendant requests that said documents and material be made available to Peat, Marwick, Mitchell & Co, Bill Hunter and other employees of Peat, Marwick, Mitchell & Co. and attorneys for Bank of Hazlehurst beginning on or before April 13, 1982, and that said availability be continued from day to day by giving said persons continuous access to said material and documents during business hours from 8 o'clock a.m. to 5 o'clock p.m. for a sufficient number of days, excluding Saturdays and Sundays, until said person or persons have concluded a thorough audit and review of said documents and material which will be produced on the premises of Little Dixie Supermarkets, Inc. where said records are maintained, provided that at each location, said auditors or examiners with Peat, Marwick, Mitchell & Co. will be provided with reasonable space which is quiet,

private and conducive to the audit function being performed so as to allow a quick, efficient, thorough and accurate examination of said records and to provide a reasonable means of photocopying any and all documents and records produced, either on the premises or in the offices of Peat, Marwick, Mitchell & Co. with provision for transporting and returning the documents to be copied.

The documents and material to be produced are the following:

1. All of the following documents for the time period of January 1, 1981 through February 28, 1982:

   a. All cash receipts journals.

   b. All cash disbursements journals.

   c. All general journals.

   d. All general ledgers.

   e. All cancelled checks for all bank accounts with all banks.

   f. All deposit slips and supporting documentation for all bank accounts in all banks.

   g. All bank reconciliations for all bank accounts with all banks.

   h. All monthly financial statements.

   i. All daily sales journals or other reports used to summarize or record daily sales.

   j. All cash register tapes.

2. All documents which were used to prepare the alleged November 17, 1981 deposit of $93,000.00.

3. All documents which identify or which could aid in the identification of any specific check, draft, amount of cash, or other item forming part of the alleged November 17, 1981 deposit of $93,000.00.

4. All documents and business records which contain any information regarding the amount of income received by plaintiff from January 1, 1981 through February 28, 1982, whether by cash, check or otherwise.

5. All documents and business records which contain any information regarding the amount of disbursement of funds, whether by check or otherwise.

6. All documents containing any information as to the amount of funds received and recorded by cash registers.

7. All documents made or referenced in attempting to verify or locate the alleged November 17, 1981 deposit of $93,000.00.

8. All documents which will, or may, aid in an audit to determine whether or not the alleged $93,000.00 ever existed and if so, then the specific composition of the alleged November 17, 1981 deposit of $93,000.00.

9. All documents containing inquiries as to any check or other item which could have possibly been part of the alleged November 17, 1981 deposit of $93,000.00.

10. All documents and reports of audits of Little Dixie Supermarkets, Inc.

11. All of Little Dixie Supermarkets, Inc.'s by-laws, stock ownership books, minutes of stockholders meetings, minutes of directors meetings, and all documents concerned with the organization, ownership, management, operation, or purposes of Little Dixie Supermarkets, Inc. and all documents recording official decisions and directions of Little Dixie Supermarkets, Inc.

The following definitions apply to this Request by Bank of Hazlehurst for Production of Documents:

(a) "Little Dixie Supermarkets, Inc." means Little Dixie Supermarkets, Inc. and all persons, employees, officers, owners, agents and others acting on behalf of Little Dixie Supermarkets, Inc.

(b) The term "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies, or otherwise (including without limitation), time records, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, work papers, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, ledgers, invoices, billings, drawings, maps, sketches, photographs, applications, plats, films, tapes, receipts, return summaries, financial statements, bank statements, bank debit and credit memos, loan ledgers, promissory notes, security agreement, deeds of trust, financing statements, records of any bank special or

expense accounts, and any and all other writings, typings, printings, or drafts or copies or reproductions thereof irrespective of form in your possession, custody or control.

(c) The term "all documents" means every document as above defined known to you and every such document which can be located or discovered by reasonable diligent effort.

Respectfully submitted,

BANK OF HAZLEHURST

By _____
Brand Henley
Attorney for Defendant

Henley, Lotterhos & Henley
990 Deposit Guaranty Plaza
P.O. Box 326
Jackson, Mississippi 39205

601/948-5131

CERTIFICATE OF SERVICE

I, the undersigned attorney for the defendant, Bank of Hazlehurst, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Request by Bank of Hazlehurst for Production of Documents to Hon. Ron C. Smith, Suite 288, Highland Village, Jackson, Mississippi 39211, attorney for the plaintiff.

This the 10th day of March, 1982.

_____
Brand Henley

8 4 0 4 0 1 4 5 2 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

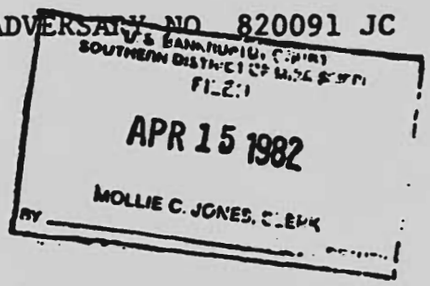
LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff,

ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST

Defendant



MOTION TO COMPEL DISCOVERY

COMES NOW, the defendant, Bank of Hazlehurst, and files this motion to compel discovery and would show the following:

1. Little Dixie Supermarkets, Inc. filed this adversary proceeding against Bank of Hazlehurst on February 27, 1982.

2. Discovery in the form of interrogatories and request for production of documents was filed on behalf of defendant and served upon the plaintiff's attorney on March 10, 1982.

3. Plaintiff has failed to answer said discovery.

4. The discovery was to be answered by April 12, 1982.

WHEREFORE, the defendant, Bank of Hazlehurst, moves this Court for an order compelling the plaintiff to answer said discovery.

Respectfully submitted,

BANK OF HAZLEHURST

Will S. Henley, II

WILL S. HENLEY, II
Its Attorney

Harris B. Henley
H. Brand Henley, Jr.
Will S. Henley, II
HENLEY, LOTTERHOS & HENLEY
990 Deposit Guaranty Plaza
P.O. Box 326
Jackson, Mississippi 39205
(601)948-5131

8 4 0 4 0 1 4 5 2 4

CERTIFICATE OF SERVICE

I, Will S. Henley, II, attorney for Bank of Hazlehurst, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Motion to Compel Discovery to Hon. Robert S. Murphree, P.O. Box 370, Jackson, Mississippi 39205, Hon. Ron C. Smith, Suite 288 Highland Village, Jackson, Mississippi 39211 and Hon. Harold J. Barkley, Jr. P.O. Box 1482, Jackson, Mississippi 39205, attorneys for Little Dixie Supermarkets, Inc.

DATED this the 14th day of April, 1982.

Will S Henley

WILL S. HENLEY, II

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

JUN 15 1982
MOLLIE C. JONES, CLERK

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff

VS. ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST

Defendant

MOTION TO DISMISS

COMES NOW defendant, Bank of Hazlehurst, and files this motion to dismiss the Amended Complaint to Require Surrender of Assets and for cause would show the following:

1. Plaintiff has totally failed to comply with the Order entered in this matter on April 23, 1982, requiring the plaintiff to make a more definite statement in its amended complaint, specifying the exact amount of currency contained in the alleged $93,000.00 deposit as well as specifying and describing in detail each individual check or item or document which formed a part of the alleged $93,000.00 deposit.

2. Plaintiff has failed to comply with the Order entered in this matter on April 23, 1982, compelling plaintiff's answers to defendant's discovery in that plaintiff produced only a few of the requested documents and specifically failed to produce its bank statements, cancelled checks, documents supporting the $93,000.00 deposit and many other requested documents.

3. Plaintiff has failed to support its claim by making a more definite statement and by failing to produce documents supporting its claim as ordered by this Court.

WHEREFORE, defendant, Bank of Hazlehurst, moves that the Amended Complaint to Require Surrender of Assets be dismissed with prejudice and that plaintiff be ordered to pay defendant's attorney's fee, as provided by Rule 37 of the Federal Rules of Civil Procedure.

Respectfully submitted,

BANK OF HAZLEHURST

By Will S. Henley, II
Will S. Henley, II
Its Attorney

Henley, Lotterhos & Henley
990 Deposit Guaranty Plaza
P.O. Box 326
Jackson, Mississippi 39205
601/948-5131

CERTIFICATE

I, Will S. Henley, II, attorney for Bank of Hazlehurst, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Motion to Dismiss to Hon. Russel D. Moore, III, P.O. Box 864, Jackson, Mississippi 39205, to Hon. Ron C. Smith, Suite 288, Highland Village, Jackson, Mississippi 39211, and to Hon. Robert S. Murphree, P.O. Box 370, Jackson, Mississippi 39205, Trustee for Little Dixie Supermarkets, Inc.

Dated this the 14th day of June, 1982.

Will S. Henley, II

8404014524

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff

VS. ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST

Defendant

ORDER OF DISMISSAL

THIS MATTER being brought before this Court on defendant's Motion to Dismiss, and the Court, having considered the premises, finds and orders as follows:

1. Plaintiff has totally failed to comply with the Order entered in this matter on April 23, 1982, requiring the plaintiff to make a more definite statement in its amended complaint, specifying the exact amount of currency contained in the alleged $93,000.00 deposit as well as specifying and describing in detail each individual check or item or document which formed a part of the alleged $93,000.00 deposit.

2. Plaintiff has failed to comply with the Order entered in this matter on April 23, 1982, compelling plaintiff's answers to defendant's discovery in that plaintiff produced only a few of the requested documents and specifically failed to produce its bank statements, cancelled checks, documents supporting the $93,000.00 deposit and many other requested documents.

3. Plaintiff has failed to support its claim by making a more definite statement and by failing to produce documents supporting its

claim as ordered by this Court.

4. The Amended Complaint to Require Surrender of Assets should be dismissed with prejudice.

WHEREFORE, IT IS HEREBY ORDERED that the plaintiff's Amended Complaint to require Surrender of Assets is dismissed with prejudice.

ORDERED this the 22nd day of June, 1982.

UNITED STATES BANKRUPTCY JUDGE

8 4 0 4 0 1 4 5 2 1 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

BANK OF HAZLEHURST

Plaintiff

VS. ADVERSARY NO. 8200091 JC

LITTLE DIXIE SUPERMARKETS, INC.

Defendant

MOTION TO SET ASIDE ORDER OF DISMISSAL

COMES NOW the Plaintiff in the above styled adversary proceeding, Little Dixie Supermarkets, Inc., by and through its attorney of record, and files this its Motion to Set Aside Order of Dismissal and in support thereof would show unto the Court the following, to wit:

I.

That this Honorable Court has jurisdiction to consider this Motion through and pursuant to Rule 60(b), Federal Rules of Civil Procedure.

II.

That on or about February 17, 1982, the Plaintiff herein filed this adversary proceeding against the Defendant, Bank of Hazlehurst. Thereafter, this Honorable Court entered its Order requiring that the Plaintiff herein make a more definite

statement in its Amended Complaint concerning the alleged $93,000.00 deposit, and that the Plaintiff had ten (10) days to so amend.

III.

That on or about June 15, 1982, the Defendant herein filed its Motion to Dismiss this adversary proceeding on the basis that the Plaintiff herein failed to comply with the previous Order of this Court regarding the requirement that the pleadings be made more definite and certain. That at the time of the filing of the Motion to Dismiss the same was noticed for hearing on or about June 21, 1982, and on June 23, 1982, this Honorable Court dismissed this adversary proceeding with prejudice.

IV.

Plaintiff herein would respectfully show unto the Court that the first knowledge the representatives of Plaintiff had of the dismissal was on or about August 1, 1982. At said time, the Plaintiff's present attorney of record researched the adversary proceeding file and discovered the Order of Dismissal. That during the period of the filing of the Complaint through the date of the entry of the Order of Dismissal, Plaintiff herein was represented by Russell D. Moore, III, and Plaintiff would show unto this Honorable Court that its previous counsel never informed Plaintiff that it was necessary to make a more definite and certain statement regarding the pleadings; that there had been a Motion filed to dismiss; that there would be a hearing on said Motion; and that the adversary proceeding had, in fact, been dismissed. Plaintiff would state that its representative, Herbert Berryhill, informed previous counsel in May, 1982, that he did not want anything to happen which would jeopardize the adversary proceeding against the Bank of Hazlehurst.

V.

Plaintiff would further show that at the time it was required

that a more definite and certain statement be made, per this Court's Order, Plaintiff had been removed from the Byram store effective March 24, 1982, and even if Plaintiff had known of the requirement of the Order of this Court, it would have been impossible, without the cooperation of the Trustee in Bankruptcy, Robert Murphy, and others, for the Plaintiff to have acquired the records necessary.

VI.

Rule 60(b) grants unto this Court the authority to examine previous Orders, and especially an Order of Dismissal with prejudice, to see if the interest of justice would be served to reopen a case under the proper circumstances. Plaintiff most respectfully requests that the inadvertence and mistake of its previous counsel in failing to inform the Plaintiff herein of the previous Orders, Motions, and hearings, are an inadvertence of the nature in line with the spirit of Rule 60(b), which should not be attributed to the Plaintiff, and that this Court should grant unto the Plaintiff herein additional time to comply with its Order to make a more definite statement. Further, this Court, in reopening this matter, should order the Trustee in Bankruptcy to make available all necessary records so that this Plaintiff may respond properly.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this matter be heard and that upon a full hearing hereof that the previous Order of Dismissal with prejudice be set aside and that this adversary proceeding be reinstated, allowing Plaintiff sufficient time to comply with the previous Order of this Court requiring that it make a more definite and certain statement.

Respectfully submitted,

LITTLE DIXIE SUPERMARKETS, INC.

BY: _____
ITS ATTORNEYS

8404014525

CERTIFICATE

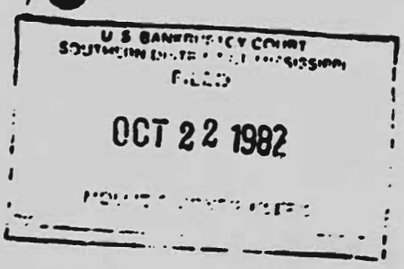
I, William B. Kirksey, do hereby certify that I have this date furnished a true and correct copy of the above and foregoing Motion to Set Aside Order of Dismissal to the Honorable Will Henley, Henley, Lotterhos & Henley, 990 Deposit Guaranty Plaza, P. O. Box 326, Jackson, Mississippi 39205.

This the 21 day of October, 1982.

WILLIAM B. KIRKSEY

BINDER, KIRKSEY & DeLAUGHTER
P. O. Box 25
Jackson, Mississippi 39205
(601) 948-8800

D-2



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974JC

Debtor,

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff ADVERSARY NO. 920091JC

VS.

BANK OF HAZLEHURST

DEFENDANT

APPEARANCES:

FOR PLAINTIFF, LITTLE DIXIE SUPERMARKETS, INC.:

Hon. Russell Moore
P. O. Box 171
Jackson, Mississippi 39205

Hon. Harold J. Barkley, Jr.
P. O. Box 1482
Jackson, Mississippi 39205

FOR DEFENDANT, BANK OF HAZLEHURST:

Hon. Brand Henley
P. O. Box 326
Jackson, Mississippi 39205

Hon. Will S. Henley, II
P. O. Box 326
Jackson, Mississippi 39205

* * * * * * * * * * * * * * * *

BE IT REMEMBERED that on June 22, 1982, Honorable Russell Moore made the following statement pertaining to the above-styled and numbered adversary proceeding:

* * * * * * * * * * * * * * * *

22nd Oct. 82

Willis C. Jones, Clerk, U.S. Bankruptcy Court

By: D.C. Deputy, D. C.

BY RUSSELL MOORE:

Let the record show my name is Russell Moore. Harold Barkley is present and earlier on this date, Mr. Herbert Berryhill had appeared representing Little Dixie Supermarkets, Inc., and it was discussed with him the proposed Order of Dismissal in the suit styled, Little Dixie Supermarkets, Inc. vs. Bank of Hazlehurst, and the fact that several requests had been made by both Ron Smith, one of his other attorneys, by myself, and by Harold Barkley for certain records which were or had been kept by Little Dixie Supermarkets, Inc., and that on one occasion, Harold Barkley and Bob Taylor went to the place of business at Byram in search of the records and found a part thereof.

That a concerted effort was made by the attorneys in order to secure the records. However, the parties Plaintiff or representatives of Little Dixie Supermarkets, Inc. failed to do the same in order that the previous order of the Court could be complied with ordering an amendment and production of certain documents.

Let the record further show that there is no objection to the Order of Dismissal proposed by the Defendant in this case.

BY BRAND HENLEY:

We would like to show that Brand Henley and Will Henley were present at this statement.

The foregoing is a true and correct transcript of a tape recording made by me on June 22, 1982.

Mitzie C. Nations

Mitzie C. Nations

8 4 0 4 0 1 4 5 2 5

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

LITTLE DIXIE SUPERMARKETS, INC. BANKRUPTCY NO. 8101974 JC

Debtor

LITTLE DIXIE SUPERMARKETS, INC.

Plaintiff ADVERSARY NO. 820091 JC

VS.

BANK OF HAZLEHURST

Defendant

O R D E R

THIS MATTER having come on for hearing on November 23, 1982, on plaintiff's Motion to Set Aside Order of Dismissal entered on June 23, 1982, and the Court having considered the pleadings, testimony, exhibits and other evidence, hereby finds and orders that plaintiff's Motion to Set Aside Order of Dismissal is not well taken and should be denied.

WHEREFORE, IT IS HEREBY ORDERED that the plaintiff's Motion to Set Aside Order of Dismissal is not well taken and is hereby denied.

ORDERED this the 29 day of November, 1982.

UNITED STATES BANKRUPTCY JUDGE

ORIGINAL

IN THE BANKRUPTCY COURT
OF THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

IN THE MATTER OF:

LITTLE DIXIE SUPERMARKETS, INC.- NO. 8101974JC
Debtor

LITTLE DIXIE SUPERMARKETS, INC.
Plaintiff

vs ADVERSARY NO. 820091 JC

BANK OF HAZLEHURST
Defendant

U S BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 09 1982
MOLLIE C. JONES, CLERK
BY _____ DEPUTY

MOTION TO SET ASIDE ORDER OF DISMISSAL

BEFORE: HONORABLE BARNEY EATON

Taken on Tuesday, November 23, 1982, at 1:45 p.m., Deposit Guaranty Building, Jackson, Mississippi

APPEARANCES:

WILLIAM B. KIRKSEY, ESQ.
511 East Pearl Street
Jackson, Mississippi 39205
ATTORNEY FOR THE PLAINTIFF

BRAND H. HENLEY, JR., ESQ.
WILLIAM S. HENLEY, II, ESQ.
Henley, Lotterhos & Henley
990 Deposit Guaranty Plaza
Jackson, Mississippi 39205
ATTORNEYS FOR THE DEFENDANT

REPORTED BY:

CYNTHIA ROGERS, CSR, RPR
Notary Public

8404014523

I-N-D-E-X

	Page
LOWERY BERRYHILL	
Direct by Mr. Kirksey.....	3
Cross by Mr. Henley.....	9
Redirect by Mr. Kirksey.....	11
RUSSELL MOORE	
Direct by Mr. Henley.....	14
Cross by Mr. Kirksey.....	25
Redirect by Mr. Henley.....	28
ROBERT MURPHREE	
Direct by Mr. Henley.....	29
Cross by Mr. Kirksey.....	34
HAROLD J. BARKLEY	
Direct by Mr. Henley.....	43
HERBERT BERRYHILL	
Direct by Mr. Kirksey.....	52
Plaintiff Rests.....	57
Defendant Rests.....	57

E-X-H-I-B-I-T-S

	Marked	Received
Exhibit D1, Pleadings.....	12	15
Exhibit D2, June 22 Statement...	24	24

8404014525

THE COURT:

On June 23, 1982 the Bankruptcy Court for the Southern District of Mississippi entered an order in Little Dixie Supermarkets, Inc. vs. The Bank of Hazelhurst which was an order of dismissal. Today the Court has scheduled a motion to set aside that order of dismissal. Is that correct?

MR. KIRKSEY:

Yes, sir, Your Honor.

THE COURT:

Are you ready?

MR. KIRKSEY:

Yes, sir, Your Honor, I am ready. We would ask the rule be invoked, Your Honor.

THE COURT:

All right.

MR. KIRKSEY:

We call Lowery Berryhill, Your Honor.

LOWERY BERRYHILL

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Berryhill, would you state your

8401452556

name to the Court, please?

A. Herbert Lowery Berryhill.

Q. And, Mr. Berryhill, in February of 1982 were you an officer of Little Dixie Supermarkets, Inc.?

A. Yes, sir.

Q. What capacity were you serving in in February of '82?

A. Secretary.

Q. All right. Now, on or about February 17, 1982 did you, as an officer of Little Dixie, authorize an adversary proceeding be filed against the Bank of Hazelhurst?

A. Yes, sir.

Q. Would you tell this Court who represented you at the time of the filing of this action?

A. Ron Smith and Harold Barkley.

Q. Now, after the filing of this adversary proceeding, would you tell this Court whether or not you were ever contacted by Ron Smith or Harold Barkley that you were required by this Court to make a more definite statement concerning the facts and allegations of that complaint?

A. That I was required?

8404014527

Q. Yes.

A. No, sir.

Q. In--on April the 23rd of 1982 what attorney represented you?

A. In April?

Q. Yes.

A. Russell Moore.

Q. Do you remember when Harold Barkley and Ron Smith withdrew from this case or whether or not you relieved them of their job?

A. In March, for Mr. Barkley and Mr. Smith left, I think, in March or April.

Q. All right. When you say he left, Ron Smith just left the state; did he not?

A. I believe so.

Q. Okay. Now, after April 23 of 1982 would you tell this Court whether Russell Moore contacted you concerning the fact that you were required by this Court to make certain records available concerning your allegations of the adversary proceeding?

A. Not that I was required, no, sir.

Q. Did he ask you to produce them?

A. He asked if we could meet at the store at Byram to go over the records and this was in

8404014528

May, I believe.

Q. Okay. And would you tell this Court whether, in fact, you met in May at the store in Byram?

A. Not with Mr. Moore.

Q. Would you tell the Court who you met with?

A. With Mr. Taylor and Mr. Barkley.

Q. All right. Now, when you say Mr. Taylor, do you mean Robert Taylor?

A. Yes, sir.

Q. And when y'all met at the store in May, did you go in the store?

A. They were already in the store and I went in the store later.

Q. All right. And why were you in the store, if you know?

A. To go over the records.

Q. All right. And when you were once in the store were the records there?

A. Yes, sir.

Q. All right.

A. Part of them were.

Q. Okay. Where were the rest of the records if you know?

8404014529

A. I don't know.

Q. Would you tell the Court when the trustee took over the operation of that store, if you remember?

A. In March.

Q. All right. And do you--at the time you vacated the premises or were removed from the premises, were all the records there?

A. Yes, sir.

Q. So when you were there in May, certain records that you needed were not available; is that correct?

A. Yes, sir.

Q. Now, tell this Court whether or not you were aware that the Bank of Hazelhurst ever filed a motion to dismiss the complaint that y'all had filed against the bank?

A. No.

Q. Who was representing you on or about June the 15th, 1982?

A. I would say Russell Moore.

Q. All right. And did you ever meet with Russell Moore and discuss with him this adversary proceeding?

A. No, sir.

8400145250

Q. Did he ever tell you or inform you that there was to be a hearing on June 21, 1982 to dismiss this adversary proceeding?

A. No.

Q. When did you first become aware of the fact that this Court had entered its order dismissing the adversary proceeding?

A. The first thing we knew anything about it we read it in the paper.

Q. All right. And when did you find out for sure that the Court had dismissed it?

A. I asked your firm to research it.

Q. All right. And do you remember what month that was, Mr. Berryhill?

A. I believe in August.

Q. All right. Now, at any time when you met with Bob Taylor or any of these other lawyers, did they ever emphasize to you the necessity of coming up with additional documents, why they were needed?

A. The only thing they ever told me, we were going to need to produce some things before the hearing.

Q. Did they ever tell you there was a dead-line, a ten-day deadline on production of these

8400145251

documents?

A. No.

Q. Were you ever present when there was a discussion with Russell concerning the fact that the Little Dixie Supermarkets wanted to make sure that the adversary proceeding against the Bank of Hazelhurst was properly preserved?

A. Yes.

Q. And would you tell the Court where that meeting took place if you know?

A. Here in this building.

Q. All right. And who made that statement to Mr. Moore?

A. My father.

Q. All right. Mr. Berryhill, would you state to this Court whether or not you feel that you have been treated fairly as far as this adversary proceeding is concerned?

A. No.

MR. KIRKSEY:

I don't think I have anything further, Your Honor.

CROSS-EXAMINATION

BY MR. HENLEY:

Q. Mr. Berryhill, would you give me a very

8400145252

brief sketch of your businesses? What you are running as Little Dixie Supermarkets?

A. Four grocery stores.

Q. Four grocery stores?

A. Yes, sir.

Q. Now, Little Dixie Supermarkets, Inc. had more than one officer. Who were the other officers?

A. My brother Cliff was president. My father Herbert was vice president.

Q. Were these two gentlemen also involved in the decision making processes concerning the corporation and the corporation's business?

A. Yes.

Q. Who is your father that you referred to earlier?

A. Herbert.

Q. Herbert Berryhill?

A. Yes, sir.

Q. And was he also one of the officers who had authority to make decisions concerning Little Dixie Supermarkets, Inc.?

A. Yes.

Q. Was Mr. Barkley rehired after he was released from employment in March of 1982?

8400145263

A. No, he was not.

Q. So he didn't have any involvement with this with Little Dixie Supermarkets, Inc. after March of 1982?

A. No.

Q. Do you know what firm Robert Taylor works for?

A. Moore, Royals & Taylor.

Q. And do you know if he was employed by that firm during May and June of 1982?

A. To my knowledge. That was the first time I had met him was in May.

Q. When did you say that you read in the paper that the adversary proceeding had been dismissed for prejudice?

A. I believe the later part of July, first part of August.

MR. HENLEY:

That's all.

REDIRECT EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Berryhill, even though you are the secretary of Little Dixie Supermarkets, who was the officer primarily charged with the daily operation of Little Dixie Supermarkets?

9400145254

A. I was.

Q. Thank you.

MR. KIRKSEY:

Nothing further, Your Honor.

THE COURT:

That's all.

MR. KIRKSEY:

The plaintiff rests, Your Honor.

MR. HENLEY:

Your Honor, we move for a directed verdict on the motion on the fact that it has been totally unsupported by the evidence presented that there was any malfeasance or misconduct on the part of the plaintiff's attorneys.

THE COURT:

Would you like to say something?

MR. KIRKSEY:

Yes, sir, Your Honor. The testimony as it stands right now, Your Honor, stands unrefuted that my client was ever informed of the necessity of the production of these documents or what they were for. The testimony is clear that there was records that weren't available. It is further from the testimony which stands uncontradicted at the present time that they were never informed of

8104014265

the motion to dismiss or of the hearing on June 23, 1982. And someone, Your Honor, whether it was Mr. Barkley, Mr. Moore or Mr. Smith or whoever represented them at the time had a duty to inform the client as to what was going on.

THE COURT:

Well, I know they are both here. Are they available for testimony?

MR. HENLEY:

Yes, sir. We will be happy to call them, Your Honor.

THE COURT:

All right.

MR. HENLEY:

Your Honor, we will call Russell Moore.

THE COURT:

All right.

MR. HENLEY:

Your Honor, while waiting, we would ask that this be marked as an exhibit for reference purposes. This is just copies of the pleadings in the file so we can refer to them readily and I would like to be able to refer to them by exhibit.

(Exhibit D1 was marked for identification.)

THE COURT:

8404014522566

All right.

RUSSELL MOORE

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENLEY:

Q. Would you state your name, please?

A. Russell Moore.

Q. Can you briefly describe for me your address and occupation?

A. 416 East Amite, Jackson, Mississippi, Attorney at Law.

Q. And what is your involvement with the case at bar?

A. Sometime last spring, I believe it was in March or April, Mr. Herbert Berryhill, Lowery Berryhill, his brother and Ron Little came to my office and asked me if I would assist in the case.

Q. In this particular case?

A. Yes, sir.

Q. Can you tell me--this case is styled Little Dixie Supermarkets, Inc. vs. The Bank of Hazelhurst in an adversary proceeding. Do you know who the officers are of Little Dixie Supermarkets, Inc. and who they were at that time?

8401145567

A. As I understood it, it was Lowery Berryhill, Cliff Berryhill and Herbert Berryhill.

Q. Can you tell me the relationship of these parties?

A. Mr. Herbert Berryhill is the father and the other two are the sons.

Q. Can you tell me who had authority to act on behalf of the corporation as far as making decisions concerning the litigation and the running of the business of Little Dixie Supermarkets, Inc.?

A. Basically, in all of my dealings they primarily were with Mr. Herbert Berryhill. I have had conferences with him when Lowery was not present. I have had him call for Lowery. I really cannot state which of them made the final decision in any instance. I had assumed that basically they all kind of worked together.

Q. Let me hand you what's been marked as Exhibit D1. It hasn't been entered into evidence yet, and just ask if you would generally describe that exhibit?

A. Well, the first instrument, of course, is the original complaint against the Bank of Hazelhurst by Little Dixie Supermarkets demanding

8400145536

that the sum of $93,000 be credited to their account. Then there were interrogatories propounded by the Bank of Hazelhurst on March the 11th, 1982 and I became one of the attorneys subsequent to that because my first appearance was in this courtroom where the defendants had made some type motion in addition to this. And I requested of you or your brother an additional ten days so I could try and get the information up because I had just--

Q. Was that meeting in March of 1982?

A. I think it was, yes, sir. Do you want a description of it otherwise?

Q. Well, the exhibit is copies of the pleadings in the file.

A. That is correct, yes.

Q. We would offer this to be introduced into evidence.

THE COURT:

All right.

MR. KIRKSEY:

No objection, Your Honor.

(Exhibit D1 was received in evidence.)

MR. HENLEY:

Q. Do you know who the owners of Little

8400143269

Dixie Supermarkets, Inc. were?

A. The owners? I thought I had said earlier, Herbert Berryhill, Lowery Berryhill.

Q. They are the officers and also the owners?

A. Yes.

Q. I would like you to refer to the request for production of documents filed March 11 and ask you, if you would, to tell me what response was made to that request for production of documents?

A. I was unable to comply with the request even though I made several demands upon both Herbert and Lowery Berryhill.

Q. What kind of demands?

A. Telling them what we needed and, basically, the consequences if we didn't supply it. And Lowery primarily was involved in that and he advised me that he could not find the records. And one day--I have forgotten when it was--Harold Barkley and Bob Taylor, my associates, went down to the store and they did find some type printout or partial records which were supplied to you but I don't know how much information that would be.

Q. Let me ask you, of the documents

8400145270

produced do you know of any bank accounts that were produced?

A. They were not.

Q. Any general ledgers produced?

A. No, sir.

Q. Any cash receipt journals produced?

A. No, sir.

Q. Any cash disbursement journals produced?

A. No, sir.

Q. Any canceled checks produced?

A. No, sir.

Q. Were there any deposits produced besides the one attached to the complaint and amendment complaint, the alleged--

A. I have forgotten that exhibit. There was one allegedly showing the 93,000 and another one showing some other.

Q. But just one other besides that?

A. That's correct.

Q. Were there any cash register tapes produced that you know of?

A. No, sir.

Q. Do you know if any documents were produced concerning the preparation of the $93,000 deposit?

8404014527 1

A. No, sir. And I made several requests of Lowery for some information about that and the best I could get was maybe $60,000 in cash and the rest in checks but no itemization on those.

Q. Would it be fair to say that for a business the size of the grocery stores run by Little Dixie Supermarkets, Inc. that almost no records were produced?

A. Not for me in order to answer this motion to produce.

Q. Would you refer to the motion to compel in Exhibit D1 that was filed April 15, 1982 and could you describe for me your response to the motion to compel discovery?

A. You know, I must have entered this case about April the 2nd because that was the day that I first appeared and asked you for additional time and there is an order here, an agreed order for more definite--for a continuance and you granted me more time so that I could try and get the instruments up.

Q. Yes, sir. What action was taken concerning after the motion to compel was heard and the order entered concerning the motion to compel? I believe that order was entered on April

8401452272

23, 1982.

A. Okay. When the motion to compel discovery was filed, I made additional efforts to see if we could find some or get some records.

Q. Did you--

A. I couldn't.

Q. Did you advise the individual Berryhill owners of the consequences of failing to produce the documents as required by the order?

A. Perhaps I did not at that time but throughout, generally, I would advise that we have got to have these otherwise this case will be dismissed.

Q. Yes, sir. Later--

A. And I would say I said that both to Herbert and to Lowery.

Q. Later a motion to dismiss was filed according to W. F. Winter on June 15, 1982. Can you tell me what response you made concerning that motion?

A. I did not make a written answer to the motion to dismiss for the simple reason I had no defense to it.

Q. Yes, sir.

A. I--you and your law firm had given me

8400145273

time. I had made requests, even had someone go down and try to find them themselves and so, therefore, I did not file a response. I had nothing to respond with.

Q. In Exhibit D1 there is a copy of the order of dismissal that's the subject matter of this motion which was entered on June 23, 1982. Can you tell me what actions you took immediately prior to the entering of this order of dismissal concerning notice to the individual owners of Little Dixie Supermarkets, Inc.?

A. As I recall, when the motion to dismiss was filed, I attempted to get in touch with Herbert Berryhill. He had always been my contact, more or less, and life long friend. He was in the bean fields I believe at that time up in Flora or some area. But any rate, on the 21st when it was set, I requested of you a couple of days or a day or two so that I could be sure that Mr. Berryhill would be advised of the status of the matter.

Q. Yes, sir.

A. And where we stood and so we did pass it over for a day or two. Mr. Berryhill came in. I talked to him then, came up here, talked to him in the little office right outside here, advised

8404014527 4

him that--

Q. What day was that?

A. The day the order was--I think the day the order was entered.

Q. All right. June the 22nd?

A. It was the day that I--when did we make a record?

Q. We made a record on the 22nd.

A. All right. On that day, yes, on that day. I guess you submitted your order the next day. I'm sorry. Right. But we were up here with Mr. Berryhill. Harold Barkley and I talked to Mr. Berryhill in the little room out here and explained to him that we were unable to get any records. Now, Lowery had on two occasions told me that he believed that the trustee, Robert Murphree, had them. I requested of Robert a couple of times did he have the records and he stated that he did not. And I am sure he will testify.

Q. Is there any question in your mind that at that June the 22nd, 1982 meeting with Herbert Berryhill that he understood that this case would be dismissed for failure to produce some records unless some action was taken?

A. I have no question in my mind that we

8400145275

explained to him that the case was going to be dismissed because we had not been able to produce the records, that we had had a continuance before and went on further to show that if it were even pursued it would go to the other people's benefit and not to his since it was really the company in bankruptcy's lawsuit.

Q. Yes, sir.

A. And--well, you know, I just wouldn't let a case be dismissed without telling my client, and both Harold Barkley and I explained it to him.

Q. In the motion to vacate this order and to set aside the order of dismissal it's in there that previous counsel, meaning Russell D. Moore, had never informed plaintiff that it was necessary to make a more definite certain statement regarding the pleadings, that there had been a motion filed to dismiss, that there would be a hearing on said motion and that the adversary proceeding had, in fact, been dismissed. Is that true?

A. That's not true. When the--you originally file these motions to the interrogatories and the request for production of documents. Ron Smith was the primary attorney and

8400145276

I think Harold Barkley came into the case at that time or about that time. And then subsequent to then, I think on about April 2, is when I came into it and came up and asked you to give me time.

(Exhibit D2 was marked for identification.)

Q. I want to ask you to refer on this document and, if you would, describe for me what it is?

A. An order to--in order that the record might have reflected what occurred I dictated a statement on June 22 to the court reporter setting forth that Harold Barkley and I represented Little Dixie, that we had discussed this matter, I think, and had--it recites what I basically testified to here today and the fact that I could not produce and therefore I had really no way to object to the entering of the order.

MR. HENLEY:

We would like to ask this be made an exhibit.

MR. KIRKSEY:

No objection, Your Honor.

THE COURT:

All right.

(Exhibit D2 was received in evidence.)

8400145277

MR. HENLEY:

No further questions, Your Honor.

THE COURT:

All right.

MR. KIRKSEY:

May I proceed, Your Honor?

THE COURT:

Yes.

CROSS-EXAMINATION

BY MR. KIRKSEY:

Q. Russell, Brand has questioned you concerning the request for the production of documents, journal ledgers, cash journals, canceled checks, deposit slips, cash register tapes, etc. Now, when you would discuss these things with Lowery or Herbert Berryhill, what would their normal response be?

A. Well, this--I think I discussed it before the trustee took over and told them what we needed.

Q. All right.

A. And I did not get them and then the trustee took over. And after that as I stated, Lowery on one or two, two maybe three occasions, said--made the allegation that the trustee had

8404145278

them.

Q. All right. Now--

A. And I requested of Robert any records of anything that he might have.

Q. All right. When Robert Taylor went down there with Harold Barkley, and Robert being your associate, did he come back and report to you what he found down there? Were all the records there? Do you know, Russell?

A. He brought back what he could find and that was the tape, printout.

Q. Okay. All right. Now, did--when you would talk to Bob, Robert Murphree, about the record situation, did the trustee have any of the records to your knowledge?

A. To my knowledge he did not and he stated to me that he did not.

Q. All right.

A. I intended to persue the case. I had a handwriting analysis made of the slips and all that sort of stuff but without any records, you know, there is nothing I can do.

Q. Yes, sir. Russell, on I think Exhibit D2 if I am not mistaken, states that Mr. Herbert Berryhill had appeared representing Little Dixie

8404014 5279

Supermarkets, Inc. and it was discussed with him the proposed order of dismissal. Now, was that on June 22, 1982?

A. That was the day that this record was made, that's correct.

Q. And where did you speak with Mr. Berryhill?

A. In the anteroom right outside the courtroom.

Q. And would you tell me the general tenor of that conversation?

A. I told him that we had been unable to produce any records, that I had gotten continuances and we were just absolutely up to it and there was nothing in my opinion that we could do at that time since it had gone on and on and on. Harold, I think, brought up the fact that the suit was on behalf of Little Dixie and that Lowery or Herbert or his brother would not personally benefit even if there were a recovery. And that, basically, was it and that the case would be dismissed.

Q. What was Mr. Berryhill's response to you at that time?

A. Basically, all right. He did not raise

8404014320

an objection of any type and I think he was not present when this was dictated because he had to go--some way or another the court was not in session or something--but I wanted to be certain that a record was made of what had transpired.

MR. KIRKSEY:

Yes, I have nothing further, Your Honor.

MR. HENLEY:

Judge, I have just got one more question.

REDIRECT EXAMINATION

BY MR. HENLEY:

Q. The notice of this hearing on June 21 was first scheduled for June the 21st. Do you know why it was on the 22nd that we actually had Mr. Berryhill?

A. At my request to be certain that one of the--Mr. Berryhill or someone was here representing, you know--

Q. So we met before the Court on the 21st of June 1982 and then continued it because Mr. Berryhill wasn't here?

A. Right. He was out in the bean fields, I think.

MR. HENLEY:

8404014529

Yes. That's all, Your Honor, of this witness.

THE COURT:

Thank you

MR. HENLEY:

We would like to call Robert Murphree.

ROBERT MURPHREE

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENLEY:

Q. Would you state your name and address, please?

A. Robert Murphree, Post Office Box 370, Jackson, Mississippi, 39205.

Q. Okay. And you are an attorney?

A. Yes.

Q. Can you tell me what your connection has been with Little Dixie Supermarkets, Inc. during the last seven or eight months?

A. Well, Mr. Henley, my first connection would have been my appointment as trustee of the debtor and I believe the record would reflect that was in late March or early April of this year. After I was appointed the trustee, I assumed the

8404014522

operation of the Byram store, which I believe was the only store operating at that time. I operated it as trustee for approximately a month and at that time it was impractical to continue the operation so we closed the store. Since that time, my connection with the case has really been limited to those ordinary duties of a trustee. Now, I don't think anyone would pretend that this has been a normal case. So my duties as trustee have had some unusual characteristics. For example, I never operated a grocery store before. But to answer your question, I have just carried out my trustee's duties.

Q. What has been your connection with the case at bar?

A. The adversary proceeding that's before the Court?

Q. Yes, sir.

A. Well, I think it was filed prior to the time I became the trustee. I know I didn't file it and I know the first time I was acquainted with it it was already filed. My first connection with it was Mr. Smith, Mr. Ron Smith, who I believe was the debtor's attorney, telling me that, in fact, such a case was filed. I asked to see the

8400143

documents involved in the case from Mr. Smith and I didn't get a whole lot of help from that source. So I came down and looked at the adversary proceeding file.

I saw that it was filed in the name of Little Dixie Supermarkets, Inc. as the plaintiff and I told Mr. Smith that the cause of action belonged to me. As you can imagine since the cause of action alleged some 90-something thousand dollars of assets belonging to the debtor was missing, I had a fairly active interest in the case. Any trustee who has an opportunity to recover $90,000 has his interest perked up. I asked Mr. Smith what the allegations of this complaint were based on. He told me about the missing deposit. I asked him to bring me the documents, anything that he had to support the allegations and he didn't.

Q. Were you familiar with the order of dismissal with prejudice toward this adversary proceeding was dismissed in June of 1982?

A. I don't think I was there at the time. I will say this, that because of the fact that Mr. Smith and his successors could never convince me as trustee that a viable cause of action existed

8400145294

and could never document it, I told them that, although it was my cause of action, that I didn't feel like it had any merit, that I would allow them to continue to maintain it if they wanted to. The code has a provision that says a trustee is not required to carry on litigation he doesn't think is meritorious that he can abandon it back to the debtor. And I told them I wasn't going to prosecute the action and, if it had to be prosecuted, that they had to prosecute it. And actually, Mr. Henley, I told Mr. Smith that he would need to file an amended complaint to get the documents out of the name of the debtor because the debtor was going to abandon the cause of action back to the individuals who--if they wanted to maintain it.

Q. The motion to dismiss or to vacate the order of dismissal which we are concerned with here today suggests that one of the reasons that the documents couldn't be produced to satisfy the defendant's request for production of documents was that they were in your possession, you being the trustee; is that true?

A. No, sir. Actually, the subject of documents is a pretty sore one with me. I don't

8404014525

have any documents belonging to the debtor and really don't know where they are. I do know this. For example, we are trying to prepare W2s for the employees and we don't have their Social Securities or addresses. Now, I do know this. One of the attorneys for the debtor called me and asked me did I have anything and I told him, no, I did not. And, specifically, I certainly had nothing to do with this lawsuit and I asked him--he told me that their position was the documents were in the store at the time I took over. And I said, "Well, if that's the case, they are still there." And I tendered him the key to go out there and get them and he came and got the key and, really, I don't think he ever brought it back. And that's a whole story in itself but that's what happened.

Q. To your knowledge did they ever turn over any bank records to you?

A. No, sir.

Q. Any general ledgers, cash receipt ledgers?

A. No, sir. And my file is full of letters to the debtor's attorneys, actually Mr. Smith I think, asking him to do so. There were--anyone who is familiar with the history of this case

8400145296

knows that there were a number of allegations of mismanagement on the part of the debtor corporation and that all the creditors had a number of questions about where the assets of the corporation were. And, of course, once I was appointed, all of their questions were directed to me and I felt very acutely that I needed to have some information about the debtor's operations. I never could get any.

MR. HENLEY:

Thank you.

CROSS-EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Murphree, what date did you as trustee remove the officers of Little Dixie Supermarket from possession of the Byram store?

A. Bill, the file would show the actual date but, if I remember correctly, it would have been March 25, March 26.

Q. Sometime in later March of '82?

A. The reason I remember is because--if I remember correctly, I operated the store from March 25 until April 25. That sounds right.

Q. Now, on the date that you became, in effect, the operating trustee of the Byram store,

8400143237

did anyone either yourself or someone under your direction, go down and inventory to see what books and records were there on that date?

A. Well, I--now, as far as inventory, now, I think a retail grocery inventory service either then or shortly thereafter performed an actual count of the inventory of the store.

Q. I am not talking about the food stuffs, that sort of thing. What I am talking about is the inventory of the books and records.

A. Well, now, I myself physically looked and there were very few records. If you are familiar with the physical layout of the store--

Q. Oh, yes.

A. --you will know that there is an up-raised office portion toward the front of the store that has a safe in it.

Q. Correct.

A. And that there is a stockroom to the left of the store running along the north side of the store as you go in. And the only two places that records could have been were in either the little upraised office at the front or the stock-room on the side. Now, let me say this. We went around and around the bush on this record question.

8400145238

I would say, "Where are the records?" And the answer I would get would be, "You have them. They are in the store."

Now, there were three or four file cabinets in the stockroom and I looked through those file cabinets at length, and for one thing they were locked. And, of course, the debtor said I had the keys and I don't ever recall getting them but, anyhow, I got them open. I forced them open. I think that's--that's right. We had to actually physically force those file cabinets open because all of the records I was looking for were said to be in the store. Well, they weren't in the upraised office portion so they had to be in the file cabinets if they were there.

So I forced the file cabinets open and all they had--all the file cabinets had in them were old invoices, paid invoices I gathered, from vendors. There were the payroll account bank statements which, of course, I wasn't too interested in and I left those there. I think I took one of them to get the account number to ask the bank was there any money in the account. There were some forms. There were a lot of order forms. There were a lot of unused bank deposit

8400145299

forms and there were a lot of old daily reports where they would--register receipt reports, but those were the only records there.

Q. At the time that you took over, you found no cash receipt journals?

A. No, sir.

Q. No cash disbursement journals?

A. No, sir. Let me clarify this. There was no--there was no document or there was no book or journal or anything that said on the front of it cash disbursement journal. Now, the debtor's affairs were in a jumble. There was no question about it and there were some loose-leaf binders in the store itself in the upraised office portion. But I could never tell what they were and I don't think that's what they were. Now, if the debtor had some unusual system for keeping track of those items that nobody could look at it and tell that's what it was, there may have been. But there was nothing that I could tell and, believe me, I had a very active interest in it. And if you are familiar with what a trustee does, you will have to realize that nobody tells him there is a chance to get $90,000 and a trustee not display an active interest in it.

8404014520

Q. Did you, Robert, when your interest got peaked in this 93,000, did you check with the accountant that the Court had previously appointed to see if he had any of these records by any chance?

A. I read the accountant's report and, no, I never asked him if he had any records. But you will have to remember there were--the debtor's attorneys were telling me that the records were in the store and certainly I had no way of knowing where the records were except for what the people who had possession of them would have mentioned to me. And they were the ones who said they were in the store.

Q. Did you ever think that what the debtor said in this case may have been, in fact, true, Mr. Murphree, that there was a viable claim here and someone maybe should have looked for the records?

A. Well, yes, sir, I did. I started--

Q. As trustee, did you ever--since it was your claim, did you ever actually take it upon yourself to try to find each and every one of these items so this claim could be pursued?

A. I certainly did. I did everything I

8404014522

knew to do. I know I have alienated Mr. Ron Smith because I badgered him so much about it. That's the only person I knew to ask. He couldn't come up with the records. I looked through the building. They told me they were in the building and I was--I looked through the building. I turned it upside down.

Q. Did you, as trustee, on any occasion ever approach the Court in your capacity as trustee and inform the Court that if these records ever existed they no longer existed or could not be found?

A. No, I did not do that and I will tell you why because you are asking me if I have ever made a representation to the Court about the state of the debtor's records. No, I didn't and no I won't. The only thing I know about the debtor in his records is that everything I have ever asked for I have not received. And the only reason I have ever been given is that I already had them and I know I didn't. And I know I don't have that much of a law practice but I have enough to where I don't try to do things I don't need. And if you ask somebody for something and they won't give it to you and they keep telling you you have it and

8400145222

you know you don't have it, what do you do?

Q. On the day that you took over as trustee, Robert, since I wasn't there--you know I wasn't involved in this case at that time--did you yourself actually run the store for that month or did you have someone, another grocery firm or whatever help you run the store?

A. For the first week the people of Lewis Grocery Company actually provided the management.

Q. All right. Now, during that week that Lewis Grocery was there, do you know whether or not they possibly removed records from that store?

A. I would have no way of knowing except for when I was there. I was there on a--I was there at least two or three times a day and was oftentimes there when we closed at night because I physically transported the deposits to the bank and to my office to have them counted and deposited. And during the time I was there, they did not.

Q. Okay.

A. Now, of course, I would have no way of knowing what they did when I was not there.

Q. Of course.

A. However, if I am allowed to venture an

8401452323

opinion, I obviously had a great deal of confidence in the people they proffered to me or I would not have used them. I am--as trustee I am a neutral party and I don't take sides in the controversy.

Q. Oh, I understand that and I didn't mean by any chance, Robert, to be implying that. I hope you didn't take it that way. What you are saying then is that you didn't have the records and the debtor says he didn't have the records so the records must have just disappeared if they ever existed in the first place?

A. Well, I don't know what happened. I do know this. The debtor's attorney came to me and said, "My client says you have the records." I told him he was perfectly free to go through every file I had but I didn't think he would find anything there that would satisfy him. He came back later and said, "Well, my client says the records are in the store." At that point I gave him the keys to the store. I didn't even go down there with him. I gave him the keys and never got them back, I don't think, but I gave them to him. And if they were in the store then--now, let me say this. As far as Lewis Grocery Company

8401452924

removing records, I just--I don't think it physically could have been possible because the day I took over we looked. I know I looked in the little store enclosure, the office, which is approximately as large, twice as large as the Judge's desk there and they were not in there. There were no records of the nature you described in that small enclosure and the only other records in the store were in the file cabinets which I have told you were locked. And, of course, we went round and round and round about who had the keys to the file cabinets and, when we couldn't get that resolved, I broke them open. Now, when I broke the file cabinets open--

THE COURT:

I have heard enough to rule on this.

MR. KIRKSEY:

I have no further questions of this witness, Your Honor.

I do have, Your Honor--I do have a witness on the way that I would like for the Court to be able to listen to possibly, Your Honor.

THE COURT:

All right. Do you want to take a recess?

8401452

MR. KIRKSEY:

Yes, sir. He should be here within three or four minutes I think, Judge.

THE COURT:

All right.

(Whereupon a recess was had.)

THE COURT:

I'm sorry we kept you Mr. Barkley. I thought we were through with the witnesses.

MR. KIRKSEY:

Your Honor, for the record since Mr. Barkley is returning as well as Mr. Moore, I would like the record to reflect that on behalf of myself and my client we do not require the other.

THE COURT:

All right.

MR. HENLEY:

Your Honor, the record can reflect the same from the attorneys for the defendant. We would not either.

HAROLD J. BARKLEY

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENLEY:

8400145226

Q. Mr. Barkley, will you state your name and address and occupation?

A. Harold J. Barkley, Jr., my address is 2320 Pebble Lane, Jackson, Mississippi. My office address is 418 East Amite Street, Jackson, Mississippi. I am an attorney.

Q. Can you tell me what your involvement with the case at bar has been generally?

A. Little Dixie?

Q. Yes.

A. I started representing the debtors, Little Dixie, sometime in November or December, I believe, of 1981.

Q. Can you tell me during what period of time you represented them?

A. Yes, sir. I represented them up until sometime in January or February and I got fired one time. And I think I started back and I represented them sometime in March and they fired me again. And I got rehired back and represented them up to about June, I guess it was.

Q. So when we were discussing Little Dixie Supermarkets, who did you deal with?

A. With the Supermarkets?

Q. Little Dixie Supermarkets, Inc., who

8400143227

were you dealing with?

A. Most of my dealings were with Lowery Berryhill. Some of them were with Herbert Berryhill and another brother of Lowery named--you will have to help me on the name.

Q. Clifford?

A. Clifford, Cliff, right.

Q. And were these three officers of the corporation?

A. Yes, as far as I know. Now, I was associated in this case with another lawyer and I didn't have anything to do with the filing of this petition so you are asking me--I am assuming that's what they were. I don't really remember.

Q. But those were the three individuals that you dealt with?

A. Yes, sir.

Q. Were you familiar with the request for production of documents which the defendants filed in this case?

A. In which case now?

Q. On the adversary proceeding.

A. On the adversary proceedings of the Bank of Hazelhurst?

Q. Yes.

8400145228

A. Yes, sir.

Q. I want to hand you what's been marked Exhibit D1 and these are copies of the pleadings in this case, the adversary proceeding, so that you can refer to them. If you would, refer to the request for the production of documents.

A. The production of documents?

Q. Yes, sir.

A. Okay. I may have passed it the first time. Let me see.

Q. It was filed on March 11. It would have been one of the first documents.

A. All right. The defendants first--no, that's the interrogatories. All right. I see it, request for Bank of Hazelhurst for production of documents?

Q. Yes, sir. And you were familiar with this request for production of documents at the time it was filed back in March up until the time it was--the case was dismissed?

A. Are you Will or Brand? I can't ever get it straight.

Q. Brand.

A. Not at first I don't believe and let me tell you why I'm saying that. I am looking at

9400145229

your certificate over here. You only show that you mailed this to Ron Smith.

Q. Uh-huh.

A. Okay. I didn't get it at that particular time and I don't know when I first saw this, but I saw it at a time after Ron Smith had gotten it and started the answer to your interrogatories and the production of the documents.

Q. Okay. But you were involved with trying to answer that request for production of documents?

A. Yes, sir, at some point in time, right.

Q. I would like to ask you to refer to the motion to compel concerning that request for production of documents?

A. Motion for--

Q. No, motion to compel. It was filed on April the 15th.

A. April the 15th? All right.

Q. Would you describe for me what efforts you and Russell Moore made to comply with this motion to compel discovery concerning the production of documents?

A. Yes. And, again, I can't be certain

8400145370

about the date. But sometime after this was filed Bob Taylor from Russell's office and my office, we went to the site of Little Dixie there in Byram, Mississippi to look for the documents to comply with the discovery request and met with Lowery Berryhill and went through some filing cabinets and didn't find the documents that we made reference to.

Q. Okay. Were any other efforts made by yourself personally to obtain these documents?

A. None other than requesting the people to bring them in and for Ron Smith to get them.

Q. When you say requesting people, who are you talking about?

A. I am talking about Lowery Berryhill and I believe there was another owner. At that time Russell was involved in it and I was kind of working through Russell. But you are asking me-- that's the only time I went to look for them, right.

Q. I would like to ask you to refer to the motion to dismiss filed by the defendant on June 15, 1982?

A. June 15th?

Q. Yes.

8404145301

A. Okay. I got it.

Q. And if you would also refer to the next document in Exhibit D1 which is the order of dismissal signed on June 23, 1982, and ask you to tell me what efforts were made by you and Mr. Moore to comply and satisfy the request for production of documents and to obtain the documents needed?

MR. KIRKSEY:

Excuse me just a second, Your Honor. If you would, Mr. Berryhill, please step out for a second. I think in all fairness to the Court, Your Honor.

THE COURT:

All right.

A. The question again.

MR. HENLEY:

Q. Would you describe for me the efforts you and Mr. Moore made to obtain the necessary documents to continue this litigation and therefore to prevent the order of dismissal from being entered that was entered on June 23, 1982?

A. Well, number one, we attempted to get it through our clients and we also attempted to get it through their place of business and the

8400145302

records in Byram, Mississippi and that was through Ron Smith who was also working on it at the same time and that was what we tried to obtain.

Q. Do you recall discussing the motion to dismiss and the order of dismissal which was on June 23 with Herbert Berryhill on June 22, 1982?

A. I am not certain about the date but I remember discussing with him. Is that about the same time the order was entered?

Q. Yes.

A. I do recall that Russell and myself and, I believe, you and your brother, one of your brothers were present at the time if I am not mistaken.

Q. Yes, sir. I would like to ask you to refer to this document and, if you would, tell me what it is?

A. This appears to be what Russell Moore dictated into the record that day on June the 22nd.

Q. Would you read it?

A. In whole?

Q. No, would you just read it to yourself?

A. I have read it.

Q. Okay. Is that exhibit a true and correct statement of what happened? Is that

8404145303

statement that was read into the record by Russell true and correct?

A. As far as I know, yes, sir.

Q. Okay. Would you describe for me in detail the conversation that was had with Herbert Berryhill that day on June 22, 1982 concerning the order of dismissal?

A. Yes, sir. To the best of my recollection Mr. Russell, he and I and Russell talked about it and this was after we were under the Court order to produce these documents and the dates and it had been continued once or twice. And I don't believe it was a formal order allowing the continuance because the attorneys had all agreed on it and we got down and we didn't have the records to produce and the question came down to--what it was in my opinion and Russell's was any money recovered would go to the estate and not to the Berryhills individually.

Q. And do you recall explaining to Herbert Berryhill that the order of dismissal would likely be entered if the documents weren't produced?

A. Very much so, yes, sir. Now, I say--I remember being present. I don't know whether Russell--I think Russell explained that to him. I

8404145374

remember it being explained to him.

MR. HENLEY:

That's all the questions I have.

MR. KIRKSEY:

Nothing of this witness, Your Honor.

THE COURT:

Thank you.

MR. KIRKSEY:

Your Honor, one short witness, Herbert Berryhill.

HERBERT BERRYHILL

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KIRKSEY:

Q. Mr. Berryhill, at the time the trustee in bankruptcy took over the operation of the Byram store, where were your records pertaining to that store?

A. Prior to that time?

Q. No, at the time.

A. At the time they had been moved into the store proper, to the storeroom.

Q. Did that include general ledgers, cash journals, cash disbursements?

8404014575

A. Yes.

Q. Cash register receipts?

A. Yes.

Q. Do you know what happened to those records?

A. No, I do not.

Q. Mr. Berryhill, do you remember being in this courtroom on or about June 22, 1982?

A. I have never been in this courtroom, Mr. Kirksey.

Q. All right. Do you know the room that you were just in out here, the library type room? Were you ever in that room on or about June 22, 1982?

A. I was in that room on the day that it was converted to a seven. After that time we went around the hall and met with the man that was called the trustee, Robert Murphree. It was converted to a seven, I believe, that day.

Q. Okay. Do you remember or have you ever had an occasion to discuss with Russell Moore and/or Harold Barkley the dismissal of the adversary proceeding that was pending against the Bank of Hazelhurst?

A. Russell told me briefly that morning.

8404145306

That same day Harold Barkley was not employed by us.

Q. All right.

A. I would have had no reason to discuss it with Harold. Russell told me that they wanted to dismiss it, the Bank of Hazelhurst's attorneys wanted to dismiss it. I heard Harold Barkley tell Russell and the lawyers for the Bank of Hazelhurst, I believe it was the gentlemen to my left, that they would come back that afternoon and take care of it. I had told Russell that under no circumstances would I agree for it to be dismissed with prejudice.

Q. Did you ever discuss with Herbert Berryhill, I mean, with Russell Moore the fact that on that particular day there would be an order entered dismissing the adversary proceeding?

A. No.

Q. Was it your explicit instructions to Russell Moore as your attorney that you did not want the adversary proceeding dismissed under any circumstances if it could be avoided?

A. Yes, it was.

Q. Okay. At any time during the period that you were searching for these records that you

8404014307

needed to produce, did any of the lawyers that you had hired tell you how important it was to produce those documents?

A. No, not really, Bill. In fact, we had been instructed or ordered--I assume it was a Court order from Robert Murphree. He ordered us the day that he took over the store and he said he was a trustee for Lewis Grocery Company and he ordered me and my two sons not to go back into the store under any circumstances. Consequently we were never in the store again to my knowledge during this period of time.

Q. Did you ever tell your attorneys that you had no way to produce or get access to any records because the trustee had the company?

A. Right.

Q. When did you first learn that this matter had been dismissed, Mr. Berryhill?

A. When I was in Al Binder's office and he read the documents to me.

Q. All right. And have you met with Russell Moore since you found out that this was dismissed?

A. He was in Al's office and he told me at that time that--

8404014538

MR. HENLEY:

Judge, we would object to what happened afterward as that would be irrelevant.

THE COURT:

Sustained.

MR. KIRKSEY:

Okay. So you can't say anything about that, Mr. Berryhill.

Q. Did you know on June 22, 1982 that this matter was going to be dismissed?

A. No.

Q. Did you talk to Russell Moore concerning the dismissal of this action?

A. No more than to tell him that I would not agree that it be dismissed.

Q. If he dismissed it or agreed to dismissal after your conversation with him, did he do it against your wishes as his client?

A. Yes.

MR. KIRKSEY:

Nothing further, Your Honor.

MR. HENLEY:

No questions, Your Honor.

THE COURT:

Thank you, Mr. Berryhill.

8404045309

MR. KIRKSEY:

That's all, Your Honor, that we have.

MR. HENLEY:

Your Honor, the defendant rests.

THE COURT:

I believe you earlier made a motion for a directed verdict, did you not?

MR. HENLEY:

Yes, sir.

THE COURT:

The Court has before it a motion to set aside an order of dismissal. I find that the motion is not well taken and shall be set aside.

MR. HENLEY:

Your Honor, did you say denied motion?

THE COURT:

Denied, motion denied.

(THE HEARING CONCLUDED AT 3:20 P.M.)

8400145310

CERTIFICATE OF COURT REPORTER

I, CYNTHIA ROGERS, Notary Public in and for the County of Hinds State of Mississippi, hereby certify that the foregoing pages, and including this page, contain a true and correct transcript of the testimony of the witnesses, as taken by me at the time and place heretofore stated, and later reduced to typewritten form by computer-aided transcription under my supervision to the best of my skill and ability.

I further certify that I am not in the employ of, or related to, any counsel or party in this matter, and have no interest, monetary or otherwise, in the final outcome of the proceeding.

Witness my signature and seal this the 6th of December 1982.

Cynthia Rogers

CYNTHIA ROGERS
My Commission expires June 16, 1986

8404014531 1

40401453

County Employes May Be Stealing

By JOE STEBBINS
and
RONNI PATRIQUIN
Clarion-Ledger Staff Writer

Administrative level employes of Hinds County District Five have allegedly been appropriating county tax monies for personal use.

The county funds have allegedly been siphoned by officials taking advantage of the lack of an orderly county purchasing unit. Funds, and in some cases other services, have been procured by requesting private concerns to work on privately owned equipment and then billing the work as a county incurred debt.

As on April 11, 1974 when Tire Service, Inc., of Jackson was called by District Five to repair a tractor tire.

The tractor, privately owned by Herbert Berryhill, District Five road foreman, was in a soybean field owned by Berryhill.

Tire Service, Inc., repaired the tire, replaced the tube and billed the county for a total of $52.62.

Berryhill personally initialed the receipt that specifically names Hinds District Five as the purchaser.

On April 16, Bill Boykin, District Five employe, called in the purchase order number 50424 to Mrs. Charlene Moore in the county purchasing office for the tire repair.

However, since county officials learned of The Clarion-Ledger's investigation, attempts have been made to explain the action.

L.J. Beasley, District Five supervisor, claimed that the mistake was in the billing records of Tire Service, Inc., and said a correction was due

"Nobody in our organization knew about it and I'm sure nobody at the tire company knew of it or they would have let us know," Beasley said.

But no correction was found in the regular June billing by Tire Service, Inc. The correction was not made until July 3, when the county received a special billing correction from Tire Service Inc. — three days after The Clarion-Ledger

See STEALING, Pg. 14A

40401453

STEALING

Continued From Pg. 1A

obtained the information from county records.

Tire Service, Inc., refused to comment on the matter.

Several residents of District Five have also charged the county with illicit distribution of gravel — especially in election years.

Though county distribution of gravel to individuals for private driveway maintenance has been traditional, it is legally forbidden.

No county machinery, equipment, labor or materials can legally be used beyond the county's right-of-way.

According to a number of sources in District Five — sources who said they would be willing to testify before a jury but preferred to remain anonymous at this time, — only favored individuals can expect the county to provide gravel for their driveways at times other than election years.

The gravel dole allegedly increases as campaigns for reelection begin.

"They're sure starting to fix up some of these black's driveways now. You know they're after the black vote," one source said.

"They never give the colored folks anything until an election comes up," another source said.

Another incident allegedly involving misuse of county equipment was in conjunction with the construction of a deer camp near Eagle Lake in Warren County in 1967.

The deer camp was allegedly being constructed with county machinery and labor.

One source heard of the operation and went there, but the ferry operator refused to take him across and disavowed any knowledge of a county work force on the opposite bank.

However, two sources returned to the location the next day and saw county equipment in the area.

"We went out the next day after the ferry operator denied knowing anything, and a county bulldozer was sitting on this side waiting for the Lo-Boy (trailer) to take the dozer to Utica. When it got to Utica, it was torn down as if it was down there to be worked on," a source said.

Beasley emphatically denied that.

"A piece of my equipment has never gone out of Hinds County. We have never taken a piece of county equipment ment than that.

"We don't even own a Lo-Boy we can move equipment on. That comes from the county engineer," Beasley said.

Allegedly, these clandestine county movements were covered by a lack of distinct markings on county equipment and the lack of a firm vacation policy for county employes.

To receive vacation time, a county employe has only to ask for it the day before he leaves. If his absence interferes with no planned county functions, the leave is granted directly by the district road foreman.

Therefore, a county employe may be working on a private project while drawing county pay. And if it is discovered, simple collusion between the foreman and the employe can provide an unimpeachable cover that the employe was on vacation.

Beasley acknowledges that such an arrangement is possible.

The question of nepotism also arises in District Five. The county employs not only Herbert Berryhill, but four other Berryhills plus a nephew by marriage.

Two of his sons work for the county and directly responsible to Herbert. His son's wife also works for the county and until recently, his other son's wife temporarily worked for the county.

Berryhill's nephew is also employed by the county this summer as driver of the mosquito control truck.

This practice is not illegal according to existing nepotism statutes. Legally, only the hiring authority per se (the supervisors in this case) is liable for nepotism.

Traditionally, the foreman accepts applications and makes a judgement, then the supervisor "rubber stamps" the foreman's decision, an attorney familiar with state supervisor's procedures said.

This raises the question as to whether a county foreman can ethically hire members of his family, a county political observer said.

"I believe I keep a little closer check on things down there. The boards of supervisors are wards of the legislature — completely, 100 per cent. As long as we don't violate the law, it is not unethical," Beasley said.

4040145

District 5 Road Foreman Replies To Paper Report

Herbert Berryhill, District Five road foreman, Thursday responded to charges made against him in an article published Wednesday in The Clarion-Ledger.

The article stated Berryhill had appropriated county tax money for his personal use, specifically in using county money to pay for repairs to a tractor owned by Berryhill.

Berryhill presented his version of the story, saying that "the following are the true facts. My brother, Allen Berryhill, was working my tractor in my soybean field when it developed a flat tire. Allen flagged down Bill Boykin, a personal friend, and asked him to send someone to fix the tire. Later that afternoon, the Tire Service driver brought a receipt for the tire to the county office where I was working. I was asked to initial the receipt since Mr. Boykin was not in the office. Mr. Boykin generally handles this type of receipt. At the time I initialed the receipt, I presumed it was a county-owned tire, as I had no knowledge whatsoever of the flat tire or the contact between my brother, Allen, and Mr. Boykin. On July 2, more than two months after the above facts occurred, I was first informed that there was some mistake. At this point, I made an investigation and determined the foregoing facts and learned that the Tire Service people had erroneously billed the county for my tire. They were immediately instructed to change this, and I paid for the tire repair."

The Clarion-Ledger article had stated that a correction in the billing records of Time Service, Inc., was made July 3, three days after Clarion-Ledger reporters obtained the information from county records.

Berryhill also said, "Statements in the article were also printed in regard to 'nepotism in District Five'. The article stated that two of my sons (I have only two sons) work for the county and are directly responsible to me. This is totally incorrect. My older son works for the Hinds County Permit Dept. and was hired by and is directly responsible to H.B. Braswell. He has never worked in

See DISTRICT, Pg. 8A

DISTRICT

Continued From Pg. 1A

my district or been responsible to me in his work for the county. My younger son was originally hired by the Engineering Dept. of the county at Raymond and later requested a transfer to District Five, where he is directly responsible to the construction foreman, Earl Boyd. My older son, Lowery Berryhill,, who works for the Hinds County Permit Dept. as an inspector, advises me that the writers of the article in your paper actually came to his office where he was working and were advised by several people as to the type work he was doing, which obviously was not working for me or in District Five. Your reporters either knew the facts and failed to report accurately, or in attempt to print a 'sensational' type story, just ignored the facts."

The Clarion-Ledger's article stated that Berryhill's two sons, nephew and two daughters-in-law were working or had been working for the county, although this practice is not illegal according to existing nepotism statutes.

4040145316

DEC 6- 1974
WM. E. "BILL" MCWILLIE
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 33,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

DECLARATION

Comes the Plaintiff, Herbert Berryhill, and files this his suit against the Defendant, Mississippi Publishers Corporation, and for cause of action would show the following:

I.

That the Plaintiff is an adult resident citizen of the First Judicial District of Hinds County, Mississippi, and that the Defendant, Mississippi Publishers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Mississippi, having its principal place of business at Jackson in the First Judicial District of Hinds County, Mississippi, and may be served with process by service on its agent for service of process, R. M. Hederman, Jr., 311 E. Pearl Street, Jackson, Mississippi.

II.

That at all times hereinafter mentioned, the Defendant was and now is engaged in the business of publishing a daily newspaper, to-wit: The Clarion Ledger, and that said newspaper is a newspaper of wide and general circulation in the State of Mississippi.

III.

That on July 17, 1974, the Defendant, in the morning edition of said newspaper, willfully and maliciously published of

●4 0 4 0 1 4 5 3 1●

and concerning the Plaintiff, certain false, defamatory and libelous words, said words being libelous per se; a true copy of said article is attached hereto as Exhibit I and made a part hereof as if copied in full herein.

IV.

That said newspaper published by the Defendant in Jackson, Mississippi, has a very large and extensive circulation in the entire State of Mississippi, and elsewhere, and that its news and editorial items are extensively copied and commented on by all leading newspaper presses, radio and television stations and other media of communication in the State of Mississippi.

V.

That by publishing that the Plaintiff was "stealing" in said newspaper, the Defendant did falsely and maliciously accuse the Plaintiff of a loathsome and reprehensible crime, to-wit: Larceny and/or embezzlement, thereby labeling him a criminal. Said words so published were generally read by the subscribers to said newspaper and by others and were, by such readers, understood to convey the meaning that the Plaintiff was a thief.

VI.

That on July 18, 1974, the Plaintiff, pursuant to Section 95-1-5 of the Mississippi Code of 1972, caused to be delivered to the office of the Defendant notice and demand, within ten days after receipt of notice of said communication to publish or cause to be published, over the signature of the author of said article, a full fair and adequate correction, apology and retraction of said defamatory, false and malicious statements published by the Defendant. A copy of said notice is attached hereto as Exhibit II and made a part hereof as if copied in full herein.

VII.

That on July 19, 1974, the Defendant did publish an article of and concerning the Plaintiff in response to Plaintiff's notice of July 18, 1974. A true copy of said article is attached hereto as Exhibit III and made a part hereof as if copied in full herein.

VIII.

That the article published July 19, 1974, by the Defendant was in no way a full, fair and adequate correction, apology and retraction of the false, defamatory, malicious and libelous statements published by the Defendant in The Clarion Ledger on July 17, 1974.

IX.

That the natural and proximate consequences of the statements published by the Defendant on July 17, 1974, in The Clarion Ledger, have caused and will continue to cause substantial and irreparable injury to the Plaintiff in his personal, social, and business life, by exposing him to hatred, contempt and ridicule thereby severely damaging his good reputation and standing in the community in which he lives and throughout the entire State of Mississippi, all to the detriment and injury of the Plaintiff in the amount of $100,000.00.

X.

That said statements published by the Defendant on July 17, 1974, in The Clarion Ledger were false, wilful, wanton and malicious and the Plaintiff demands exemplary damages in the amount of $150,000.00.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment of and from the Defendant, Mississippi Publishers Corporation, in the amount of $250,000.00, as actual and exemplary damages together with interest and all costs herein.

Respectfully submitted,

HERBERT BERRYHILL

BY: G. Garland Lyell, III

W. E. GORE, JR.
G. GARLAND LYELL, III
Attorneys for Plaintiff

4040145316

24

Herbert Berryhill

No. 22,466

Vs.

Mississippi Publishers Corporation

COURT SUMMONS

THE STATE OF MISSISSIPPI

TO THE SHERIFF OF HINDS COUNTY—GREETINGS:

WE COMMAND YOU HEREBY THAT YOU SUMMONS Mississippi Publishers Corporation---- agent for process is R. M. Hederman, Jr., 311 E. Pearl Street, Jackson, Ms.

Defendant

if to be found in your County, so that it be before the Circuit Court to be holden in and for the First District of Hinds County, at the Court House thereof, in the City of Jackson, on the 1st Monday of January, 19 75 to answer the declaration of Herbert Berryhill

Plaintiff

against the said defendant, now on file in the Clerk's office of said Court. And have then and there this summons.

(By Section 1519, Mississippi Code of 1942, as amended, you are required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier.)

The amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs.

Judgement will be demanded at return term.

Issued the 6th day of December, 19 74

Declaration filed when summons issued.

ATTEST:

WILLIAM E. "BILL" McKINLEY, Clerk

(SEAL)

By: [signature], D. C.

G. Garland Lyell, III
Attorney For The Plaintiff

40401453

Mrs Publishers Corporation
Mr Tony Hagberson
10 Agent
Dear Sir
Yours Sincerely

40401453

HERBERT BERRYHILL

No. 22,466

Vs.

MISSISSIPPI PUBLISHERS CORPORATION

(ALIAS) **COURT SUMMONS**

THE STATE OF MISSISSIPPI

TO THE SHERIFF OF HINDS COUNTY—GREETINGS:

WE COMMAND YOU HEREBY THAT YOU SUMMONS

MISSISSIPPI PUBLISHERS CORPORATION-----

AGENT FOR PROCESS: R. M. HEDERMAN, JR.,

311 E. PEARL ST., JACKSON, MS.

Defendant

if to be found in your County, so that IT be before the CIRCUIT Court to be holden in and for the First District of Hinds County, at the Court House thereof, in the City of Jackson, on the 1ST Monday of JANUARY, 19 75 to answer the declaration of

HERBERT BERRYHILL

Plaintiff

against the said defendant, now on file in the Clerk's office of said Court. And have then and there this summons.

(By Section 1519, Mississippi Code of 1942, as amended, you are required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier.)

The amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs.

Judgement will be demanded at return term.

Issued the 12 day of DECEMBER, 19 74

Declaration filed when summons issued.

ATTEST: WILLIAM E. "BILL" McKINLEY, Clerk

(SEAL) By: Dell Cook, D. C.

G. GARLAND LYELL, III

Attorney For The Plaintiff

4040145326

F. M. Holmes, M.D.
6 Jan 74
Lula Store

4040145

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

V. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

ANSWER AND DEFENSES TO AMENDED DECLARATION

COMES NOW Mississippi Publishers Corporation, defendant in the above entitled cause, and for its answer to the Amended Declaration exhibited against it says:

1.

Defendant admits the allegations of paragraph 1 of the Amended Declaration.

2.

Defendant admits the allegations of paragraph 2 of the Amended Declaration.

3.

Defendant admits that Exhibit I to the Amended Declaration is a true copy of an article published in "The Clarion-Ledger" on or about July 17, 1974, and admits that said article, in part, concerned plaintiff. Defendant denies the remaining allegations of paragraph 3 of the Amended Declaration. The actual facts are that the article in question was not published wilfully or maliciously, but was published in complete good faith in justifiable reliance on reliable sources of information, including official county records. Defendant denies that the article in question contained false, defamatory or libelous words or that any portion of said article which may have been incorrect, if any, was either libelous or libelous per se.

Defendant further specifically denies that said article was published with reckless disregard for the truth of the contents thereof. Defendant avers that the reporters who wrote said article investigated the subject matter thereof, and other alleged improprieties in the Fifth Supervisor's District of Hinds County, Mississippi, some of which related to the plaintiff, said investigation being conducted over a period of several days and with reasonable care and with attention to acceptable reporting practices. In accordance with said practices, although said reporters obtained information relating to a variety of allegedly improper practices committed by plaintiff and others in the Fifth Supervisor's District of Hinds County, Mississippi, they only published in said article those matters which could be independently verified or which were related to them as fact by more than one person.

4.

Defendant admits that the newspaper, "The Clarion-Ledger", has a large and extensive circulation in the State of Mississippi and elsewhere. Defendant denies the remaining allegations of paragraph 4 of the Amended Declaration; because defendant does not know the practices of the other leading newspaper presses, radio and television stations and other media of communication in the State of Mississippi as respects their copying and commenting upon this defendant's news and editorial items.

5.

Defendant denies the allegations of paragraph 5 of the Amended Declaration. It is specifically denied that defendant accused plaintiff of "stealing", or that said article implied that plaintiff was "stealing", or that the words contained in the entire article, taken in context, were intended to, or did, convey to defendant's subscribers, or anyone else, the meaning that plaintiff was a thief.

6.

Defendant admits that Exhibit II to the Amended Declaration is a true copy of the notice which plaintiff, on July 18, 1974, delivered or caused to be delivered to defendant pursuant to §95-1-5, Mississippi Code of 1972, Annotated. Defendant admits receipt of said notice by it. Defendant denies the remaining allegations of paragraph 6 of the Amended Declaration, especially the inference that the article in question is defamatory, false or malicious.

7.

Defendant admits the allegations of paragraph 7 of the Amended Declaration.

8.

Defendant denies the allegations of paragraph 8 of the Amended Declaration.

9.

Defendant denies the allegations of paragraph 9 of the Amended Declaration.

10.

Defendant denies the allegations of paragraph 10 of the Amended Declaration because (1) the article in question and its publication were not such as to justify exemplary damages in any event and (2) plaintiff could not, under any circumstances, be entitled to such damages in this case by virtue of the provisions of §95-1-5, Mississippi Code of 1972, Annotated.

Defendant denies that plaintiff is entitled to judgment against it in the sum of $250,000.00 or any other amount whatsoever.

AND NOW, having answered the allegations of the Amended Declaration exhibited against it, defendant would show and charge the following special and affirmative matters:

FIRST AFFIRMATIVE DEFENSE

The article of which complaint is made is a statement of true and correct facts; therefore, it cannot, as a matter of law, be defamatory, malicious or libelous.

SECOND AFFIRMATIVE DEFENSE

1.

At all times material hereto, the plaintiff was a public official of the County of Hinds, State of Mississippi holding a position of trust and responsibility.

2.

Defendant published the article in question believing the contents thereof to be true, same having been obtained from sources, including official county records, which the authors justifiably considered accurate and reliable.

3.

If any portion of the article in question is false, which defendant denies, defendant avers that it did not knowingly publish any false statement about plaintiff nor did it publish any statement about plaintiff with reckless disregard of the truth or falsity thereof or with a high degree of awareness of the probable falsity of any such information. Defendant avers that it gave due regard to the truth of the subject matter of the publication in question and the facts and matters therein recited before it published said article and it published same fully believing, in good faith, that the subject matter of the article was a matter of interest to the public being generally concerned with the expenditure of tax dollars and published said article believing the contents thereof to be true.

4.

Defendant avers, therefore, that its publication of the article in question was protected by the privilege accorded

defendant and other publishers under the First Amendment to the Constitution of the United States. Even if any portion of the article were false, its publication under these circumstances, did not give rise to a cause of action in favor of plaintiff.

THIRD AFFIRMATIVE DEFENSE

1.

For brevity and convenience, defendant adopts and here reasserts by reference paragraphs 1 through 3, inclusive, of its second affirmative defense.

2.

In addition, defendant avers that the article as a whole was concerned with the lack of an orderly county purchasing unit, which was, and is, a matter of great public interest in the State of Mississippi as evidenced by the attention which the subject has received from both the Governor and Legislature of the State of Mississippi.

3.

For this additional reason, the publication in question was privileged and was protected by the First Amendment to the Constitution of the United States. Therefore, the plaintiff can have no cause of action on account of the publication of this article, in any event.

FOURTH AFFIRMATIVE DEFENSE

Defendant denies that plaintiff is entitled to any recovery whatsoever on account of the publication in question. In the alternative, however, defendant avers that plaintiff is not entitled to any sum greater than his actual damages, if any, by virtue of the provisions of §95-1-5, Mississippi Code of 1972, Annotated, with which defendant has fully and fairly followed.

AND NOW, having fully answered, defendant prays that the Amended Declaration will be dismissed at the cost of the plaintiff.

Respectfully submitted,

W. SCOTT WELCH, III
1700 Deposit Guaranty Plaza
Post Office Box 22567
Jackson, Mississippi 39205
(601) 948-5711

ATTORNEY FOR DEFENDANT

OF COUNSEL:

ROGER C. LANDRUM
BUTLER,SNOW,O'MARA,STEVENS & CANNADA
1700 Deposit Guaranty Plaza
Post Office Box 22567
Jackson, Mississippi 39205

C E R T I F I C A T E

I, W. SCOTT WELCH, III, one of the attorneys for the defendant, do hereby certify that I have this day served a true and correct copy of the foregoing Answer and Defenses to Amended Declaration upon W. E. Gore, Jr. and G. Garland Lyell, III, by personally delivering same to their respective business addresses in the City of Jackson, Mississippi.

SO CERTIFIED this the 29th day of March, 1976.

W. SCOTT WELCH, III

4040145329

INSTRUCTION C-2

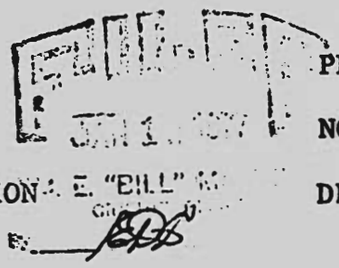
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHING CORPORATION — DEFENDANT



The Court instructs the Jury that if you believe from a preponderance of the evidence in this case that the publication in question that appeared in the Defendant's newspaper on July 17, 1974, including the headlines and article, was false and that the publication meant to and did charge the plaintiff with stealing, and if you further find from a preponderance of the evidence that the defendant through its duly authorized agents and employees knew or by the exercise of reasonable care should have known that the publication was false, and accused the plaintiff of stealing, if you so find, then the Court instructs you that you should return a verdict for the plaintiff in the amount of actual damages sustained by the plaintiff, if any. In that event and you so find, in arriving at the amount of your verdict you are the sole judges as to that amount. You may take into consideration all damages, if any, necessarily incurred by plaintiff as the result of the publication. You may take into consideration any humiliation or embarrassment necessarily sustained by the plaintiff. You may take into consideration any exposure of the plaintiff to public contempt or ridicule.

The Court further instructs you that if you should find from a preponderance of the evidence that the publication in question was false, and you further find from a preponderance

of the evidence that the defendant, through its duly authorized agents and employees, knew that the publication was false or that it acted in a reckless disregard for the truth, then the Court instructs you that in addition to actual damages you may award the plaintiff punitive damages. By punitive damages is meant damages that would deter any such action in the future. The amount of any punitive damages, if any should be awarded by you, is solely within your discretion.

4040146338

D 10

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

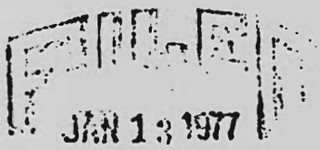
MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that when any nine of you have agreed upon a verdict, you may return the same into Court as the verdict of the jury.

4040145337

IN THE C CUIT COURT OF THE FIRST J CIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

INSTRUCTION NO. P-4



HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHING CORPORATION — DEFENDANT

The Court instructs the Jury that if you find for the Plaintiff and you find he is entitled to actual damages only, then the form of your verdict may be:

"We, the Jury, find for the plaintiff in the amount of $_____ as actual damages."

The Court further instructs you that if you find that the Plaintiff is entitled to punitive damages, the form of your verdict may be:

"In addition to the above actual damages, we the Jury find that the Plaintiff is entitled to the sum of $_____ as punitive damages."

4040145373

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

INSTRUCTION NO. P-5

The Court instructs the Jury that when nine (9) of you arrive at a verdict you may bring it into Court as the verdict of the entire Jury.

4040145

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

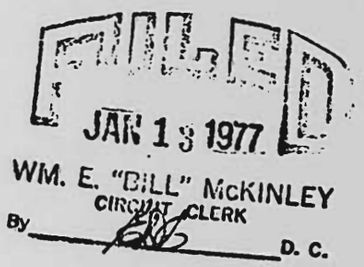
HERBERT BERRYHILL — PLAINTIFF

VS. — NO. _____

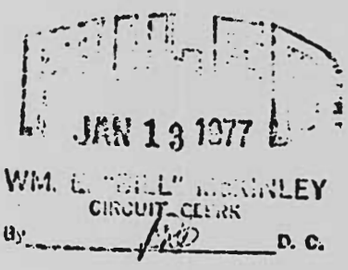
MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

INSTRUCTION NO. P-3

The Court instructs the Jury that you are the sole judges of the weight and credibility of the witnesses, including expert witnesses, who testified in this case, and you are not bound by the testimony of any one witness, but you are to base your verdict on the greater weight of the believable evidence.



"Else, the jury, find for the defendant."



4040145337

D 11

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that if you find for the defendant, your verdict may be in the following form:

"We, the jury, find for the defendant."

Please write your verdict on a separate sheet of paper.

4040146

D 16

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The court instructs the jury that the mere fact that you have been given instructions relating to the law of damages in this case does not mean that the court is of the opinion that the plaintiff should or should not recover any sum of money whatsoever. Such instruction is given you for the sole purpose of allowing the jury to be completely instructed on all matters of law which may be applicable to the case.

FILED
JAN 12 1977
WM. E. "BILL" McKINLEY
CLERK
By _____ D. C.

40401453

D 9C

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

Any sum of money awarded as actual damages must be supported by the evidence and any such damages must have been established by a preponderance of the evidence with reasonable certainty, although not with mathematical precision.

4040145

D 7

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court further instructs you that the rule is that such reckless disregard as is required for an award of punitive damage is not measured by whether a reasonably prudent man would have published said article or would have investigated further before publishing or even whether there was negligence or a mistake in connection with any investigation which you find from the evidence was undertaken. This is so only with regard to the issue of whether or not the plaintiff is entitled to recover punitive damages.

4040145314

D 6A

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that the phrase "reckless disregard for the truth" as used in these instructions, on the issue of punitive damages, means publication of the alleged defamatory statements with knowledge that they were false or with reckless disregard of whether they were false or not and with a high degree of awareness by defendant of their probable falsity. The Court instructs you further that even if you find from the evidence that the article in question was false, you must further find that there has been proof of knowing falsity or "reckless disregard for the truth" as herein defined before plaintiff is entitled to recover any ~~sum of money whatsoever~~ punitive damages and that unless the preponderance of the evidence establishes with convincing clarity that the article was published with "reckless disregard for the truth", it is your sworn duty to find for the defendant on the issues of punitive damages to which issue, alone, this instruction applies.

FILED
JAN 13 1977
WM. E. ...

4040145 3.1

D 4

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that, in considering the article sued on, including the accompanying headlines, you will read the article according to the ordinary meaning of the language used. The Court therefore instructs you that if you find, from such a consideration of the article, that it was not false, then it is your sworn duty to return a verdict for the defendant.

Jurm

4040145341

D 3B

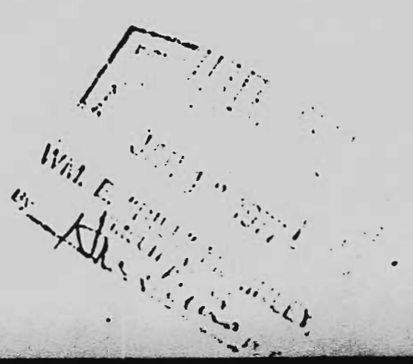
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that this case must be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair treatment at your hands as a private individual. The law is no respecter of persons; all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.



4040145341

D 3A

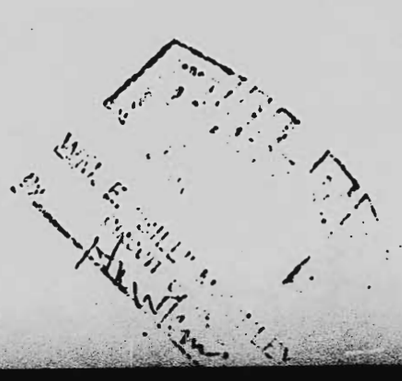
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

HERBERT BERRYHILL — PLAINTIFF

VS. — NO. 22,466

MISSISSIPPI PUBLISHERS CORPORATION — DEFENDANT

The Court instructs the jury that in an action for libel the plaintiff is required to prove the falsity of the publication complained of, and if the falsity of the publication is not proved by the greater weight of the believable evidence, ~~and~~ then it would be your sworn duty to return a verdict for the defendant.



FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1469 DEPOSITIONS AND AFFIDAVITS

Date Filmed 4/4/84 Camera No. ---3

Cameraman JRL