



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2060

DATE FILMED 5/9/88 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

16 May 1985

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF THE VICTORY '84 COMMITTEE

This is a referral of the Victory '84 Committee ("the Committee"). The Committee has failed to clarify whether payments for printing disclosed on the 1984 30 Day Post-General Report were made on behalf of Federal candidates. According to the RAD Review and Referral Procedures for Unauthorized Committees (Standard 13), further examination is required by your office.

If you have any questions on this matter, please contact Brian J. Hancock at 523-4048.

Attachment

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REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 16 May 1985

ANALYST: Brian J. Hancock

I. COMMITTEE: Victory '84 Committee
(C00186841)
Thomas J. Spargo, Treasurer
315 State Street
Albany, NY 12210

II. RELEVANT STATUTE: 11 CFR 106.1

III. BACKGROUND:

Failure to Allocate Expenditures Among Candidates

The 1984 30 Day Post-General Report, which also included the 12 Day Pre-General reporting period, was filed by the Victory '84 Committee ("the Committee") disclosing a total of \$184,586.23 in disbursements for various printing services (Attachment 2).^{1/}

A Request for Additional Information ("RFAI") was sent to the Committee on February 8, 1985, seeking clarification regarding the payments for printing, as well as other payments made for phone banks, advertising, direct mail and communications. The RFAI also informed the Committee that if these disbursements were made on behalf of specifically identified Federal candidates, they should be disclosed as either in-kind contributions on Schedule B supporting Line 21, or coordinated expenditures on Schedule F supporting Line 23, and should include the amount, name, address, and office sought by each candidate (Attachment 3, page 3).

Because the Committee failed to respond to the RFAI, a Second Notice was sent on February 28, 1985 (Attachment 4). On March 20, 1985, a response was received from the Committee addressing the expenditures for phone banks, advertising, direct mail, and communications, but which failed to mention the expenditures made for printing (Attachment 5, page 2).

^{1/} On October 29, 1984, the Committee filed a statement in lieu of the 12 Day Pre-General Report which stated that the Committee had not made any expenditures for any specific Federal candidate.

VICTORY '84 COMMITTEE
REPORTS ANALYSIS OGC REFERRAL
PAGE 2

The Reports Analysis Division ("RAD") analyst contacted the Committee's treasurer, Mr. Thomas Spargo, on March 28, 1985, to inform him that the Committee's response for the 30 Day Post-General Report was incomplete because it failed to fully address the question regarding printing expenses. Mr. Spargo told the RAD analyst that he would submit a response correcting the problem as soon as possible (Attachment 6).

As of the date of this referral, the Commission has not received a response.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

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FEDERAL ELECTION COMMISSION
COMMITTEE INDEX OF DISCLOSURE DOCUMENTS - (C) (83-84)DATE 7MAY85
PAGE 1

PARTY RELATED

COMMITTEE	DOCUMENT	RECEIPTS	DISBURSEMENTS	TYPE OF FILER COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
VICTORY '84 COMMITTEE				PARTY QUALIFIED		ID #C00186841
CONNECTED ORGANIZATION:	NY REP FED CAMP CMTE NY REP STATE CMTE					
1984	STATEMENT OF ORGANIZATION			5JUL84	2	84FEC/318/35
	MISCELLANEOUS REPORT			24OCT84 TO FEC	2	84FEC/347/429
	OCTOBER QUARTERLY	190,025	158,391	1JUL84 -30SEP84	22	84FEC/340/3258
	OCTOBER QUARTERLY - AMENDMENT	-	-	1JUL84 -30SEP84	6	85FEC/366/1126
	OCTOBER QUARTERLY - AMENDMENT	-	-	1JUL84 -30SEP84	19	85FEC/368/3338
	REQUEST FOR ADDITIONAL INFORMATION			1JUL84 -30SEP84	8	85FEC/358/4621
	REQUEST FOR ADDITIONAL INFORMATION 2ND			1JUL84 -30SEP84	9	85FEC/363/2411
	POST-GENERAL	347,771	378,084	30SEP84 -26NOV84	41	84FEC/357/4210
	POST-GENERAL - AMENDMENT	-	-	30SEP84 -26NOV84	6	85FEC/365/0811
	POST-GENERAL - AMENDMENT	-	-	30SEP84 -26NOV84	35	85FEC/368/3357
	REQUEST FOR ADDITIONAL INFORMATION			30SEP84 -26NOV84	5	85FEC/365/3968
	REQUEST FOR ADDITIONAL INFORMATION 2ND			30SEP84 -26NOV84	3	85FEC/367/1781
	YEAR-END	10,778	11,937	27NOV84 -31DEC84	8	85FEC/365/0817
	YEAR-END - AMENDMENT	10,778	12,137	27NOV84 -31DEC84	12	85FEC/372/2495
	REQUEST FOR ADDITIONAL INFORMATION			27NOV84 -31DEC84	2	85FEC/367/0839
	REQUEST FOR ADDITIONAL INFORMATION 2ND			27NOV84 -31DEC84	3	85FEC/369/0040
1985	MISCELLANEOUS REPORT			18MAR85 TO FEC	6	85FEC/368/2105
	TOTAL	548,574	0 548,612	0	189	TOTAL PAGES

All reports have been reviewed.
 Ending cash-on-hand (12/31/84) = \$161.81
 Debts owed to/by committee = \$ 0

ATTACHMENT #1

ATTACHMENT #2,
PAGE 1 OF 6

1984 30 Day Post-General

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VICTORY '84 Committee

30 Day Post-General

A Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Postmaster, Albany, N.Y.	Postage		
	Disbursement for Primary Campaign	10-8-84	130.00
	Other activity	10-15-84	130.00
B Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Postmaster, Flushing, N.Y.	Postage		
	Disbursement for Primary Campaign	10-8-84	250.00
	Other activity	10-15-84	250.00
C Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Election Computer Services 333 Jericho Turnpike Jericho, N.Y. 11753	Printing		
	Disbursement for Primary Campaign	10-8-84	20,000.
	Other activity	10-11-84	10,000.
	Other activity	10-12-84	10,000.
D Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Video Services Syracuse University Syracuse, New York 13210	Advertising		
	Disbursement for Primary Campaign	10-15-84	85.39
E Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Petty Cash	Office Expenses		
	Disbursement for Primary Campaign	10-15-84	150.00
F Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Iver Printing 6703 Main Street Flushing, New York 11367	Printing		
	Disbursement for Primary Campaign	10-15-84	73.75
G Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Multi-Media Advertising 46-27 Kissena Blvd. Flushing, N.Y. 11355	Flyers & Posters		
	Disbursement for Primary Campaign	10-15-84	400.53
H Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Neil Levin 45 East 45th Street New York, N.Y. 10017	Reimbursement for Travel Expense		
	Disbursement for Primary Campaign	10-15-84	20.95
I Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
U.S. Postmaster, N.Y., N.Y.	Postage		
	Disbursement for Primary Campaign	10-15-84	3,000.
	Other activity		
SUBTOTAL (Total)			
TOTAL (Total)			

44,490.62

Victory '84 Committee

1984 30 Day Post-General

A Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Marlon Dennis 45 East 45th Street New York, New York 10017	Consulting Fee & Travel Expense	10-15-84	95.25
B Full Name, Mailing Address and ZIP Code Promotions, Etc. 88 Needham Street Newton, Mass. 02161	Advertising	10-15-84	15,884.
C Full Name, Mailing Address and ZIP Code Armand P. D'Amato 120 Mineola Blvd Mineola, New York 11501	Reimbursement for Petty Cash	10-17-84	100.00
D Full Name, Mailing Address and ZIP Code Election Computer Services 333 Jericho Turnpike Jericho, N.Y. 11753	Printing	10-17-84	10,000
E Full Name, Mailing Address and ZIP Code Hispanic Press Conf. & Comm. 767 Fifth Avenue New York, N.Y. 10020	Meeting Expense	10-17-84	480.00
F Full Name, Mailing Address and ZIP Code New York Telephone Albany, New York 12207	Telephone Expense	10-17-84	1,572.
G Full Name, Mailing Address and ZIP Code New York Hilton New York, New York 10001	Reception	10-12-84	8,020.00
		10-10-84	6,168.60
H Full Name, Mailing Address and ZIP Code A. Olsen Printing 100-28 Martense Avenue Corona, New York 11368	Printing	10-17-84	540.00
I Full Name, Mailing Address and ZIP Code Victors Cafe 52nd Street New York, New York	Reception	10-17-84	3,500
SUBTOTAL			46,359.85
TOTAL			

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Victory '84 Committee 1984 30 Day Post-General

A Full Name, Mailing Address and ZIP Code Election Computer Services 333 Jericho Turnpike Jericho, New York 11753	Purpose of Disbursement Printing Disbursement for: Primary General Other specify:	Date of Disbursement 10-23-84 10,000. 10-24-84 5,000 10-26-84 25,000.
B Full Name, Mailing Address and ZIP Code (same as above)	Purpose of Disbursement Disbursement for: Primary General Other specify:	Date of Disbursement 10-26-84 15,000 10-30-84 7,697.48 11-5-84 20,000.
C Full Name, Mailing Address and ZIP Code Club 101 New York, New York	Purpose of Disbursement Reception Disbursement for: Primary General Other specify:	Date of Disbursement 10-26-84 1,200.
D Full Name, Mailing Address and ZIP Code Ryetown Hilton Rye, New York	Purpose of Disbursement Reception Disbursement for: Primary General Other specify:	Date of Disbursement 10-29-84 550.00
E Full Name, Mailing Address and ZIP Code WNJU, 425 Park Avenue New York, N.Y. 10022	Purpose of Disbursement Advertising Disbursement for: Primary General Other specify:	Date of Disbursement 10-26-84 482.00
F Full Name, Mailing Address and ZIP Code Niagra Mohawk Erie Blvd. Syracuse, N.Y. 13252	Purpose of Disbursement Electricity Cost Disbursement for: Primary General Other specify:	Date of Disbursement 10-30-84 15.95
G Full Name, Mailing Address and ZIP Code Crawford Advertising KUHN Road Syracuse, N.Y. 13208	Purpose of Disbursement Signs Disbursement for: Primary General Other specify:	Date of Disbursement 10-30-84 70.00
H Full Name, Mailing Address and ZIP Code U.S. Postmaster, Staten Island, New York	Purpose of Disbursement Postage Disbursement for: Primary General Other specify:	Date of Disbursement 10-31-84 400.00
I Full Name, Mailing Address and ZIP Code Stephen Stofelano 62 Park Avenue Albany, New York 12202	Purpose of Disbursement Reimbursement for Postage Expense Disbursement for: Primary General Other specify:	Date of Disbursement 10-31-84 4,750
SUBTOTAL (Total disbursements. This figure must add to		90,105.43
TOTAL (Total disbursements. This figure must add to		

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VICTORY '84 COMMITTEE 1984 30 Day Post-General

A Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
Quality Ad & Design 167-11 Union Turnpike Flushing, N.Y. 11366	Direct Mail	Primary	11-5-84 428.75
B Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
The Waldorf Astoria Park Avenue New York, New York	Reception	Primary	11-5-84 6,449.16
C Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
Montauk Bus Co. Inc. 242 West Montauk Highway Hampton Bays, New York 11946	Transportation	Primary	11-5-84 100.
D Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
B & R Promotional Products 7 West 30th Street New York, N.Y. 10001	Bumper Stickers, Buttons, etc.	Primary	11-5-84 790.89
		General	11-6-84 2,071.33
E Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
Club Hubano 681 Prospect Avenue Bronx, N.Y. 10455	Reception	Primary	11-5-84 200.
F Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
Hampton Balloon Company P.O. Box 1641 South Hampton, N.Y. 119 68	Decorations	Primary	11-6-84 25.74
G Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
Partner's Press 1881 Kenmore Avenue Kenmore, New York 14217	Printing	Primary	11-6-84 5,000
H Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
New York Republican County Committee, Hotel Roosevelt New York, New York 10017	Headquarters Expense	Primary	11-14-84 807.80
I Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Disbursement for	Amount
Federal Express P.O. Box 727, Dept. A Memphis, Tenn. 38194	Courier Service	Primary	11-14-84 371.
SUBTOTAL			16,245.67
TOTAL			

81 81 00 45 03 77 00 21 62 64 25

Victory '84 Committee

A Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
B&R Promotional Products 7 West 30th Street New York, New York 10001	Bumper Stickers, Buttons, Etc.	11-19-84	130.90
	Disbursement for Primary General	11-19-84	2,000.
	Other expense	11-19-84	358.77
B Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Globe Audio Visual Services 1095 Tulip Avenue Franklin Square, N.Y. 10010	Advertising	11-14-84	86.60
	Disbursement for Primary General		
	Other expense		
C Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Artmans 1057 Second Avenue New York, N.Y. 10022	Art Supplies	11-14-84	116.16
	Disbursement for Primary General		
	Other expense		
D Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Columbia Advertising 180-10 93rd Avenue Jamaica, New York 11433	Advertising	11-14-84	2,070.28
	Disbursement for Primary General		
	Other expense		
E Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Excelsior Graphics 45 West 18th Street New York, N.Y. 10011	Envelopes	11-14-84	1,813.10
	Disbursement for Primary General		
	Other expense		
F Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Edward S. Lurie 315 State Street Albany, New York 12210	Expense Reimbursement Travel	11-26-84	296.42
	Disbursement for Primary General		
	Other expense		
G Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Quality Ad & Design 167-11 Union Turnpike Flushing, N.Y. 11366	Envelopes	11-14-84	1,307.11
	Disbursement for Primary General		
	Other expense		
H Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Mazel Printing, Inc. 221 Ross Street Brooklyn, N.Y. 11211	Printing	11-15-84	275.00
	Disbursement for Primary General		
	Other expense		
I Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date	Amount
Metrocom Enterprises 35-30 38th Street Long Island City, N.Y. 11106	Communications	11-19-84	166.
	Disbursement for Primary General		
	Other expense		
SUBTOTAL (Disbursements Plus Basic Information)			8,622.43
TOTAL (The above list plus any other number only)			



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

FEB 8 1985

RQ-2

Thomas J. Spargo, Treasurer
Victory '84 Committee
315 State Street
Albany, NY 12210

Identification Number: C00186841

Reference: 30 Day Post-General Report (9/30/84-11/26/84)

Dear Mr. Spargo:

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:

-The identification of each contributor, including the person's occupation and name of employer, must be provided if the person has contributed in excess of \$200 in the aggregate during the calendar year. Please amend Schedule A supporting Line 11a for each entry lacking a contributor's occupation and name of employer.

Note: If your committee has made at least one effort per solicitation, either by a written request or by an oral request documented in writing to obtain this information from the contributor, your committee may have exercised "best efforts." If you believe that your committee satisfies the "best efforts" provision, you should provide a copy of your solicitation or an explanation of the method(s) used to obtain contribution information. 11 CFR 104.3(a)(4)(i) and 104.7.

-On Schedule A supporting Line 11a of the Detailed Summary Page, your report disclosed contributions from individuals which omit the aggregate year-to-date. Please amend your report by supplying the information. 11 CFR 104.3(a)(4)(i).

-The total amount of contributions itemized on Schedule A, plus the total amount of unitemized contributions reported on the Detailed Summary Page, should equal the total reported on Line 11(a) of the Detailed Summary Page. Please amend either Schedule A or the Detailed Summary figures to correct this discrepancy. 11 CFR 104.3(a).

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FACTORY '84 COMMITTEE
PAGE 2

-Your report discloses contributions which may have been drawn on corporate accounts (examples of such contributions are attached). You are advised that contributions from corporations are prohibited by the Act, unless made from separate segregated funds established by the corporations. (2 U.S.C. §441b) If you have received corporate contributions, the Commission recommends that you refund the full amounts to the donors or transfer the funds to a non-Federal account. Please inform the Commission immediately in writing and provide a photocopy of your check(s) for the refund(s) or transfer(s)-out. In addition, the disbursement should be itemized on Schedule B for Line 26a or 27 of your next report.

Although the Commission may take further legal steps concerning the acceptance of prohibited contributions, prompt action on your part to refund or transfer-out any such prohibited contributions will be taken into consideration.

If you find, however, that the contributions in question were not drawn from prohibited corporate accounts, and there is another explanation regarding the manner in which such entries have been disclosed, please clarify this matter for the public record.

-Schedule B supporting Line 19 reflects payments for buttons, signs, bumper stickers and brochures. Payments for buttons, signs, bumper stickers and brochures (sometimes called "exempt activity") are exempt from the definition of a contribution or expenditure if certain conditions are met. The conditions are that no public advertising may be used including distribution by direct mail; all funds used for the activity must be permitted under the act; none of the funds used may have been designated for a particular candidate; and finally, payments for the activity may not be made from transfers-in from the national committee to specifically fund the activity. (See 11 CFR 100.7(b)(15) and (17) and Pages 11 and 12 of the Campaign Guide for Party Committees.)

Please clarify the nature of the payments for buttons, signs, bumper stickers and brochures. If the activity disclosed on your report does not meet the definition of "exempt" activity as described above, and a portion or all of the expenditures were made on behalf of

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FACTORY '84 COMMITTEE
PAGE 3

specifically identified candidates, the activity must be disclosed on Schedule B or F for Line 21 or 23 of the Detailed Summary Page, as appropriate.

-Please clarify all expenditures made for phone banks, printing, advertising, direct mail and communications. If a portion or all of these expenditures were made on behalf of specifically identified Federal candidates, they should be disclosed on Schedule B or F for Line 21 or 23 and include the amount, name, address and office sought by each candidate. 11 CFR 104.3(b) and 106.1.] B.H.

-Your report discloses transfers made to the New York Republican State Committee which appears to be the non-Federal account of your committee. Please note that if any portion of such transfers/payments represents reimbursements of administrative expenses pursuant to 11 CFR 106.1, such reimbursements should be reported on Schedule B supporting Line 19 of the Detailed Summary Page for Operating Expenditures. Administrative expenses are those day-to-day expenses of operating the committee, including rent, utilities, salaries, office supplies and other miscellaneous costs. The Federal account must pay its share of such costs.

If these transfers do not represent reimbursements of administrative expenses, please be advised that you must allocate such expenses between your Federal and non-Federal accounts in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis. 11 CFR 106.1(e) and 102.5(a)(1).

If your organization has incurred such administrative costs and your non-Federal account has paid for all such costs, your Federal account must reimburse the non-Federal account for its portion of the expenses. The amount incurred by the Federal account should be disclosed as a debt or obligation owed to the non-Federal account on Schedule D supporting Line 10 of the Summary Page. When payments are made toward the debt, they should be reported on Schedule B supporting Line 19 of the Detailed Summary Page and the debt should be reduced by a corresponding amount.

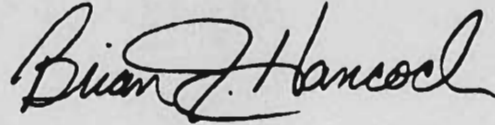
An amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission

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ATORY '84 COMMITTEE
PAGE 4

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) 523-4048.

Sincerely,



Brian J. Hancock
Reports Analyst
Reports Analysis Division

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

ATTACHMENT #4
PAGE 1 OF 3

RQ-3

February 28, 1985

Thomas J. Spargo, Treasurer
Victory '84 Committee
315 State Street
Albany, NY 12210

Identification Number: C00186841

Reference: 30 Day Post-General Report (9/30/84-11/26/84)

Dear Mr. Spargo:

On February 8, 1985 you were notified that a review of the above-referenced report(s) raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act.

The Commission is in receipt of your amended 30 Day Post-General Report received on February 4, 1985. For this response to be considered adequate, the following information is still required.

-The identification of each contributor, including the person's occupation and name of employer, must be provided if the person has contributed in excess of \$200 in the aggregate during the calendar year. Please amend Schedule A supporting Line 11a for each entry lacking a contributor's occupation and name of employer.

Note: If your committee has made at least one effort per solicitation, either by a written request or by an oral request documented in writing to obtain this information from the contributor, your committee may have exercised "best efforts." If you believe that your committee satisfies the "best efforts" provision, you should provide a copy of your solicitation or an explanation of the method(s) used to obtain contribution information. 11 CFR 104.3(a)(4)(i) and 104.7.

-On Schedule A supporting Line 11a of the Detailed Summary Page, your report disclosed contributions from individuals which omit the aggregate year-to-date. Please amend your report by supplying the information. 11 CFR 104.3(a)(4)(i)

-Your report discloses contributions which may have been drawn on corporate accounts (examples of such contributions are attached). You are advised that contributions from corporations are prohibited by the Act, unless made from separate segregated funds established by the corporations. (2 U.S.C. 5441b) If you have received corporate contributions, the Commission recommends that you refund the full amounts to the donors or transfer the funds to a non-Federal account. Please inform the Commission immediately in writing and provide a photocopy of your check(s) for the refund(s) or transfer(s)-out. In addition, the disbursement should be itemized on Schedule B for Line 26a or 27 of your next report.

Although the Commission may take further legal steps concerning the acceptance of prohibited contributions, prompt action on your part to refund or transfer-out any such prohibited contributions will be taken into consideration.

If you find, however, that the contributions in question were not drawn from prohibited corporate accounts, and there is another explanation regarding the manner in which such entries have been disclosed, please clarify this matter for the public record.

-Schedule B supporting Line 19 reflects payments for buttons, signs, bumper stickers and brochures. Payments for buttons, signs, bumper stickers and brochures (sometimes called "exempt activity") are exempt from the definition of a contribution or expenditure if certain conditions are met. The conditions are that no public advertising may be used including distribution by direct mail; all funds used for the activity must be permitted under the act; none of the funds used may have been designated for a particular candidate; and finally, payments for the activity may not be made from transfers-in from the national committee to specifically fund the activity. (See 11 CFR 100.7(b)(15) and (17) and Pages 11 and 12 of the Campaign Guide for Party Committees.)

Please clarify the nature of the payments for buttons, signs, bumper stickers and brochures. If the activity disclosed on your report does not meet the definition of "exempt" activity as described above, and a portion or all of the expenditures were made on behalf of specifically identified candidates, the activity must be disclosed on Schedule B or F for Line 21 or 23 of the Detailed Summary Page, as appropriate.

-Please clarify all expenditures made for phone banks, printing, advertising, direct mail and communications.

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If a portion or all of these expenditures were made on behalf of specifically identified Federal candidates, they should be disclosed on Schedule B or F for Line 21 or 23 and include the amount, name, address and office sought by each candidate. 11 CFR 104.3(b) and 106.1. MK

-Your report discloses transfers made to the New York Republican State Committee which appears to be the non-Federal account of your committee. Please note that if any portion of such transfers/payments represents reimbursements of administrative expenses pursuant to 11 CFR 106.1, such reimbursements should be reported on Schedule B supporting Line 19 of the Detailed Summary Page for Operating Expenditures. Administrative expenses are those day-to-day expenses of operating the committee, including rent, utilities, salaries, office supplies and other miscellaneous costs. The Federal account must pay its share of such costs.

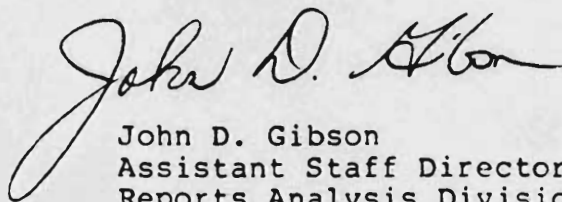
If these transfers do not represent reimbursements of administrative expenses, please be advised that you must allocate such expenses between your Federal and non-Federal accounts in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis. 11 CFR 106.1(e) and 102.5(a)(1).

If your organization has incurred such administrative costs and your non-Federal account has paid for all such costs, your Federal account must reimburse the non-Federal account for its portion of the expenses. The amount incurred by the Federal account should be disclosed as a debt or obligation owed to the non-Federal account on Schedule D supporting Line 10 of the Summary Page. When payments are made toward the debt, they should be reported on Schedule B supporting Line 19 of the Detailed Summary Page and the debt should be reduced by a corresponding amount.

If this information is not received by the Commission within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Brian Hancock on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,


John D. Gibson
Assistant Staff Director
Reports Analysis Division

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3 MAR 20 4 51

THOMAS J. SPARGO

ATTORNEY AT LAW

314 STATE STREET

ALBANY, NEW YORK 12210

TELEPHONE 518 482-8877

March 14, 1985

John D. Gibson
Assistant Staff Director
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20463

Re: Victory '84 Committee - C00186841
30-day Post-General Election 1984

Dear Mr. Gibson:

This will respond to your letter of February 28, 1985, a copy of which I have attached hereto, regarding the report and committee set forth above.

I am attaching hereto a further amended Schedule A for the above report which sets forth the identification of a substantially greater number of contributors than was first reported. This is a result of the follow-up activities that I described in my earlier response. There is a continuing effort to reach the contributors to secure their occupation and employer, and I have attached a copy of a letter which I have sent to each contributor on the attached Schedule A, requesting that they furnish the required information. In addition, volunteers have been calling contributors for employment information, but I thought this final letter was appropriate, and would allow you to determine that the Victory '84 Committee is using "best efforts" to secure the necessary information as to each contributor.

As to those contributors for whom no address is indicated, I have copies of their contribution checks, and I am sending a communication to each bank requesting that they forward my communication and request for information to their depositor-contributor.

John D. Gibson, FEC
Victory '84 - Post General Election
March 14, 1985

-2-

I have indicated on this amended report, the year-to-date contributions from each of the contributors.

You inquire whether certain contributions to the Victory '84 Committee may not have been drawn upon corporate accounts as indicated on the Schedule A. This will advise that where there is indicated on the original Schedule A a corporate identity next to the contributor's name, that this reflects only that contributor's address, and not the source of the contribution. I have reviewed the copies of the checks which were deposited into the Victory '84 account and have not found that any check discloses that the contribution was drawn on anything other than the personal account of the contributor, or partnership where indicated.

There was a separate Victory '84 State Committee set up under the laws of the State of New York, into which corporate contributions were legally deposited. These corporate checks were segregated before any deposits were made into the federal Victory '84 Committee. Copies of all checks are available for your inspection if you desire.

You inquire also about expenditures by the committee for bumper sticker, buttons, etc. This will advise that no public advertising was used in these expenditures and that all funds used for this activity were contributed under the Act, to include the fact that no funds were received from the National Committee of the Republican Party (or any other national committee). Finally, the expenditures were not designated for a specific candidate. In sum, I believe that all of the expenditures for bumper stickers, etc. qualify under the act as "Exempt activities" and there was a specific intention from the beginning of the activities of this committee that such expenditures would qualify as exempt and that the committee would abide by all restrictions under the Act for the expenditures to be "exempt".

As to the expenditures for phone banks, this will advise that no phone bank expenditures were made for any specifically identified candidate, nor were any expenditures for advertising, direct mail or communications made for any specifically identified candidate

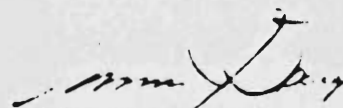
John D. Gibson, FEC
Victory '84 - Post General Election
March 14, 1985

This will further advise that the transfer by the Victory '84 Committee to the New York Republican State Committee was not deemed at the time to be as a payment for any administrative expenses of the Victory '84 Committee. I have made, however, a check payable to the New York Republican State Committee dated March 14, 1985, for the administrative expenses of the Victory '84 Committee in the amount of \$200.

This \$200 is to cover the costs for use of the State Committee headquarters and to reimburse the committee for any expenses incurred in connection with Victory '84 activities to include electricity, use of the phones, photocopying and general office overhead. Other than the personal activities of the undersigned, the Victory '84 Committee had limited administrative expenses. I used most of my own facilities for most of my duties, and the use of the State Committee's resources are well covered by the transfer of \$200 to cover administrative expenses, and represent a fair allocation of costs between the federal expenditures and activities against the state expenditures and activities.

I am endeavoring to complete the disclosure of the contributor identification by the above procedures, and trust that this letter is a satisfactory response to your recent letter. If it is not satisfactory, I would be anxious to hear from you, in regard to more particulars that may be furnished.

Sincerely,



Thomas C. Spargo, Treasurer
Victory '84 Committee

ANALYST: Brian J. Hancock

CONVERSATION WITH: Thomas J. Spargo, Treasurer

COMMITTEE: Victory '84 (C00186841)

DATE: 3/28/85

SUBJECT(S): Incomplete Response to RFAI on 30G Report

I contacted Mr. Spargo regarding the fact that he neglected to address a request to clarify printing disbursements that I had made on the 30G report. I informed Mr. Spargo that since the amount in question was quite considerable, he should supply the information to the FEC as soon as possible. I also advised him to amend the report to show the \$200 in admin. which he disclosed in the response of 3/14/85.

Mr. Spargo agreed to correct this situation as quickly as he could.

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

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

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FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY
OGC TO THE COMMISSION _____

RAD Referral No. 85L-22
STAFF MEMBER
Shelley Garr

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

RESPONDENT'S NAME: Victory '84 Committee
Thomas J. Spargo, Treasurer

RELEVANT STATUTE: 11 C.F.R. § 106.1

SENSITIVE

INTERNAL REPORTS
CHECKED: FEC Disclosure Documents

FEDERAL AGENCIES
CHECKED: N/A

GENERATION OF MATTER

The Victory '84 Committee ("the Committee") was referred to the Office of General Counsel by the Reports Analysis Division for failing to clarify whether payments for printing disclosed on the 1984 30 Day Post-General Report were made on behalf of federal candidates.

SUMMARY OF ALLEGATIONS

The 1984 30 Day Post-General Report, which also included the 12 Day Pre-General reporting period, was filed by the Victory '84 Committee disclosing a total of \$184,586.23 in disbursements for various printing services.^{1/}

^{1/} On October 29, 1984, the Committee filed a statement in lieu of the 12 Day Pre-General Report which stated that the Committee had not made any expenditures for any specific Federal candidate.

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A Request for Additional Information ("RFAI") was sent to the Committee on February 8, 1985, seeking clarification regarding the payments for printing, as well as other payments made for phone banks, advertising, direct mail and communications. The RFAI also informed the Committee that if these disbursements were made on behalf of specifically identified Federal candidates, they should be disclosed as either in-kind contributions or coordinated expenditures and should include the amount, name, address, and office sought by each candidate.

Because the Committee failed to respond to the RFAI, a Second Notice was sent on February 28, 1985. On March 20, 1985, a response was received from the Committee addressing the expenditures for phone banks, advertising, direct mail, and communications, but which failed to mention the expenditures for printing.

The RAD analyst contacted the Committee's treasurer, Mr. Thomas Spargo, on March 28, 1985, to inform him that the Committee's response for the 30 Day Post-General Report was incomplete because it failed to fully address the question regarding printing expenses. Mr. Spargo told the RAD analyst that he would submit a response correcting the problem as soon as possible.

As of the date of this referral, the Commission has not received a response.

FACTUAL AND LEGAL ANALYSIS

Pursuant to 11 C.F.R. § 106.1, expenditures, including independent expenditures, made on behalf of more than one

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candidate must be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived.

Because the Victory '84 Committee failed to specifically identify those candidates on whose behalf printing expenditures were made, it is the recommendation of the General Counsel that the Commission find reason to believe that the Victory '84 Committee violated 11 C.F.R. § 106.1.

RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Victory '84 Committee and Thomas J. Spargo, as treasurer, violated 11 C.F.R. § 106.1.
3. Approve the attached letter and factual and legal analysis.

Charles N. Steele
General Counsel

July 3, 1985
Date

BY: Kenneth A. Gross (RHF)
Kenneth A. Gross
Associate General Counsel

Attachments

1. Referral
2. Letter and factual and legal analysis

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Marjorie W. Emmons
Marjorie W. Emmons

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 19, 1985

Thomas J. Spargo, Treasurer
Victory '84 Committee
315 State Street
Albany, New York 12210

RE: MUR 2060
Victory '84 Committee
Thomas J. Spargo, Treasurer

Dear Mr. Spargo:

On July 11, 1985, the Federal Election Commission found reason to believe that the Victory '84 Committee and you, as treasurer, violated 11 C.F.R. § 106.1 by failing to clarify whether payments for printing disclosed on the 1984 30 Day Post-General Report were made on behalf of federal candidates. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

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.

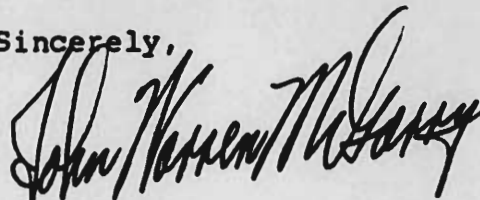
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Thomas J. Spargo, Treasurer
Page 2

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Shelley Garr, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,



John Warren McGarry
Chairman

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

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RECEIVED AT THE FEC
GCC# 8167
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THOMAS J. SPARGO
ATTORNEY AT LAW
314 STATE STREET
ALBANY, NEW YORK 12210
—
TELEPHONE 518-462-6677

July 26, 1985

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

Re: MUR 2060
Victory '84 Committee

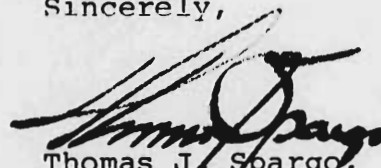
Dear Miss Garr:

Pursuant to our conversation yesterday, this will request an extension of time within which to answer the correspondence from your office regarding the above matter.

This will give me an opportunity to check the correspondence in my file and the documents of the committee which form the basis of your inquiry.

I appreciate the courtesies of your office.

Sincerely,



Thomas J. Spargo,
Treasurer, Victory '84

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THOMAS J. SPARGO

ATTORNEY AT LAW

314 STATE STREET

ALBANY, NEW YORK 12210

TELEPHONE 518-482-8677

September 6, 1985

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

Re: MUR 2060
Victory '84 Committee

Dear Miss Garr:

Thank you for your patience in giving me the opportunity to check my records regarding the expenditures by the Victory '84 Committee for printing. I have also reviewed my reply to Mr. Gibson dated March 14, 1985, which forms the basis of this inquiry by reason of the fact that I failed to respond specifically to your inquiry as it related to printing expenses in that letter of March 14.

It appears that there was a typographical omission from my letter of March 14, regarding the printing expenditures. This will reaffirm that all funds used by the Victory '84 Committee were permissible under the Act, and that no funds from the National Committee of the Republican Party (or other National Committee) were received by the Victory '84 Committee.

This will also confirm that no printing expense by the Victory '84 Committee was made for any specifically identified candidate. The printing expenditures were made for exempt activities as allowed to a party committee and as detailed in the Commission's Campaign Guide for Political Party Committees at page 11, section 4. I am enclosing a copy of the slate card or listing of candidates which was the subject of the exempt activity and the printing expense.

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5 SEP 12 P1:53

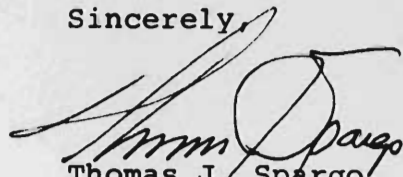
Federal Election Commission
Re: MUR 2060
September 6, 1985

I would like to also note that I did not intentionally fail to include the printing expenditures in my March 14, reply to Mr. Gibson, and at this time I do not have a particular recollection of my conversation with Mr. Hancock referred to in your Summary as having occurred on March 28, 1985. I guess I did not understand from Mr. Hancock what was expected of me, and to the extent that my own ignorance or inadvertance has caused this additional work for the Commission, I apologize.

I trust that if further information is required that you will not hesitate to contact me, and I stand ready to cooperate in any way that I can.

I appreciate the courtesies of your office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Spargo", with a large, stylized loop at the end.

Thomas J. Spargo,
Treasurer, Victory '84

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VOLUNTEER CONTRIBUTOR REPLY FORM

REPUBLICAN VICTORY CHECK-OFF LIST

- ☐ I'm enclosing my Absentee Ballot Application. Please forward to my Board of Elections today.
- ☐ I will go to the polls on Tuesday, November 6 to cast my vote for Republicans in person.
- ☐ I want to volunteer! Please call me at the following telephone number () DAY () EVENING.

PHONE () _____

Enclosed is my contribution to the Victory '84 Committee to help wage this special election drive.

Enclosed is:

☐ \$15 ☐ \$25 ☐ \$50 ☐ \$100 _____ Other

(Please make check payable to: Victory '84 Committee)

CAR-RT SORT
PHILLIP J. BAYER
95 RICHMOND AVE
AMITYVILLE NY 11701

**CR02

Please tear off your 1984 Republican Candidate Guide to use when you vote. Thank you.

1984 Republican Candidate Guide

PREPARED EXCLUSIVELY FOR: PHILLIP J. BAYER

Here's your personal 1984 Republican Candidate Guide, listing all of the men and women running for Federal and State office in your area!

Please keep this list handy. You can use it when you receive your Absentee Ballot... or when you go to the polls on Tuesday, November 6.

President:	RONALD REAGAN
Vice-President:	GEORGE BUSH
U.S. Congress:	PAUL ANIBOLI
State Senate:	OWEN H JOHNSON
State Assembly:	MILDRED L FLOYD

Official Absentee Ballot Application Enclosed

Please mail by October 19 to vote by mail.

Your vote is critically important. Please mail your application early.

IMPORTANT!

The Victory '84 Committee desperately needs contributions to help carry out our final count down plans for victory—and to cover the cost of your Absentee Ballot Application mailing. Won't you consider sending \$15 or \$25 today? Your help will be greatly appreciated.

State and Federal Campaign laws request the following information if you make a contribution of \$100 or more:

(Title or Occupation)

Employer (name of business if self-employed)

Business Address

Paid for by New York Republican State Committee--Victory '84 Thomas J. Spargo, Treasurer

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of
Victory '84 Committee
Thomas J. Spargo, Treasurer

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COMPREHENSIVE INVESTIGATIVE REPORT #1

The Commission determined on July 11, 1985, that there was reason to believe that the Victory '84 Committee and Thomas Spargo, as treasurer, violated 11 C.F.R. § 106.1 by failing to specifically identify those candidates on whose behalf printing expenditures totalling \$184,586.23 (as reported on the Committee's 1984 Day Post General Election Report) were made.

In his response to the notification, Mr. Spargo contended that all funds used by the Committee were permissible under the Act and that the printing expenditures "were made for exempt activities as allowed to a party committee and as detailed in the Commission's Campaign Guide for Political Party Committees..." To support this, he enclosed a copy of the Committee's slate card which "was the subject of the exempt activity and the printing expenses."

A review of the slate cards has revealed that they contain certain get-out-the-vote language. Although activities related to get-out-the-vote may be exempt activities, the fact that the costs incurred appear to have been for the direct mail of the get-out-the-vote material would indicate that the exemption could not be claimed for the instant slate cards.

In an attempt to investigate the direct mail issue, this Office has been in telephone contact with Mr. Spargo on several

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occasions to determine the nature and extent of the mailings at issue. Because Mr. Spargo has failed to provide specific responses, this Office has forwarded the following questions to the Fund and requested its prompt response.

QUESTIONS

The Victory '84 Committee reported disbursements of \$184,586.23 for printing services related to a slate card on its 1984 30 Day Post General Election Report (\$178,697.48 to Election Computer Services; \$73.75 to Iver Printing; \$540 to Olsen Printing; \$5,000 to Partners Press; and \$275 to Mazel Printing, Inc.). In connection with these disbursements, please provide responses to the following requests:

1. Please identify by name, address, and position, all persons who authorized the mailings.
2. Please submit copies of any written authorizations by the National Republican Party or the New York State Republican Party authorizing the expenditures.
3. Please describe how the lists of addresses were obtained for the mailings.
4. Please describe the services provided by Election Computer Service, Iver Printing, Olsen Printing, Partners Press, and Mazel Printing, Inc.
5. Please describe how the slate cards were distributed.
6. Please describe what activities, if any, were undertaken by volunteers of the Victory '84 Committee in connection with the mailing of the slate card.

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Upon receipt of Mr. Spargo's response, this Office will prepare a report stating its position on the legal and factual issues of the case.

Charles N. Steele
General Counsel

May 21, 1986
Date

BY:

Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO:

CHARLES N. STEELE
GENERAL COUNSEL

FROM:

MUR MARJORIE W. EMMONS/CHERYL A. FLEMING

DATE:

MAY 27, 1986

SUBJECT:

MUR 2060 - COMPREHENSIVE INVESTIGATIVE REPORT #1
SIGNED MAY 21, 1986

The above-captioned matter was circulated by the Commission Secretary's Office to the Commissioners on a 24 hour no-objection basis Friday, May 23, 1986 at 2:00 P.M.

There were no objections received in the Office of the Secretary of the Commission to the Comprehensive Investigative Report at the time of the deadline.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 29, 1986

Thomas J. Spargo, Treasurer
Victory '84 Committee
314 State Street
Albany, New York 12210

RE: MUR 2060
Victory '84 Committee
Thomas J. Spargo, Treasurer

Dear Mr. Spargo:

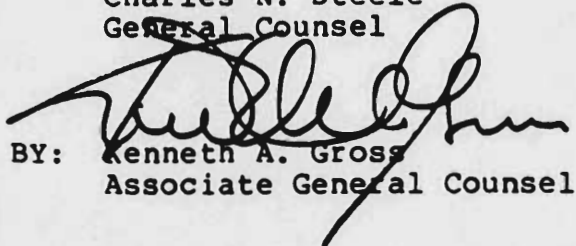
As you know the Federal Election Commission has determined that there is reason to believe that your committee, the Victory '84 Committee and you as treasurer, violated 11 C.F.R. § 106.1 by failing to identify on whose behalf printing expenditures were made. The Commission is in receipt of your response to the notification of finding and the enclosed slate card.

In continuing its investigation in this matter, the Commission requests that you respond to the enclosed questions. Please respond within ten days of your receipt of this letter.

If you have any questions, please contact Shelley Garr, the staff member assigned to this matter, at (202) 320-2264.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

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QUESTIONS

The Victory '84 Committee reported disbursements of \$184,586.23 for printing services related to a slate card on its 1984 30 Day Post General Election Report (\$178,697.48 to Election Computer Services; \$73.75 to Iver Printing; \$540 to Olsen Printing; \$5,000 to Partners Press; and \$275 to Mazel Printing, Inc.). In connection with these disbursements, please provide responses to the following requests:

1. Please identify by name, address, and position, all persons who authorized the mailings.
2. Please submit copies of any written authorizations by the National Republican Party or the New York State Republican Party authorizing the expenditures.
3. Please describe how the lists of addresses were obtained for the mailings.
4. Please describe the services provided by Election Computer Service, Iver Printing, Olsen Printing, Partners Press, and Mazel Printing, Inc.
5. Please describe how the slate cards were distributed.
6. Please describe what activities, if any, were undertaken by volunteers of the Victory '84 Committee in connection with the mailing of the slate card.

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THOMAS J. SPARGO
ATTORNEY AT LAW
314 STATE STREET
ALBANY, NEW YORK 12210

TELEPHONE 518-462-8677

July 17, 1986

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Federal Election Commission
Attn: Office of General Counsel
Kenneth A. Gross, Esq.
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2060
Victory '84 Committee

Dear Mr. Gross:

This letter will reply to your inquiry of May 29, 1986, which set forth certain questions regarding disbursements of the Victory '84 Committee, and the numbered answers herein are to the corresponding questions in your letter.

1. The only person other than myself who authorized the disbursements for mailings or printing that you refer to for the Victory '84 effort was Edward S. Lurie, the Executive Director of the New York Republican State Committee at 315 State Street, Albany, New York 12210 (Tel: 518 462-2601).

2. There was no written authorization by the New York Republican State Committee for the expenditures for printing or mailings, it being orally communicated between Mr. Lurie and the undersigned. There was no authorization given or requested by the undersigned from the National Committee of the Republican Party, and it is not my understanding that they were involved in any approval capacity.

It should be noted that the New York Republican State Committee established a Victory '80 Committee, which carried out Republican activities in the statewide campaigns in 1980, and that in 1986, the State Committee also has established a Victory '86 Committee for our efforts this year. This is a State Committee effort and project, not coordinated or funded by the National Committee of the Republican Party, and they exercise no approval or control over these efforts.

3. The mailing for the slate card were provided from the records of county boards of elections throughout the state and reflect voter registration records. These lists were

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available to us from Election Computer Services, and I understand could be screened by party enrollment and/or various municipal and legislative and congressional districts to accomplish an accurate slate card for voters. Victory '84 did not purchase the voter list, but as will be discussed below, paid for the use of such list by Election Computer Services.

4. Election Computer Services printed and mailed the slate card as allowed by section 100.8(b)(10) of the Federal Regulations. Pursuant to my conversation with Shelly Garr of your office, I contacted the offices of Election Computer Services and there services and the payment therefore were broken down on the following percentage basis:

Printing of Slate Card	36%
Envelopes	25%
Computerization	19%
List Cost	4%
Letter Shop Costs - Stuffing & Sorting	16%

The entire slate card project was done through Election Computer Services.

were
Partners Press printed brochures which/distributed by volunteers in various upstate counties in the western part of the State. These brochures were produced and distributed in compliance with section 100.8(b)(16), and it is my understanding that none of these brochures were mailed, but if there was any mailed, it would have been a part of a local volunteer mailing undertaken by a local (town or city) committee of the Republican Party.

The expenditures by Victory '84 to Iver Printing (\$73.75); Olsen Printing (\$540); and Mazel Printing (\$275) were not in any way connected to the slate card project and were for incidental printing jobs that were undertaken during the course of the campaign in compliance with section 100.8(b)(16) to include flyers (handbills) and brochures to be handed out directly to voters.

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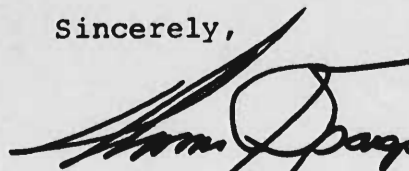
5. The slate cards were distributed by regular mail to voters from the offices of Election Computer Services having been addressed and sorted by them.

6. There was no volunteer effort to my knowledge in connection with the preparation or mailing of the slate card, and if there was any such volunteer effort, it was probably minimal and only to expedite the mailing or to clean up the extra pieces that may not have readily been processed by the mechanical procedures used by Election Computer Services.

The slate card mailing was undertaken in compliance with section 100.8(b)(10) of the Regulations and was intended to be a volunteer or mass mailing as allowed by section 100.8(b)(16).

I apologize for the delay in this response, but trust that the information herein adequately responds to your questions. If, however, further detail would be helpful, please do not hesitate to call upon me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Spargo", written over a horizontal line.

Thomas J. Spargo
Treasurer, Victory '84

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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SENSITIVE

November 25, 1987

MEMORANDUM

TO: The Commission
FROM: Lawrence M. Noble
General Counsel
SUBJECT: MUR # 2060

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondents of the General Counsel's intent to recommend to the Commission findings of probable cause to believe was mailed on November 25, 1987. Following receipt of the respondents' reply to this notice, this Office will make a further report to the Commission.

Attachments

- 1-Brief
- 2-Letter to respondents

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 25, 1987

Thomas J. Spargo, Treasurer
Victory '84 Committee
314 State Street
Albany, New York 12210

RE: MUR 2060
Victory '84 Committee;
Thomas J. Spargo,
as treasurer

Dear Mr. Spargo:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission on July 11, 1985, found reason to believe that the Victory '84 Committee and you, as treasurer, violated 11 C.F.R. § 106.1, and instituted an investigation of 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 violations of 11 C.F.R. § 106.1, and 2 U.S.C. §§ 441a(d) and 441a(f) have 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 15 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 the 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 whether there is probable cause to believe a violation has occurred.

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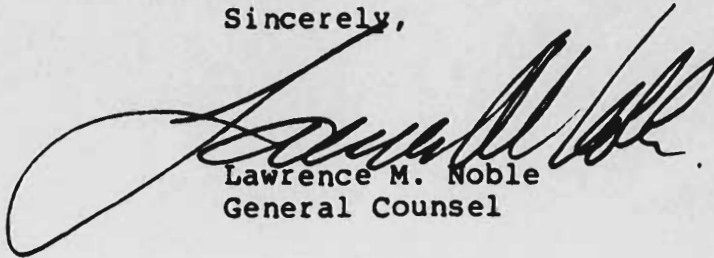
Letter to Thomas J. Spargo, Treasurer
Page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Thomas Whitehead, the attorney assigned to handle this matter, at (202) 376-8200.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

88040702697

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Victory '84 Committee --)

Thomas J. Spargo, as treasurer)

MUR 2060

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

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The Victory '84 Committee ("the Committee")^{1/} and Thomas J. Spargo, as treasurer, were referred to the Office of the General Counsel by the Reports Analysis Division for failing to clarify whether payments totalling \$184,568.23 for printing expenses, which the Committee disclosed on its 1984 30 Day Post-General Election Report, were made on behalf of federal candidates.

On July 11, 1985, the Commission found reason to believe that the Committee and Thomas J. Spargo, as treasurer, violated 11 C.F.R. § 106.1 by failing to specifically identify those candidates on whose behalf printing expenditures were made. Notification of the Commission's reason to believe finding was mailed on July 19, 1985. On September 12, 1985, the Committee responded to the Commission's notification. The Committee's response states that "all funds used by the Victory '84 Committee were permissible under the Act, and that no funds from the National Committee of the Republican Party (or other National Committee) were received by the Victory '84 Committee."

^{1/} The Victory '84 Committee registered with the Commission on July 5, 1984, listing the New York Republican Federal Campaign Committee and the New York Republican State Committee as affiliated committees.

The response also notes that no printing expense "was made for any specifically identified candidate," and that such printing expenditures "were made for exempt activities as allowed to a party committee and as detailed in the Commission's Campaign Guide for Political Committees at page 11, section 4."

On May 29, 1986, the Office of the General Counsel sent questions to the Committee requesting information pertaining to the authorization of the expenditures, procurement of the mailing lists, distribution of the documents, and services provided by each of the printing companies. To clarify specific questions, this Office followed-up with several additional phone calls. On July 17, 1986, the Committee submitted its response to the questions.

The Committee's responses to questions posed as part of the investigation indicate that the disbursements (\$184,568.23) involved herein constitute payments to: 1) Partners Press (\$5,000) for the printing of brochures distributed in the western part of New York State on a volunteer basis; 2) Iver Printing (\$73.75), Olsen Printing (\$540), and Mazel Printing (\$275) for incidental printing jobs for handbills and brochures which were handed out directly to voters during the course of the campaign;^{2/} and, 3) Election Computer Services (\$178,697.48)

^{2/} The Committee's response asserts that the expenditures to Partners Press, Iver Printing, Olsen Printing, and Mazel Printing involved activity which was in conformance with 11 C.F.R. § 100.8(b)(16). Because these expenditures did not include any
(continued)

for what the Committee referred to as its "slate card project."

The Committee's response explains that "[t]he entire slate card project was completed through Election Computer Services." It is the position of the Committee that the "slate card mailing was undertaken in compliance with Section 100.8(b)(10) of the Regulations and was intended to be a volunteer or mass mailing as allowed by Section 100.8(b)(16)."^{3/} According to the response, Election Computer Services printed, addressed, sorted, and mailed (via regular mail) the communication using names obtained from the records of various county Boards of Election throughout the state. The Committee's response notes that it did not purchase the voter list from Election Computer Services but paid for the use of the list.

The communication at issue herein consists of four distinct portions. (See Attachment I.) The upper portion of the communication, which is slightly less than 1/3 of the page, is titled "Volunteer/Contributor Reply Form" and contains the "Republican Victory Check-Off List." This "List" contains four

^{2/} (continued)

Broadcasting, direct mail, newspapers, magazines, billboards or similar types of general public communications, it would appear that these expenses would fall under the exemption for campaign materials.

^{3/} Contrary to this assertion, the response further notes that there was "no volunteer effort" in connection with the preparation or mailing of the slate card.

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check-offs relating to: absentee ballots ("I'm enclosing my Absentee Ballot Application. Please forward to my Board of Election today."); voting on election day ("I will go to the polls on Tuesday, November 6 to cast my vote for Republicans in person"); volunteering ("I want to volunteer! Please call me at the following telephone number () DAY () EVENING. PHONE ()"); contributing ("Enclosed is my contribution to the Victory '84 Committee to help wage this special election drive. Enclosed is: \$15, ___\$25, ___\$50, ___\$100, ___Other.")

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The middle portion titled the "1984 Republican Candidate Guide" provides a list of federal and state candidates running for office in the addressee's area and urges the addressee to use the guide in casting an absentee ballot or when going to the polls. "Please keep this list handy. You can use it when you receive your Absentee Ballot...or when you go to the polls on Tuesday, November 6." This is followed by:

President:	Ronald Reagan
Vice President:	George Bush
U.S. Congress:	Paul Aniboli
State Senate:	Owen H. Johnson
State Assembly:	Mildred L. Floyd

The third section of the communication commences at the bottom of the document with the language "Official Absentee Ballot Application Enclosed." This statement is followed by: "Please mail by October 19 to vote by mail. Your vote is critically important. Please mail your application early."

The final portion of the communication appears on the reverse side of the page. It constitutes a request for contributions to cover further Committee activities and the cost of mailing absentee ballot applications. The disclaimer reads "Paid for by New York Republican State Committee-Victory '84; Thomas J. Spargo, Treasurer."

According to the Committee's response, it did not receive written authorization from the New York Republican State Committee to spend against the Section 441a(d) limit for the printing and mailings.^{4/} The response also states that there was no authorization, written or oral, "given or requested" from the Republican National Committee ("RNC").^{5/}

II. LEGAL ANALYSIS

Pursuant to 11 C.F.R. § 106.1, all expenditures, including independent expenditures, made on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived.

^{4/} According to the response, authorization was communicated orally between the Executive Director of the New York Republican State Committee and the Committee's treasurer.

^{5/} The response notes that the New York Republican State Committee established a "Victory 80 Committee" in 1980 and a "Victory 86 Committee" in 1986, referred to as "projects," neither of which were funded, coordinated, or controlled by the RNC. RNC exercised no approval or control over either project.

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Pursuant to 2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv), the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized, is exempt from the definition of "contribution" and "expenditure." However, the exemption does not apply to costs incurred by such committee with respect to the preparation and display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising. If made by a political party committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. See 11 C.F.R. §§ 100.7(b)(9) and 100.8(b)(10).

As set forth at 2 U.S.C. §§ 431(8)(B)(xii) and 431(9)(B)(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of its Presidential and Vice-Presidential nominees are excluded from the definition of "contribution" and "expenditure" provided certain conditions are met:

- 1) such payments are not for costs incurred in connection with general public political advertising, including the distribution of materials by direct mail; 6/
- 2) the portion of the payments allocable to Federal candidates are made from funds subject to the prohibitions and limitations of the Act;
- 3) the payments are not made from funds designated for a specific candidate;
- 4) reference to any House or Senate candidate is merely incidental to the overall activity; 7/
- 5) the payments are not made from transfers made by the national party committee specifically to fund the activity.

See 11 C.F.R. §§ 100.7(b)(17) and 100.8(b)(18).

As set forth at 11 C.F.R. § 110.7 the national committee of a political party and a State committee of a political party, including any subordinate committees of a State committee, shall not make independent expenditures in connection with the general election campaign of a Presidential candidate and candidates for federal office.

Under 2 U.S.C. § 441a(d)(1) the national committee of a political party and a State party committee including any subordinate committee of the State party committee may make expenditures in connection with the general election

6/ "Direct mail" is defined as any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists. 11 C.F.R. §§ 100.7(b)(17)(i) and 100.8(b)(18)(i).

7/ If reference to any House or Senate candidate is more than incidental to the overall activity the costs of such activity are allocable to that candidate and are either a contribution to the candidate or an expenditure on behalf of the candidate. See 11 C.F.R. § 100.7(b)(17), § 100.8(b)(18), and § 106.1(c)(3).

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campaign of candidates for Federal office, subject to the limitations of paragraphs (2) and (3) of that subsection. See also 11 C.F.R. § 110.7. Under 2 U.S.C. § 441a(d)(1) the national committee of a political party may make expenditures in connection with the general election campaign of the party's Presidential nominee. The Commission's Regulations at 11 C.F.R. § 110.7(a)(4) state that the national party committee may make such expenditures through any designated agent, including state and subordinate party committees.

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The information presented by the Committee raises the issue of whether the communication involved herein is, as the Committee asserts, exempt from the definitions of "contribution" and "expenditure" pursuant to 2 U.S.C. §§ 431(8)(B)(v), 431(9)(B)(iv), 431(8)(B)(x), and 431(9)(B)(viii). If the expenses (\$178,679.48) related to the communication are in fact exempt under 2 U.S.C. §§ 431(8)(B)(v), 431(9)(B)(iv), 431(8)(B)(x), and 431(9)(B)(viii), then the Committee is not required to identify on its reports those candidates on whose behalf expenses were incurred but need only report such payments as disbursements. 11 C.F.R. § 100.7(b)(9) and § 100.7(b)(15). But see footnote 7.

Insofar as the Committee's responses demonstrate that it neither sought nor obtained the RNC's approval or authorization concerning the communication, and none was in fact given by the RNC, the communication cannot be considered to constitute an expenditure on behalf of Ronald Reagan and George Bush pursuant

to 2 U.S.C. § 441a(d).^{8/} (The applicability of 2 U.S.C. § 441a(d) as it pertains to the single congressional candidate (Paul Aniboli) whose name also appeared on the communication is discussed below.) It is, therefore, necessary to turn to the question of whether the communication constitutes exempted activity.

Although the Committee's responses raise the issue of the applicability of two specific exemptions accorded to party committees - the exemption for "slate cards, sample ballots or other printed listings" (2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv)) and the exemption for campaign materials (2 U.S.C. §§ 431(8)(B)(x) and 431(9)(B)(viii)), this Office does not believe that the subject communication constitutes the type of campaign materials contemplated under 2 U.S.C. §§ 431(8)(B)(x) and 431(9)(B)(viii), i.e. pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs.^{9/} Because this Office's review of the communication indicates that the predominant purposes of the communication were to urge the recipients to vote for the candidates whose names appeared on the "printed listing," and to solicit contributions, this Office

^{8/} Prior authorization by the national party committee to make Section 441a(d) expenditures on behalf of the party's Presidential nominee is required. See the Federal Election Commission Record, March 1984, page 1.

^{9/} Even in the event the communication could be considered "campaign materials," the exemption would not apply because the communication was distributed by direct mail. See 2 U.S.C. §§ 431(8)(B)(x) and 431(9)(B)(viii).

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believes that the exemption found at 2 U.S.C. §§ 431(8)(B)(xii) and 431(9)(B)(ix) relating to get-out-the-vote drives is more appropriately called into play, in addition to the exemption raised by the Committee pertaining to "slate cards, sample ballots, and other printed listings" (2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv)).^{10/}

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The communication contains both strong get-out-the-vote language and a listing of the names of the party's Presidential and Vice-Presidential nominees, including the name of a congressional candidate. The resulting message is that the recipient should not only vote, but vote for the candidates whose names appear on this "printed listing." The inextricable link between the names and the exhortation to vote results in this Office's view that two distinct exemptions cannot be claimed for the single communication.^{11/} Thus, because the exhortation to vote does not stand alone and the totality of the communication must be considered, this Office believes that the communication

^{10/} Based upon the spacial relationship of the communication's subject matter, 28% of the communication is devoted to the solicitation of contributions. Thus, this Office views only the remaining 72% of the communication's cost (\$128,662.19) as in question.

^{11/} If the middle portion of the communication containing the printed listing of candidates' names stood alone, it would appear to meet the criteria for exempt activity found at 2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv) in that the names of three or more candidates for public office in New York appear, and it was mailed rather than displayed on broadcasting stations, newspapers, magazines or similar types of general public political advertising. Unlike the exemption found at 2 U.S.C. §§ 431(8)(B)(xii) and 431(9)(B)(ix) "direct mail" may be used to distribute a slate card, sample ballot, or printed listing.

§§ 431(8)(B)(xii) and 431(9)(B)(ix) for it encompasses both get-out-the-vote activity and candidate identification.

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The exemption for get-out-the-vote activities on behalf of a party's Presidential and Vice-Presidential nominees stipulates that no "direct mail" be involved. The record indicates that the communication at issue was distributed through direct mail by Election Computer Services, a commercial vendor. Consequently, the exemption does not apply. The Commission's regulations stipulate that party committees may not make independent expenditures in connection with the general election campaigns of candidates for federal office, 11 C.F.R. § 110.7(a)(5) and (b)(4), so the expenditures cannot be considered independent expenditures. Although Section 441a(d) provides for such expenditures by the National Committee or by a subordinate committee which has received written authorization from the National Committee, the Committee did not get written authorization to spend against the National Committee's Section 441a(d) limit. Consequently, because Section 441a(f) prohibits a political committee from making expenditures in violation of the provisions of Section 441a, this Office recommends that the Commission find probable cause to believe the Committee and Thomas Spargo, as treasurer, violated 2 U.S.C. § 441a(f) by making expenditures on behalf of Ronald Reagan and George Bush totalling \$51,464.^{12/}

^{12/} The cost allocable to Ronald Reagan and George Bush is 40% of the total cost of the get-out-the-vote portion of the communication (\$128,662) (see footnote 10), resulting from a ratio of the federal candidates' names (3) on the communication to all the candidates' names (5) on the communication, and then dividing by three to determine the allocation for a single federal candidate (20%). Accordingly, 20% is also allocable as an expenditure on behalf of Paul Aniboli. See infra.

As to that portion of the communication guiding the reader to vote for Paul Aniboli, a candidate for the U.S. House of Representatives, it is the view of this Office that such portion should be considered to constitute an expenditure by the Committee pursuant to 2 U.S.C. § 441a(d), which does provide a limit for State party Committee spending in Congressional elections. The limitation on Section 441a(d) expenditures by a State party committee in the case of a candidate for election to the office of Representative was \$20,200 during 1984. The national party committee may also expend an additional \$20,200 on behalf of the same House candidate pursuant to 2 U.S.C. § 441a(d). See 2 U.S.C. §§ 441a(c) and 441a(d)(3). In the instant matter the portion of the communication allocable to Paul Aniboli as a Section 441a(d) expenditure is \$25,732 (20% of \$128,662).

Review of Commission records has revealed that the National Republican Congressional Committee-Expenditures ("NRCC") reported Section 441a(d) expenditures in connection with the campaign of Paul Aniboli totalling \$38,258.87 during the period of September 17, 1984, through October 16, 1984.^{13/} The NRCC's

^{13/} The expenditures were reported as made on September 17, 1984 (\$38,193.92), September 24, 1984 (\$306), and October 16, 1984 (\$53), with two refunds reported as received on February 11, 1985 (\$255.89) and February 6, 1985 (\$38.16) for a total of \$38,258.87.

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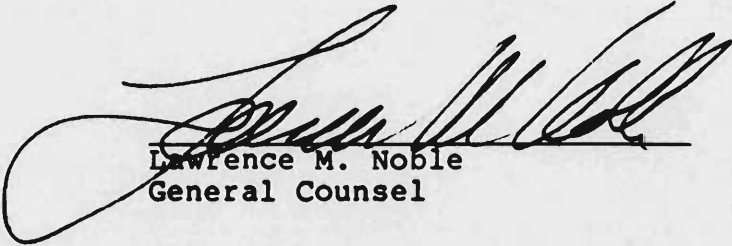
reports state that it had been designated by the state party committee to make the coordinated expenditures. It appears, therefore, that in addition to its own \$20,200 limit, the NRCC was authorized to spend against the New York Republican State Committee's \$20,200 limit, and did so by spending a total of \$38,258.87. The Committee's spending of \$25,732 on the portion of the communication allocable to Paul Aniboli was, therefore, in excess of the Section 441a(d) limits. Any amount spent over \$40,400 would be considered excessive under 2 U.S.C. § 441a(d). Thus, the Committee has exceeded the Section 441a(d) limitation by \$23,590.87 and failed to attribute on its reports its expenditures on behalf of Paul Aniboli (11 C.F.R. § 106.1).^{14/} In consideration of the foregoing, it is the recommendation of this Office that the Commission find probable cause to believe the Committee and Thomas Spargo, as treasurer, violated 2 U.S.C. §§ 441a(d) and 441a(f), and 11 C.F.R. § 106.1.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe the Victory '84 Committee and Thomas Spargo, as treasurer, violated 2 U.S.C. §§ 441a(d) and 441a(f), and 11 C.F.R. § 106.1.

Date

11/24/87


Lawrence M. Noble
General Counsel

^{14/} The amount in violation was arrived at by attributing \$18,058.87 of the \$38,258.87 spent by the NRCC to the New York Republican State Committee (and \$20,200 to the NRCC), combined with the \$25,732 considered allocable to Paul Aniboli, less \$20,200.

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VOLUNTEER/CONTRIBUTOR REPLY FORM

REPUBLICAN VICTORY CHECK-OFF LIST

- ☐ I'm enclosing my Absentee Ballot Application. Please forward to my Board of Elections.
- ☐ I will go to the polls to cast my vote for Republican.
- ☐ I want to volunteer. Please call me at the following telephone number: _____
- PHONE () _____
- ☐ Enclosed is my contribution to the Victory '84 Committee to help wage this special election drive. Enclosed is:
- ☐ \$15 ☐ \$25 ☐ \$50 ☐ \$100 ☐ _____ Other
- (Please make check payable to: Victory '84 Committee)

CAR-RT SORT
PHILLIP J. BAYER
95 RICHMOND AVE
AMITYVILLE NY 11701

**CR02

Please tear off your 1984 Republican Candidate Guide to use when you vote. Thank you.

1984 Republican Candidate Guide

PREPARED EXCLUSIVELY FOR: PHILLIP J. BAYER

Here's your personal 1984 Republican Candidate Guide, listing all of the men and women running for Federal and State office in your area!

Please keep this list handy. You can use it when you receive your Absentee Ballot...or when you go to the polls on Tuesday, November 6.

President:	RONALD REAGAN
Vice-President:	GEORGE BUSH
U.S. Congress:	PAUL ANIBOLI
State Senate:	OWEN H JOHNSON
State Assembly:	MILDRED L FLOYD

Official Absentee Ballot Application Enclosed

Please mail by October 19 to vote by mail.

Your vote is critically important. Please mail your application early.

IMPORTANT!

The Victory '84 Committee desperately needs contributions to help carry out our final count down plans for victory—and to cover the cost of your Absentee Ballot Application mailing. Won't you consider sending \$15 or \$25 today? Your help will be greatly appreciated.

State and Federal Campaign laws request the following information if you make a contribution of \$100 or more:

(Title or Occupation)

Employer (name of business if self-employed)

Business Address

Paid for by New York Republican State Committee—Victory '84 Thomas J. Spargo, Treasurer

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CCC#4919

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

THOMAS J. SPARGO

ATTORNEY AT LAW

314 STATE STREET

ALBANY, NEW YORK 12210

TELEPHONE 518-462-6677

December 4, 1987

87 DEC -9 AM 10:48

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

RE: MUR 2060
Victory - '84 Committee

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 DEC -9 AM 11:59

Dear Mr. Noble:

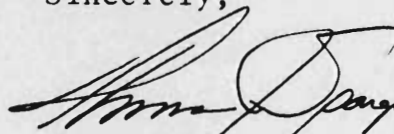
I am in receipt of your letter dated November 25, 1987, which was received in Albany on December 1, 1987.

Pursuant to your advice, I am requesting an extension until January 15, 1988 to reply by way of brief or otherwise. This is necessitated by the fact that I am involved in several matters over the next few weeks, together with the holiday season being fast upon us. In addition, this is a rather old matter, and we have a new Republican State Chairman since 1985, and I have to bring him as well as the whole new team up to speed on the questions that are raised in your letter.

I also expect that in early January that there will be some meetings of individuals that can be helpful in hopefully resolving the questions that you raise. This would also allow us to make a more coordinated decision as to the best way to proceed.

While I understand that this extension is perhaps a little longer than you would normally permit, I beg your indulgence and understanding. I thank you for your consideration.

Sincerely,



Thomas J. Spargo
Treasurer
Victory '84 Committee

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

18 December 1987

Thomas J. Spargo, Esquire
314 State Street
Albany, New York 12210

RE: 2060
Victory 84' Committee

Dear Mr. Spargo:

This is in response to your letter dated December 4, 1987, which was received at this office on December 9, 1987. In your letter you request an extension of time until January 15, 1988 to reply to our brief.

After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by close of business on January 15, 1988.

On page 10 of our brief of November 25, 1987, in this matter, certain language was inadvertently omitted, ie. "is properly evaluated under the exemption found at 2 U.S.C. ..." I have enclosed a revised page 10 for your information.

If you have any questions, please contact Thomas J. Whitehead the attorney handling this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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believes that the exemption found at 2 U.S.C. §§ 431(8)(B)(xii) and 431(9)(B)(ix) relating to get-out-the-vote drives is more appropriately called into play, in addition to the exemption raised by the Committee pertaining to "slate cards, sample ballots, and other printed listings" (2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv)).^{10/}

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The communication contains both strong get-out-the-vote language and a listing of the names of the party's Presidential and Vice-Presidential nominees, including the name of a congressional candidate. The resulting message is that the recipient should not only vote, but vote for the candidates whose names appear on this "printed listing." The inextricable link between the names and the exhortation to vote results in this Office's view that two distinct exemptions cannot be claimed for the single communication.^{11/} Thus, because the exhortation to vote does not stand alone and the totality of the communication must be considered, this Office believes that the communication is properly evaluated under the exemption found at 2 U.S.C.

^{10/} Based upon the spacial relationship of the communication's subject matter, 28% of the communication is devoted to the solicitation of contributions. Thus, this Office views only the remaining 72% of the communication's cost (\$128,662.19) as in question.

^{11/} If the middle portion of the communication containing the printed listing of candidates' names stood alone, it would appear to meet the criteria for exempt activity found at 2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv) in that the names of three or more candidates for public office in New York appear, and it was mailed rather than displayed on broadcasting stations, newspapers, magazines or similar types of general public political advertising. Unlike the exemption found at 2 U.S.C. §§ 431(8)(B)(xii) and 431(9)(B)(ix) "direct mail" may be used to distribute a slate card, sample ballot, or printed listing.

HAND DELIVERED

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MAIL ROOM

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88 JAN 15 PM 1:34

THOMAS J. SPARGO

ATTORNEY AT LAW

314 STATE STREET

ALBANY, NEW YORK 12210

TELEPHONE 518-462-6677

January 12, 1988

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

Re: MUR 2060
Victory - 84 Committee

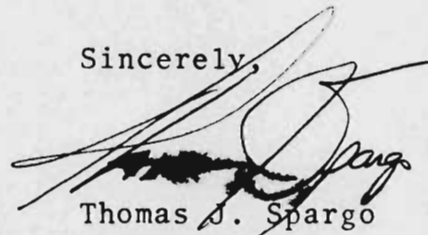
Dear Mr. Noble:

I am enclosing herewith the copy of the brief of the respondent Victory - 84 Committee and its treasurer Thomas J. Spargo to the Probable Cause to Believe recommendation of your office.

I am submitting 13 copies of the brief to your office with the request that pursuant to section 111.16 of the Regulations you would be kind enough to file 10 copies thereof with the Secretary to the Commission.

I appreciate your courtesies in this matter.

Sincerely,



Thomas J. Spargo

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 JAN 15 PM 2:41

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FEDERAL ELECTION COMMISSION

In the Matter of)
Victory '84 Committee) MUR 2060
Thomas J. Spargo, as Treasurer)

BRIEF FOR COMMITTEE AND TREASURER

PRELIMINARY STATEMENT

Pursuant to section 111.16 of the Federal Election Commission Regulations, the General Counsel recommended that the Commission find Probable Cause to believe that the Victory '84 Committee (the Committee) and Thomas J. Spargo, as Treasurer, violated 2 U.S.C. sections 441a(d) and 441a(f) and 11 C.F.R. section 106.1. by brief dated and filed on November 24, 1987.

An extension for the time of filing having been requested by the Committee and its treasurer, and the Commission having granted such extension until January 15, 1988, the instant brief is filed on behalf of the Committee and the treasurer.

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STATEMENT OF FACTS

The dispute in the findings by the General Counsel arises over the interpretation and evaluation that should be placed upon a particular piece of literature that was distributed in the course of the 1984 general election campaign in New York State by the Committee.

The distribution of the piece was made by Election Computer Services, a commercial mail house, at a cost to the Committee of \$178,697.48. The voter lists that were used in the distribution of the piece were provided by Election Computer Services from the local Boards of Election in New York State.

The Committee in response to the initial inquiries from the Commission has indicated that the piece in question was intended to be exempt from the contribution and expenditure restrictions of the Act by reason of the fact that the disputed document constitutes a slate card prepared and distributed by the Committee, which is affiliated with the New York Republican State Committee and is a Party Committee.

A copy of the slate card piece is attached to this brief and made a part hereof.

POSITION OF COMMITTEE AND TREASURER

The disputed piece of literature attached to this brief in the view of the Committee and its Treasurer fall clearly within the exception allowed by section 431(8)(B)(v) and 431(9)(B)(iv), the slate card exemption.

The Commission has long held in its advisory opinions that "the purpose of (the slate card) exemption is to allow State and local parties to educate the general public as to the identity of the candidates of the party.".

Similarly, the Commission has pointed out in the same advisory opinions that the slate card exemption is "not intended as a device for party committees to circumvent the reporting provisions and the limitations on contributions and expenditures by undertaking extensive campaigning on behalf of the candidates" (Advisory Opinions, 1978-0 and 1978-89).

The Commission has particularly cautioned in these opinions that the slate card exemption is not to be used to circumvent the contribution and expenditure limitations by party committees by "undertaking extensive campaigning on behalf of the candidates". The slate card exemption is thus strictly limited to information identifying the candidates by name or photograph together with the title of the office being sought and the position currently held by such candidate.

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In addition to the party affiliation of the candidates, the Commission's Advisory Opinion 1978-89 specifically points out that the slate card may include "voting information, such as the time and place of election and instructions on the method for voting a straight party ticket".

While permitting voting information as a representative category of information that will be permitted on a slate card, the Commission in this same Advisory Opinion carefully restricts that the inclusion of any additional "biographical information, other than that specifically mentioned above, would not be permissible under the described exemption, nor would material on the candidates' positions on the issues or statements of party philosophy".

The Commission thus cautions that the slate card exemption may not be misused as a campaign device by including additional candidate identification material or supportive background information to encourage or convince the voter to support the identified candidate over his or her opponent.

On the other hand, information that will be helpful to the voter to carry out his or her function of casting his or her ballot is not the subject of the same

cautionary warnings in the Commission's Advisory Opinions which allow information to be presented on straight party voting and the time and place where the election will be held.

In the disputed piece, the inclusion of the information on Absentee Voting is precisely what is set forth in the Commission's Advisory Opinions as the kind of helpful information that may be provided to the voters. This information is beneficial to the voters in allowing them to actually have the knowledge and the facility to be able to vote.

THE POSITION OF THE GENERAL COUNSEL

Incredibly, the General Counsel has taken the smallest garnishment at the bottom of the slate card piece where it states in regular type "Your vote is critically important", and turned those five words into a characterization of the piece as a "Get Out the Vote" piece. The General Counsel calls this an "exhortation".

It is important to note that the derivation of the word to exhort is from the Latin to incite, and that its contemporary usage includes giving warnings and urgent appeals. Exhortation is defined in Webster's Ninth New Collegiate

Dictionary as "language intended to incite and encourage".

Notice that the offending language "Your vote is critically important" is a mere statement, an observation. It doesn't tell the voter to go out and vote and "exhort" the reader. By making the statement that the person's vote is important, the piece is communicating that the reader himself is "important", critically important in fact.

The General Counsel further translates this garnishment into the descriptive phrase in his brief as "strong get-out-the-vote language". While this might not constitute hyperbole on the General Counsel's part, it is certainly a mischaracterization of the importance and function of the language in the piece, and a misrepresentation of the clear and obvious purpose of the piece as a slate card listing of the candidates, which is dramatically void of any campaign overtones or embellishments.

The Committee and Treasurer categorically reject the General Counsel's position that this piece constitutes a get-out-the-vote piece and that the patently obvious slate card exemption should be nullified by the perceptively sensitive observation that the voter's vote is critically important.

On another occasion, the Commission may have the opportunity to review a slate card that truly provokes and incites the voter to action giving reason and motivation throughout the piece.

A thoughtful evaluation of the disputed piece here does not easily allow a common sense conclusion that the piece is a get-out-the-vote message. The piece is informational and helpful to the voter in identifying a mere listing of candidates that he can vote for on the Republican line, as well as setting forth helpful voting information on absentee voting.

The Committee's slate card meets the requirements that the Commission set forth in its Advisory Opinions and does not include any prohibited language that would nullify its slate card status such as biographical entries or candidate statements of position or issues.

The General Counsel has concluded that the Committee and its treasurer will not be permitted to claim "two distinct exemptions" for the single communication. It should be noted that we do not claim two exemptions for the piece, but only claim the correct and reasonable exemption which the piece was designed to qualify for - the slate card exemption.

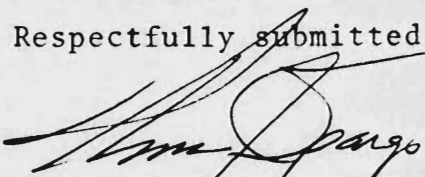
CONCLUSION

While the Committee and Treasurer greatly respect the role and function of the General Counsel in containing the misuse of claimed exemptions under the slate card format, particularly when patent campaign efforts are attempted, it is earnestly requested that the Commission find no violation by reason of the fact that the piece clearly meets the restricted criteria of a slate card including what was intended to be helpful voter information.

A deliberate examination of the whole document rather than supporting a conclusion of a "strong get-out-the-vote" message", allows only a vague intuition of such a message in the language.

We would respectfully urge that this is an insufficient basis to sustain the very serious consequences of sustaining the General Counsel's Finding of Probable Cause.

Respectfully submitted,



Thomas J. Spargo, Esq.
Treasurer

HAND DELIVERED

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FEDERAL ELECTION COMMISSION
MAIL ROOM

88 JAN 19 PM 1:03

THOMAS J. SPARGO

ATTORNEY AT LAW

314 STATE STREET

ALBANY, NEW YORK 12210

TELEPHONE 518-482-6677

January 17, 1988

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2060
Victory - 84 Committee

Dear Mr. Noble:

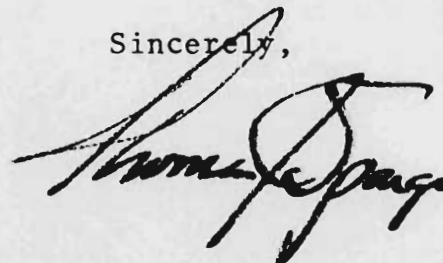
I noticed in reviewing the copies of the Committee's brief that were left on my desk after being shipped to you, that the copy of the disputed piece of literature did not get attached to the brief.

While I suspect that gremlins had a hand in this, I apologize for submitting an incomplete brief and enclose herewith 13 copies of the disputed piece and would ask that your office attach them to the brief.

I also noted that my reference to FEC Advisory Opinions at page 3 of the brief inaccurately lists the first opinion as 1978-0, when it should be 1978-9.

Your courtesies and patience are much appreciated.

Sincerely,



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OFFICE OF GENERAL COUNSEL
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VOLUNTEER/CONTRIBUTOR REPLY FORM

REPUBLICAN VICTORY CHECK-OFF LIST

- ☐ I'm enclosing my Absentee Ballot Application. Please forward to my Board of Elections today.
- ☐ I will go to the polls on Tuesday, November 6, to cast my vote for Republican in person.
- ☐ I want to volunteer. Please call me at the following telephone number: 1 DAY - 1 EVENING

PHONE () _____

- ☐ Enclosed is my contribution to the Victory '84 Committee to help wage this special election drive. Enclosed is:
- ☐ \$15 ☐ \$25 ☐ \$50 ☐ \$100 ☐ _____ Other
- (Please make check payable to: Victory '84 Committee)

CAR-RT SORT
PHILLIP J. BAYER
95 RICHMOND AVE
AMITYVILLE NY 11701

**CR02

Please tear off your 1984 Republican Candidate Guide to use when you vote. Thank you.

1984 Republican Candidate Guide

PREPARED EXCLUSIVELY FOR: PHILLIP J. BAYER

Here's your personal 1984 Republican Candidate Guide, listing all of the men and women running for Federal and State office in your area!

Please keep this list handy. You can use it when you receive your Absentee Ballot...or when you go to the polls on Tuesday, November 6.

President:	RONALD REAGAN
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Vice-President:	GEORGE BUSH
-----------------	-------------

U.S. Congress:	PAUL ANIBOLI
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State Senate:	OWEN H JOHNSON
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State Assembly:	MILDRED L FLOYD
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Official Absentee Ballot Application Enclosed

Please mail by October 19 to vote by mail.

Your vote is critically important. Please mail your application early.

IMPORTANT!

The Victory '84 Committee desperately needs contributions to help carry out our final count down plans for victory—and to cover the cost of your Absentee Ballot Application mailing. Won't you consider sending \$15 or \$25 today? Your help will be greatly appreciated.

State and Federal Campaign laws request the following information if you make a contribution of \$100 or more:

(Title or Occupation)

Employer (name of business if self-employed)

Business Address

Paid for by New York Republican State Committee—Victory '84: Thomas J. Spargo, Treasurer

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BEFORE THE FEDERAL ELECTION COMMISSION

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88 MAR 30 AM 10:05

In the Matter of)

Victory '84 Committee)

Thomas J. Spargo, as treasurer)

MUR 2060

EXECUTIVE SESSION

APR 12 1988

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The Victory '84 Committee ("the Committee") and Thomas J. Spargo, as treasurer, were referred to the Office of the General Counsel by the Reports Analysis Division for failing to clarify whether payments totalling \$184,568.23 for printing expenses, which the Committee disclosed on its 1984 30 Day Post-General Election Report, were made on behalf of federal candidates.

On July 11, 1985, the Commission found reason to believe that the Committee and Thomas J. Spargo, as treasurer, violated 11 C.F.R. § 106.1 by failing to specifically identify those candidates on whose behalf printing expenditures were made. Notification of the Commission's reason to believe finding was mailed on July 19, 1985. On September 12, 1985, the Committee responded to the Commission's notification. On November 25, 1987, the Office of the General Counsel sent a brief to the Committee and Thomas J. Spargo, as treasurer, in which it recommended that the Commission find probable cause to believe that the Committee and Thomas J. Spargo, as treasurer, violated 2 U.S.C. §§ 441a(d) and 441a(f) and 11 C.F.R. § 106.1. The Committee's responsive brief was received on January 15, 1988 with an additional clarifying letter received on January 17, 1988.

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II. ANALYSIS

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The legal analysis of the Office of the General Counsel is set out in its brief, dated November 24, 1987. The Committee's response to the General Counsel's brief is narrow in its view of both the law and facts, and seems limited to what respondents believe to be the General Counsel's position on the get-out-the-vote aspect of the mailing in question. It is the Committee's contention that this Office has taken the statement "your vote is critically important" as found at the bottom of the mailing and characterized the entire "piece" as a get-out-the-vote communication. In doing so, the Committee fails to recognize that this Office did not merely consider these five words, but considered the totality of the communication in arriving at the conclusion that this is get-out-the-vote message. The communication does not merely identify the candidates by name nor merely supply voting information; viewed in its entirety, it encourages the voter both to vote and to vote for the specific candidates listed. Because it is a get-out-the-vote communication distributed by direct mail, it is governed by 2 U.S.C. §§ 431(8)(B)(xii) and 431(9)(B)(ix) and, as such, is an expenditure under the Act.^{1/} The Commission's regulations state

^{1/} This Office recognizes that part of the communication, standing alone, could be considered to be a slate card or sample ballot which would fall within the exemptions allowed under 2 U.S.C. §§ 431(8)(B)(v) and 431(9)(B)(iv). See fn. 11, General Counsel's Brief.

that a party committee may not make independent expenditures in connection with the general election of a candidate for the Office of President. 11 C.F.R. § 110.7(a)5. Further, 11 C.F.R. § 110.7(b)(4) states that a party committee shall not make independent expenditures in connection with the general election campaign of candidates for Federal office. Respondents' expenditures thus cannot be considered to be independent expenditures.

Under 2 U.S.C. § 441a(d)(1), the national committee of a political party and a State party committee including any subordinate committee of the State party committee may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations of paragraphs (2) and (3) of that subsection. See also 11 C.F.R. § 110.7. 2 U.S.C. § 441a(d)(2) sets out the limitations on the expenditures of the national committee in connection with the general election campaign of the party's Presidential nominee. 2 U.S.C. § 441a(d)(3) sets out the limitations on the expenditures of the national committee or the State committee in connection with the general election campaign of the party's candidates for the Senate and House. The Commission's Regulations at 11 C.F.R. § 110.7(a)(4) state that the national party committee may make expenditures on behalf of the party's presidential nominee through any designated agent, including state and subordinate party committees. Because the Committee did not obtain the RNC's authorization to expend funds in connection with the communication, the expenditure does

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not qualify as an expenditure on behalf of the party's presidential and vice presidential nominees pursuant to 2 U.S.C. § 441a(d).^{2/} 2 U.S.C. § 441a(f) prohibits a political committee from making expenditures in violation of the provisions of 2 U.S.C. § 441a. Respondents' expenditures on behalf of Ronald Reagan and George Bush were in excess of the limitations of 2 U.S.C. § 441a, and thus were in violation of 2 U.S.C. § 441a(f).

As to the expenditure for that portion of the communication referring to Paul Aniboli, it is the view of this Office that this is an expenditure also controlled by 2 U.S.C. § 441a(d). The limitation under Section 441a(d) to the State party committee and the National party committee in 1984 for the election of a Representative was \$20,200 each for a total of \$40,400. As pointed out in our brief, the RNC was authorized to spend against the New York Republican State Committee's limitation, and it spent \$38,258.87 on this particular race. Because respondents also had authority from the State party committee to spend against its Section 441a(d) limitation, any expenditure by respondent committee which resulted in exceeding \$20,200 (the State party's limitation) would be excessive. As more fully

^{2/} Since the mailing of our brief, the Commission has changed its position on violations of 2 U.S.C. § 441a(d). The Commission on December 11, 1987 held that the limitations found in 2 U.S.C. § 441a(d) were definitional in nature; violations for exceeding the limitations of 2 U.S.C. § 441a would hereafter be considered to be a violation of 2 U.S.C. § 441a(f).

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explained in our brief, Respondents' expenditure on behalf of Paul Aniboli exceeded the limitations as defined in 2 U.S.C. § 441a(d)(3) by \$23,590.87 in violation of 2 U.S.C. § 441a(f).

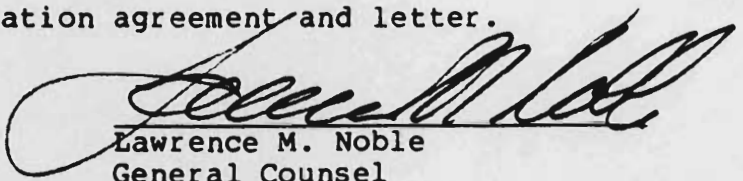
III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe the Victory '84 Committee and Thomas Spargo, as treasurer, violated 2 U.S.C. §441a(f), and 11 C.F.R. § 106.1.
2. Approve proposed conciliation agreement and letter.

Date

3/29/88


Lawrence M. Noble
General Counsel

Attachments

Proposed Conciliation Agreement
Letter to Respondents

Staff Person: Thomas J. Whitehead

33040702732

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Victory '84 Committee) MUR 2060
Thomas J. Spargo, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 12, 1988, do hereby certify that the Commission took the following actions in in MUR 2060:

1. Decided by a vote of 5-1 to reject the recommendations contained in the General Counsel's report dated March 29, 1988, and instead:
 - a) Find no probable cause to believe the Victory '84 Committee and Thomas Spargo, as treasurer, violated 11 C.F.R. § 106.1.
 - b) Direct the Office of General Counsel to send an appropriate letter pursuant to the above action.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas dissented.

(continued)

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Federal Election Commission
Certification for MUR 2060
April 12, 1988

Page 2

2. Decided by a vote of 6-0 to close the file
in this matter.

Commissioners Aikens, Elliott, Josefiak,
McDonald, McGarry, and Thomas voted
affirmatively for the decision.

Attest:

4-12-88

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 15, 1988

Thomas J. Spargo, Esquire
314 State Street
Albany, New York 12210

RE: MUR 2060
Victory '84 Committee and
Thomas J. Spargo, as treasurer

Dear Mr. Spargo:

On April 12, 1988, the Federal Election Commission found that there is no probable cause to believe Victory '84 Committee and you, as treasurer, violated 2 U.S.C. §441a(f), a provision of the Federal Election Campaign Act and 11 C.F.R. § 106.1. Accordingly, the file in this matter has been closed as it pertains to the committee and you, as treasurer.

This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

If you have any questions, please contact Thomas J. Whitehead, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2060

DATE FILMED 5/9/88 CAMERA NO. 2

CAMERAMAN SLC

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