FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 2066

Date Filmed 10/29/86 Camera No. --- 2

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MUR 2066

FEDERAL ELECTION COMMISSION

Routing slips, duplicate documents,
Conciliation matters, internal documents,
voting tallies

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

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

Signed John K. Dring

date 10/23/86

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 28, 1986

Curtis Herge, Esquire
Suite 200
8201 Greensboro Drive
McLean, VA 22102

RE: MUR 2066

Dear Mr. Herge:

On July 24 , 1986, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

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

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
Conciliation Agreement

86040514856

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Conservative Political) MUR 2066
Action Committee)
Leif E. Noren, Treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that respondents violated 2 U.S.C. § 441a(f) by accepting campaign contributions which were illegal on their face.

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

I. The Commission has jurisdiction over the Respondents, and the subject matter of this proceeding.

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

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

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

1. The National Conservative Political Action Committee is a multicandidate political committee registered with the Commission.

2. Leif E. Noren is the treasurer of the National Conservative Political Action Committee.

3. In 1984, the respondents received and deposited one contribution check in the amount of $6000, such check exceeding $5000 in value, and thereby in violation of 2 U.S.C. § 441a(a)(1)(C).

4. Section 441a(f) of Title 2, United States Code, provides that no political committee shall knowingly accept any contribution in violation of the provisions of § 441a, including § 441a(a)(1)(C).

V. By accepting the contribution check, the respondents were in violation of 2 U.S.C. § 441a(f).

VI. Respondents will pay a civil penalty to the treasurer of the United States in the amount of Two Hundred Fifty Dollars ($250) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

VIII. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: _______________ 7/28/86
Lawrence M. Noble — Date
Deputy General Counsel

FOR THE RESPONDENTS:

J. Curtis Herge — June 24, 1986
J. Curtis Herge — Date
Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2066
	)	
National Conservative Political Action Committee; and Leif E. Noren, Treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 24, 1986, the Commission decided by a vote of 6-0 to take the following actions in MUR 2066:

1. Accept the conciliation agreement with the National Conservative Political Action Committee, and Leif E. Noren, as treasurer, as recommended in the General Counsel's Report signed July 18, 1986.

2. Approve and send the letter, as recommended in the General Counsel's Report signed July 18, 1986.

3. Close the file.

Commissioners Aikens, Elliott, Harris, Josefiak, McDonald and McGarry voted affirmatively for this decision.

Attest:

7-24-86
Date

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

Received in Office of Commission Secretary:	Mon.,	7-21-86,	4:07
Circulated on 48 hour tally basis:	Tues.,	7-22-86,	11:00
Deadline for vote:	Thurs.,	7-24-86,	11:00

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Conservative Political) MUR 2066
Action Committee; and Leif E. Noren,)
Treasurer)

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GENERAL COUNSEL'S REPORT

Background

Attached is a conciliation agreement which has been signed by counsel for the respondents.

The attached agreement contains no changes from the agreement approved by the Commission. A check for the civil penalty has been received.

In their brief in MUR 2066, the respondents stated that the reason NCPAC appears to accept excessive contributions is that on its reports to the Commission, NCPAC represents multiple contributions received from a contributor within one reporting period as a single contribution. Hence, what appears to be a single facially excessive contribution is in fact an aggregation of contributions, none of which is facially excessive.

NCPAC's practice of representing multiple contributions as one raises questions regarding possible violations of 2 U.S.C. § 434(b)(3)(A) which provides that political committees must report the date and amount of any contribution received from an individual who gives more than $200 to the reporting political committee within any given reporting period. At the time the Commission approved the attached agreement, it chose not to

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address this issue within the confines of MUR 2066, given that the Reports Analysis Division informed the Commission that a matter containing the same violation as that in the present matter would be referred to this Office shortly after the Commission action in MUR 2066. For this reason, the misreporting issue under § 434(b)(3)(A) is not dealt with in the agreement in hand.

<u>Recommendation</u>

1. Accept the attached conciliation agreement with the National Conservative Political Action Committee, and Leif E. Noren, as treasurer.
2. Approve and send the attached letter.
3. Close the file.

Charles N. Steele
General Counsel

7/18/86
Date

BY: [signature]
Lawrence M. Noble
Deputy General Counsel

Attachments
I. Conciliation Agreement
II. Photocopy of civil penalty check
III. Proposed letter (1)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 12, 1986

Curtis Herge, Esquire
Suite 200
8201 Greensboro Drive
McLean, VA 22102

RE: MUR 2066

Dear Mr. Herge:

On June 10, 1986, the Commission determined that there is probable cause to believe your clients committed a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with accepting a facially excessive contribution.

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

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

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact John Drury, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
  Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Conservative Political) MUR 2066
Action Committee)
Leif E. Noren, Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of June 10, 1986, do hereby certify that the Commission took the following actions in MUR 2066:

1. Failed in a vote of 2-3 to pass a motion to:

   a) Find probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f) in connection with contributions from William Thurman, Larry Bloomer, and E.F. Von Seggern.

   b) Take no further action with respect to the contributions of Solomon Barrow, Douglas Cummings, and Glenn Morris.

   c) Approve the conciliation agreements attached to the General Counsel's report dated June 2, 1986.

   d) Approve the letter attached to the General Counsel's report dated June 2, 1986.

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

(continued)

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2. Decided by a vote of 5-0 to:

a) Find probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, treasurer, violated 2 U.S.C. § 441a(f) in connection with a contribution from E.F. Von Seggern.

b) Take no further action with respect to the contributions of Solomon Barrow, Douglas Cummings, Glenn Morris, William Thurman, and Larry B'…mer.

d) Approve the sending of appropriate letters consistent with the actions taken above.

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

Attest:

6-10-86
Date

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

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED OFFICE OF COMMISSION SECRETARY

SENSITIVE

EXECUTIVE SESSION

86 JUN 3 P12:24

JUN 10 1986

In the Matter of	)	
	)	
National Conservative Political Action Committee	)	MUR 2066
Leif E. Noren, Treasurer	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 13, 1986, the Office of the General Counsel forwarded its brief in this matter to the respondents ("NCPAC"). On March 12, NCPAC's brief arrived at this Office.

II. LEGAL ANALYSIS

The RAD referral giving rise to this MUR presented thirty individuals who had made contributions to NCPAC in excess of 2 U.S.C. § 441a . Based on this referral, the General Counsel recommended that the Commission find NCPAC in violation of 2 U.S.C. § 441a(f) for receipt of these contributions. For twenty-four of the individuals, the contributions were excessive if aggregated. With regard to the remaining six individuals, the contributions involved appeared illegal on their face. It was this latter class of contributions which the Commission elected to pursue.

In reply, NCPAC asserts that the contributions which the Commission has chosen to examine are not facially illegal. Instead, NCPAC claims, these apparently illegal contributions are also aggregations of all contributions received for the individuals involved. As NCPAC explains, if contributions of $4,000, $3,000, and $3,000 are received from a contributor on

April 15, April 20, and April 25 respectively, NCPAC will list such receipts on its Schedule A reports as a single contribution of $10,000 dated April 25. (See Attachment I, page 6). It should be noted that this practice is in violation of 11 C.F.R. § 104.3(a)(4)(i) and 2 U.S.C. § 434(b)(3)(A). In any case, NCPAC's assertion that the contributions in question are not facially illegal appears correct with respect to at least two of the contributors.

With regard to Solomon Barrow, NCPAC states that it received one check for $5,000, as well as a second check for $25. If this statement is accurate, then clearly neither check was facially illegal. Unfortunately, NCPAC supplies no evidence of this statement. However, even if NCPAC did receive one check for $5,025, such check would have been facially illegal only to the extent of $25. Under these circumstances, this Office recommends that the Commission take no further action.

In connection with Douglas Cummings, NCPAC explains that it received two checks for $4,000 and $2,000 respectively. As NCPAC observes, neither check is facially excessive. Attached to the respondents' brief are copies of these checks. At the reason to believe stage, the Commission elected to pursue only those contributions in this matter that are facially illegal. For purposes of treating the respondents in this MUR similarly,this Office recommends that the Commission take no further action.

With respect to Glenn Morris, NCPAC relates that it received three checks in the amount of $5,000, $2,000 and $2,000. Therefore, no check from Morris is facially excessive. (Copies of these checks are attached to the respondents' brief). For the same reason as that cited for Douglas Cummings' checks, this Office recommends that the Commission take no further action.

The respondents' assertion that none of the checks received are facially illegal is incorrect with regard to three contributors. NCPAC states that it received a check for $10,000 from William Thurman. Attached to the respondents' brief is a copy of a statement authorizing NCPAC to attribute $5,000 to Mrs. Thurman. Such statement followed an interval of ninety-seven days from receipt of the contribution. Such period is not a "reasonable time" as that phrase used in 11 C.F.R. § 103.3(b). Therefore, this Office recommends that the Commission find probable cause to believe that NCPAC violated § 441a(f).

In connection with Larry Bloomer, NCPAC states that it received one check in the amount of $5,500.00. The respondents contend that of this sum, $500 was earmarked for NCPAC's non-federal account, pointing to a notation on the copy of the check as evidence of this claim. From the premise, NCPAC asserts that this check was not facially illegal. This assertion is unconvincing. The notation "11-2 500-Sef" standing alone gives no indication of the allleged designation to a non-federal account. Therefore, this Office recommends that the Commission find probable cause with regard to this contribution.

Similarly, NCPAC argues that the $6,000 check received from E.F. Von Seggern is not facially illegal, since $1,000 of this sum was allegedly expended by the contributor for admission to a fund-raising event. But NCPAC's contention is without merit, since this $1,000 is a contribution even if it is to pay the price of such admission. Thus, the check represents a contribution of $6,000. No one may contribute more than $5,000 to a political committee such as NCPAC. Therefore, the check is facially illegal. For this reason, this Office recommends that the Commission find probable cause to believe a violation occurred.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, treasurer, violated 2 U.S.C. § 441a(f) in connection with contributions from William Thurman, Larry Bloomer, and E.F. Von Seggern.

2. Take no further action with respect to the contributions of Solomon Barrow, Douglas Cummings, and Glenn Morris.

3. Approve the attached conciliation agreement.

5. Approve the attached letter.

2 June 1986
Date

Charles N. Steele
General Counsel

Attachments
Respondents' brief
Letter to Respondent
Proposed Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE and LEIF E. NOREN, Treasurer, Respondents.	MUR 2066

RESPONDENTS' BRIEF

I <u>Statement of the Case</u>

The Office of General Counsel alleges that, in 1984, Respondents received six contributions from six individuals, each contribution being in an amount in excess of $5,000.00. The Office of General Counsel then goes on to assert that the receipt by Respondents of a check in an amount in excess of $5,000.00 is a <u>per se</u> violation of 2 U.S.C. §441a(f) and recommends that the Commission find probable cause to believe that Respondents violated 2 U.S.C. §441a(f).

Respondents reply that the facts demonstrate that National Conservative Political Action Committee ("NCPAC") exercises due diligence and takes every reasonable and responsible action to assure compliance with the Act. Further, the factual representations of the Office of General Counsel are demonstrably erroneous. Only two of the checks - not six as alleged by the Office of General Counsel - were in excess of

Attachment I Page 1

$5,000.00 and they were refunded or reattributed to the spouse of the original contributor. Notwithstanding the refund/reattribution of those contributions, the Office of General Counsel suggests that a stand must be taken, otherwise "a political committee in receipt of a $50,000 contribution check from an individual could deposit and have the use of such funds, as long as it later reported receipt of the money." Respondents assert that <u>that is not this case</u>. When that case comes before the Commission, Respondents will be among the first to applaud appropriate corrective action. Respondents further assert, however, that the issues here under review represent a statistical incidence of 0.00028% and question whether this is the type of matter that should properly consume the time and attention of the Commission and its staff.

II <u>Factual Analysis</u>

It is reliably estimated that, in 1984, NCPAC received in excess of 700,000 separate contributions totaling $14,128,000.00. To process that extraordinary volume of contributions, NCPAC utilizes the most sophisticated systems and procedures available. Those systems and procedures are designed specifically to assure compliance with the provisions of the Federal Election Campaign Act of 1971, as amended.

NCPAC maintains an active vigil to assure compliance with the provisions of the Act relating to limitations on contributions. For example, all contributions to NCPAC, and the attendant contributor data, are entered into a computer designed

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to aggregate the data relevant to a single contributor. This data entry system is maintained by Directech, Inc., 11600 Nebel Street, Rockville, Maryland. In order to secure compliance with the limitations contained in 2 U.S.C. §441a(a)(1)(C), the Directech computer has an inquiry feature which regularly identifies and reports any contributor whose cumulative year-to-year date total exceeds $5,000.00. Utilizing those reports, NCPAC refunds the excess over $5,000.00 to the contributor or secures written confirmation that the excess contribution is to be attributed to the contributor's spouse. The record will show that, in 1984, NCPAC refunded a total of $59,524.00 in excess contributions which were identified through this process.

The Directech system used to identify excessive contributions is known as a monthly batch updating system. Specifically, the way that system works is that contributor data is keyed, or entered, into the computer and, subsequent to the end of the month, the computer produces a list of contributions received in the previous month; a Schedule A for line 11a for each monthly report filed by NCPAC; and, a list of contributors, if any, who exceeded the $5,000.00 limit in that month. That material would be delivered to NCPAC just prior to the report filing deadline, usually the 20th day of the month following the month in question. NCPAC would utilize that material in preparing its reports and in identifying any contributor who might have exceeded the limitation of 2 U.S.C. §441a (a)(1)(C).

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Following the immediate requirement of compiling and filing the report, the staff would then make any necessary refunds.

Specfic examples of this monthly procedure can be found in reviewing NCPAC's reports. In May, 1984, for example, NCPAC received excessive contributions from six individuals. NCPAC learned of that fact when it received the Directech computer report prior to filing its May report on June 20, 1984. The excessive contributions were refunded on June 28, 1984. Similarly, in August, 1984, NCPAC received excessive contributions from nine individuals and it refunded the excess amounts on September 28, 1984, promptly after learning of them in preparing the August report due on September 20, 1984.

Notwithstanding this exemplary record of achievement, the Office of General Counsel now sees fit to spend its time and resources, and the time and resources of the Commission, focusing on 6 of the 700,000 contributions received by NCPAC in 1984. Those six contributions constitute 0.00085% of the total. Not only is this de minimus, but, as the Office of General Counsel admits, "all of the [subject] contributions were later refunded, or reattributed to the spouse of the original contributor." General Counsel's Brief at p 1. While this observation should be sufficient to dispose of this matter, we shall nevertheless examine the facts with respect to the six contributions the Office of General Counsel finds so patently offensive.

The six contributions the Office of General Counsel alleges were "facially illegal" are as follows:

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(1) Solomon Barrow. In August, 1984, Solomon Barrow sent NCPAC a check for $25.00 in response to a direct-mail solicitation. In addition, Mr. Barrow sent NCPAC a separate check for $5,000.00. Neither check was "facially illegal."

While NCPAC does not have a copy of either check, there is attached a copy of the deposit slip for the $5,000.00 check.

When NCPAC received its computer report for the month of August - the computer report for use in preparing NCPAC's Report of Receipts and Disbursements due September 20, 1984, NCPAC discovered that Mr. Barrow's two contributions in August aggregated $5,025.00 and, on September 28, 1984, refunded $25.00 to Mr. Barrow.

(2) Douglas Cummings. In August, 1984, Douglas Cummings sent two contributions to NCPAC. One check was in the amount of $4,000.00 and the second check was in the amount of $2,000.00. Copies of those checks are attached. Neither check was "facially illegal."*

When NCPAC received its computer report for the month of August, NCPAC discovered that Mr. Cummings two contributions in August aggregated $6,000.00 and, on September 28, 1984, with the consent of Mr. Cummings, transferred $1,000.00 to its non-Federal account, the National Conservative Political Action Committee - State Election Fund (NCPAC-SEF).

(3) Larry D. Bloomer. In November, 1984, Larry D. Bloomer sent NCPAC a check in the amount of $5,500.00, the check being in payment of admission to a

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* It appears that the reason why the Office of General Counsel believes NCPAC routinely accepts checks in excess of $5,000.00 is because of the computer format of its schedule A's. If an individual contributes more than once during a given reporting period and exceeds $200.00 in the aggregate, the computer generated schedule A will show the date of the last contribution. All contributions received from that contributor in the period are aggregated and shown as one contribution. Thus, if an individual contributes $500.00 on 1/1/86 and $1,000.00 in 1/15/86, the schedule A will show the individual contributed $1,500.00 on 1/15/86. The detail of each contribution, e.g. date, amount, etc., is maintained in the system.

NCPAC fund-raising event for Mr. Bloomer and his guests. A copy of that check is attached. It will be noted, however, that $500.00 was earmarked for the non-Federal account, NCPAC-SEF. (See the notation in the upper-left corner of the check, to -wit: "11-2 500-SEF.") The transfer to NCPAC-SEF of the $500.00 was made on December 28, 1984, the date upon which NCPAC made eleven contribution refunds relating to November receipts.

(4) Dr. and Mrs. William G. Thurman. In October, 1984, William G. Thurman sent NCPAC a check in the amount of $10,000.00. It was received with the knowledge that $5,000.00 of that amount was attributable to Mrs. Thurman. As required by Commission regulations, written confirmation of that attribution was requested and received. A copy of that confirmation is enclosed.

The Office of General Counsel attempts to divert the attention of the Commission from the legitimacy of this conduct through the use of the technique of reductio ad absurdum. That is a method of disproving an argument by showing that it leads to an absurd consequence. On page 3 of its Brief, the Office of General Counsel states: "Under NCPAC's construction, a political committee in receipt of a $50,000.00 contribution check from an individual could deposit and have the use of such funds, as long as it later reported receipt of the money." That would be an absurd consequence, but that is not this case and it is not NCPAC's argument. Thus, this observation by the Office of General Counsel is irrelevant and inappropriate. NCPAC did not accept $50,000.00 from an individual. It accepted a $10,000.00 check knowing that it was a contribution from a husband and wife and that, as a consequence, the receipt and deposit of the check was lawful.

(5) Mr. and Mrs. Glenn H. Morris. In January, 1984, Glenn H. Morris sent NCPAC a check in the amount of $5,000.00. In May, 1984, Mr. Morris sent NCPAC a second check in the amount of $2,000.00, that check clearly indicating on the memo line that it was for Mr. and Mrs. Morris. In July, 1984, Mrs. Morris sent NCPAC a check in the amount of $2,000.00. Copies of those checks are attached. None of the checks was "facially illegal."

At that point, of the aggregate received,

$6,000.00 was allocable to Mr. Morris and $3,000.00 was allocable to Mrs. Morris. Inadvertently, NCPAC believed the full $9,000.00 was attributable to Mr. Morris and, eight days after it became aware of the apparent overage, NCPAC transferred $4,000.00 to its non-Federal Account. That was $3,000.00 more than required. The reason for this confusion was that the May check was keypunched into the computer in June, showing a May date, thus not appearing in the June reconciliations. The computer did report the $9,000.00 aggregation, however, when the July check was recorded.

In December, 1984, Mr. Morris sent NCPAC yet another check, it being in the amount of $8,000.00 and being intended by Mr. and Mrs. Morris to be their 1985 contribution to NCPAC. That check was deposited, subsequently refunded, but replaced by Mr. and Mrs. Morris in 1985. Attached is a copy of a letter from Mr. and Mrs. Morris confirming the allocation of the $8,000.00 contribution in 1985 as being $5,000.00 attributable to Mr. Morris and $3,000.00 attributable to Mrs. Morris.

(6) E. F. Von Seggern. In December, 1984, Ms. Von Seggern sent NCPAC a check for $6,000.00. Of that amount, $1,000.00 was for admission to a fund-raising event and $5,000.00 was intended by Ms. Von Seggern to be her 1985 contribution to NCPAC. Ms. Von Seggern had previously contributed $5,000.00 to NCPAC in 1984. This overage was discovered in April, 1986, at which time the full amount was refunded to Ms. Von Seggern.

In summary, of the 700,000 contributions received by NCPAC in 1984, we have identified only two checks in excess of $5,000.00 which were neither attributable to a spouse nor earmarked for NCPAC's non-Federal account at the time of receipt. Those were the checks in December from Morris, in the amount of $8,000.00, and from Von Seggern, in the amount of $6,000.00. All but $1,000.00 was sent with the intention that they be 1985 contributions. Two checks out of 700,000 checks. NCPAC's record should be applauded, not punished. Clearly, this does not

27

demonstate a propensity by NCPAC to accept, deposit and use $50,000.00 contribution checks.

III Legal Analysis

Section 103.3 (b) of Title 11 of the Code of Federal Regulations provides that the treasurer of a political committee must make his best efforts to determine the legality of contributions. That requirement was clearly met by the treasurer of NCPAC. As soon as an excessive contribution came to the attention of the treasurer of NCPAC, he would (1) make and retain a written record noting the basis for the appearance of illegality, as required by 11 CFR 103.3 (b)(1);(2) include in the report for the relevant period a statement noting that the legality of the contribution was in question, as required by 11 CFR 103.3 (b)(1); and, (3) report the refund on the next required report, as required by 11 CFR 103.3 (b)(2).

Section 103.3(b)(1) provides that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. First, that section only applies to contributions "which appear to be illegal". If an individual sends in a $25.00 check, there is no appearance of illegality in the check. The legality of the contribution can only be determined after that contribution is processed and the contribution aggregated with other contributions made previously by the same contributor in that year. The appearance of illegality can thus only be determined at a later date. Second, that section does not say

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that even contributions which do in fact appear to be illegal must be refunded within ten days. The section says that the contribution must be either returned to the contributor or deposited and reported within ten days. There is no suggestion that NCPAC failed to deposit and report the questioned contributions as required by the regulations. As a result, because it availed itself of one of the two permissible alternatives, NCAPC did not violate 11 CFR 103.3 (b)(1). In fact, the applicable regulatory standard for situations such as these is found in 11 CFR 103.3(b)(2).

Section 103.3 (b)(2) of Title 11 of the Code of Federal Regulations provides, as follows:

> When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time, and the treasurer shall note the refund by amending the current report or noting the change on the committee's next required report." (Emphasis added.)

Thus, the regulatory requirement is that refunds be made within "a reasonable time" once it is determined that a contribution is not legal. Neither the Act, nor the regulations, provides that illegal contributions must be refunded within ten days of the day they are received or even of the day they are found to be illegal. As a consequence, absent more specific regulatory language, the system followed by NCPAC violated neither the Act nor the regulations.

The Office of General Counsel may nevertheless point out that in two cases, Morris and Von Seggern, it took NCPAC approximately 100 days between the date the check was received and the date the excessive amount was either reattributed to the contributor's spouse or refunded to the contributor. In reply, NCPAC reminds the Office of General Counsel that those were 2 out 700,000 contributions. That is a statistical incidence of 0.00028%. It is not reasonable to suggest that those two isolated situations prove that the treasurer of NCPAC failed in meeting the best efforts standard in 11 CFR 103.3(b).

Notwithstanding the fact that no showing has been made that NCPAC violated the standards of 11 CFR 103.3(b) by utilizing a monthly batch updating system, NCPAC has now voluntarily instituted a system of daily "on-line" updating. Enclosed is a copy of a letter from Directech, Inc. to the Treasurer of NCPAC, confirming the institution of that system. That system will cause the treasurer of NCPAC to be notified almost immediately if a contributor exceeds the $5,000.00 limitation, thus enabling the treasurer to make refunds more promptly then in 1984.

It is evident from the foregoing that no additional action is justified or warranted in this matter. In view of the fact that, in 1984, NCPAC had approximately 250,000 contributors, who contributed approximately $14,128,000.00 in approximately 700,000 separate contributions, NCPAC's record of ferreting out contributors who exceed the limitation of 2 U.S.C. §441a(a)(1)(C) must be considered excellent. Virtually all those problems were found, reported and corrected as required by 11 CFR 103.3(b). The two isolated situations which did not fall within those parameters are statistically insignificant and do not justify a finding that the treasurer of NCPAC failed to use his best efforts in identifying and correcting problems. The regulations do not require that refunds be made within ten days, or that a daily "on-line" updating system be used as opposed to a monthly batch updating system. It if is the view of the Commission that such is required, then the Commission should be specific and amend its regulations accordingly and apply them prospectively. Nevertheless, NCPAC has now voluntarily instituted a daily "on-line" updating system in an effort to identify and refund excessive contributions even more promptly.

IV Conclusion

In 1984, NCPAC received approximately 700,000 separate contributions. Corporate checks and checks in excess of the statutory limit were routinely identified, returned or otherwise diverted away from the Federal account. Multiple contributions, which aggregated in excess of the statutory limit, were refunded promptly following the receipt of computer reports which identified the overage. When checks were received in excess of $5,000.00, but with the knowledge that the excess was attributable to a spouse, the checks are deposited and written confirmation secured. The Commission is now being asked, however, to take action against NCPAC because two of the 700,000 checks were "facially illegal." This recommendation is made notwithstanding the fact that those amounts were refunded. Those two checks represent 0.00028% of the total number of checks received by NCPAC in 1984. The Office of General Counsel suggests, using the technique of reductio ad absurdum, that NCPAC must be punished to avoid having political committees accept, deposit and use $50,000.00 contribution checks. That argument is misplaced. The correct maxim is de minimus non curat lex, which means the law does not care for, or take notice of, very small or trifling matters.

For the reasons stated, the actions taken by NCPAC under the circumstances are actions which should be encouraged by the Commission without penalty and be recognized as meeting the best efforts requirement of the Act. As a result, no further action should be taken on this matter and the file should be closed.

Dated: March 11, 1986

Respectfully submitted,

J. Curtis Herge
Attorney-at-Law
8201 Greensboro Drive,
Suite 200
McLean, Virginia 22102
(703) 848-4700

Counsel of Record for
National Conservative
Political Action Committee
and Leif E. Noren, Treasurer

8 6 0 4 0 5 1 4 8 8 2

5/17

DOUGLAS R. CUMMINGS
INVESTMENT ACCOUNT
3800 LIBERTY TOWER 947-7170
OKLAHOMA CITY, OKLA. 73102

LIBERTY
THE BANK OF MID-AMERICA

1774

39-19/1030

THE SUM 4000 DOLS 00 CTS

PAY

TO THE ORDER OF 1984 Texas Gala NCPAC

DATE August 9, 1984

AMOUNT *$4,000.00*

8604051483

DOUGLAS

I13

DOUGLAS R. CUMMINGS
INVESTMENT ACCOUNT
3000 LIBERTY TOWER 947-7176
OKLAHOMA CITY, OKLA. 73102

LIBERTY

1775

THE SUM 2000 DOLS 00 CTS

PAY TO THE ORDER OF

1984 Texas Gala NCPAC

DATE	AMOUNT
August 9, 1984	*$2,000.00*

I14

11-2 500-Sef

LARRY D. BLOOMER
SANTA FE NORTH OFFICE BUILDING
6 N.E. 63RD STREET, SUITE 215
OKLAHOMA CITY, OK 73105
405-843-8122

LIBERTY
THE BANK OF MID-AMERICA

3922

39-19
1030

CHECK NO. | DATE | AMOUNT
Nov. 02, 1984

PAY FIVE THOUSAND FIVE HUNDRED and no/100 Dollars------------------------------$5,500.00

TO THE ORDER OF Victory Night '84

I15

Larry D Bloomer

86040514886

Mr. John T. (Terry) Dolan
NCPAC
[illegible]1 Prince Street
Alexandria, VA 22314

Dear Terry:

On October 31, 1984 you received a $10,000 contribution from William G. Thurman. I would appreciate it if you would credit $5,000 as a contribution from Mrs. William G. Thurman.

Your records should indicate, then, a total of $5,000 contributed by Mrs. William G. Thurman in 1984, and $5,000 contributed by Mr. William G. Thurman.

Thank you.

Sincerely,

William G. Thurman

Mr. William G. Thurman, M.D.

Mrs. William G. Thurman

Mrs. William G. Thurman

Date: February 7, 1985

I16

GLENN H. MORRIS
1102 CUMBERLAND RD
CHATTANOOGA, TN 37419

4/19 1984 748

Pay to the Order of NC PAC $ 5,000.00

Five Thousand Dollars and no/100 Dollars

FIRST TENNESSEE BANK 1ST
N.A. CHATTANOOGA CHATTANOOGA, TENNESSEE

For PAC

Glenn H. Morris

I17

[redacted]

GLENN H. MORRIS
1192 CUMBERLAND ROAD
CHATTANOOGA, TN 37419

812

5/14 1984

87-728/613

PAY TO THE ORDER OF 1984 TEXAS GALA/NCPAC $ 2,000.00

DOLLARS

PIONEER BANK
CHATTANOOGA, TENNESSEE

FOR MR. & MRS. TEXAS TRIP Glenn H. Morris

I8

MRS. GLENN H. MORRIS
1192 CUMBERLAND ROAD
PHONE 821-2324
CHATTANOOGA, TN 37419

280

7/14 19 84

87-41/613

PAY TO THE ORDER OF "1984 Fagan Gals" INC Pac $ 2000.00

Two thousand dollars & no/100 DOLLARS

LOOKOUT VALLEY BRANCH
AMERICAN NATIONAL BANK AND TRUST COMPANY
CHATTANOOGA, TENN.

3-84

FOR Made Rothbe & Fran Morris Jr. Mrs. Fran H. Morris

8604051489 9

I19

Mr. John T. (Terry) Dolan
NCPAC
1001 Prince Street
Alexandria, VA 22314

Dear Terry:

On January 8, 1985 you received an $8,000 contribution from Glenn H. Morris. I would appreciate it if you would credit $3,000 as a contribution from Mrs. Faynell G. Morris.

Your records should indicate, then, a total of $5,000 contributed by Mr. Glenn H. Morris in 1985, and $3,000 contributed by Mrs. Faynell G. Morris.

Thank you.

Sincerely,

Glenn H. Morris

Glenn H. Morris

Faynell G. Morris

Faynell G. Morris

Date: ______________________

8 6 0 4 0 5 1 4 8 9 0

I20

directech INC.
11600 NEBEL STREET, ROCKVILLE, MARYLAND 20852, PHONE (301)881-0664

September 6, 1985

Leif Noren
NCPAC
1001 Prince Street
Alexandria, VA 22314

Dear Leif:

In regard to your memo of August 19, 1985, I want to briefly inform you of the steps DirecTech has taken to help NCPAC improve on it's processing of donors who have reached, or exceeded the $5000.00 yearly donation limit.

DirecTech, as you know keys all donations "on-line" into the NCPAC masterfile as we receive the source documents. We have made the necessary programming changes so that when an individuals' donation is entered into the file, and their current-year-to-date donation total is at, or above the $5000.00 level, the data entry operator will receive a message on the terminal, requiring that the source document be pulled, and given to the supervisor. The supervisor will then call you or one of your associates with the information you need to fulfill your obligations as required by the FEC.

One other situation that has been improved upon is the time delay between when a donation is received and then actually entered into the system. Since we are going to begin fulfilling the "thank you acknowlegement letters", we will receive the source in a more timely manner.

Leif, if this procedure is not satisfactory, or if there are any additional steps you would like us to take, please let me know.

Sincerely,

Dan Sullivan

Dan Sullivan
Production Manager

I 21

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Conservative) MUR 2066
Political Action Committee)
Leif E. Noren, Treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On July 16, 1985, the Commission found reason to believe that the National Conservative Political Action Committee (NCPAC) and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f). The Commission notified respondents of this determination by letter dated August 15, 1985. Respondents hand delivered their response to the Commission on September 9, 1985.

Respondents' violation was based on the receipt of contributions in excess of $5,000 from six individuals. All of the contributions were later refunded, or reattributed to the spouse of the original contributor.

II. LEGAL ANALYSIS

Section 441a(f) of Title 2, United States Code, provides that no political committee, or officer or employee of a political committee, shall knowingly accept any contribution in violation of the provisions of section 441a.

Section 441a(a)(1)(C) of Title 2, United States Code, provides that no person shall make contributions to "any other political committee in any calendar year, which in the aggregate, exceed $5,000," where such other political committee is any political committee other than a candidate's authorized committee or a committee established and maintained by a national political party. For purposes of § 441a(f), under § 441a(a)(1)(c), any contribution in excess of $5,000 by an individual to NCPAC is a contribution which <u>on its face</u> is in violation of the provisions of § 441a.

Based on information obtained in the normal course of its supervisory responsibilities, the Commission found reason to believe that NCPAC and Leif E. Noren, as treasurer, violated § 441a(f) by accepting contributions in excess of $5,000 from six individuals.

In response, NCPAC asserts that there was no violation of 441a(f) because NCPAC complied fully with 11 C.F.R. § 103.3(b). That regulation is designed to permit committees to deal expeditiously with contributions the legality of which is uncertain. As NCPAC itself states, "Section 103.3(b) ... provides that the treasurer of a political committee must make his best efforts to determine the legality of [such] contributions." (Attachment p. 3). Moreover, NCPAC relates that in handling these contributions, it would "include in the report for the relevant period a statement noting that the legality of the contributions were [sic] in question, as required by 11 C.F.R. § 103.3(b)(1)...." (Id.)

It is clear from its terms that § 103.3(b) pertains only to contributions of uncertain legality. Indeed, there is no language in the section to suggest that it encompasses those contributions which are facially illegal. Moreover, to construe § 103.3(b) as applying to facially illegal contributions would be to destroy the act's effectiveness in combatting illegal contributions. Under NCPAC's construction, a political committee in receipt of a $50,000 contribution check from an individual could deposit and have the use of such funds, as long as it later reported receipt of the money. It hardly need be said that this state of affairs is not what the Congress sought to achieve when it drafted the provisions regarding illegal campaign contributions.

The six contributions at issue here each exceeded the $5,000 limitation of § 441a(a)(1)(C), and hence, were illegal. Thus, § 103.3(b) is inapposite here, and NCPAC's reliance on that section is misplaced.

NCPAC also asserts that the Commission should find no violation of § 441a(f), because NCPAC employed what it considered to be a sophisticated computer system. Designed to detect illegal contributions, this "monthly batch updating system" would process contribution data at the end of each month and report the names of any individuals whose contributions exceeded the $5,000 limitation of § 441a(a)(1)(c). (Attachment pp. 2,6).

However, the contribution checks in issue should have been examined by NCPAC's prior to computer entry. Last year, as the respondents state, NCPAC took in over $14 million in contributions, and certainly was familiar with the $5,000 ceiling on contributions by individuals imposed by § 441a(a)(1)(C). Thus, to say, as NCPAC does, that it could not be aware that these contributions were illegal until after receiving the monthly computer report, is to beg the question.

In sum, NCPAC, and Leif E. Noren, as treasurer, received six contributions which exceeded $5,000. These contributions violated § 441a(a)(1)(c)'s limitation of $5,000 on contributions by individuals. In addition, because all six contribution checks were in amounts greater than $5,000, each one was illegal on its face. By receiving and depositing such checks, respondents knowingly accepted contributions that violated § 441a. In so doing, they violated § 441a(f).

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the National Conservative Political Action Committee, and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f).

12 February 1986
Date

Charles N. Steele
General Counsel

Attachments

1. Respondents' answer to RTB notification
2. Proposed letter

GCC# 8487

SEDAM & HERGE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 1100
8300 GREENSBORO DRIVE
MCLEAN, VIRGINIA 22102
(703) 821-1000

GLENN J. SEDAM, JR.
J. CURTIS HERGE
ROBERT R. SPARKS, JR.
A. MARK CHRISTOPHER
CHRISTOPHER S. MOFFITT
GEORGE V. BIONDI
PHILIP H. BANE
DONNA LYNN MILLER
OF COUNSEL
THOMAS J. FADOUL, JR.

SEDAM, HERGE & REED
SUITE 1000
1250 EYE STREET, N.W.
WASHINGTON, D. C. 20005
(202) 818-0800
CHARLES D. REED
RESIDENT PARTNER
JOHN D. HEFFNER
TELEX 710-831-0896
CABLE SEDAMHERG

September 9, 1985

SEP 12 P4:21

RECEIVED
GENERAL COUNSEL

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

Attention: Mr. Paul Reyes
Office of General Counsel

Re: MUR 2066

Dear Mr. Chairman:

On behalf of our clients, National Conservative Political Action Committee (hereinafter referred to as "NCPAC") and its Treasurer, Mr. Leif E. Noren, we are responding to your letter, dated August 15, 1985, in which you reported that the Federal Election Commission determined there is reason to believe that our clients may be in violation of the provisions of 2 U.S.C. 441 a (f). In the accompanying General Counsels's Factual and Legal Analysis, it was reported that "according to information referred to the Office of General Counsel from the Commission's Reports Analysis Division...NCPAC received [in 1984] contributions in excess of the allowable limitation from six (6) individuals" and that "the excessive contributions were disposed of by refund or reattribution to the original contributor's spouse." The General Counsel's Factual and Legal Analysis concluded that, while NCPAC took action on the excessive contributions it received, the system used by NCPAC to identify excessive contributions was not, in the eyes of the General Counsel, sufficient to meet the requirements of 11 CFR 103.3 (b).

It is reliably estimated that, in 1984, there were in excess of 250,000 individuals who made in excess of 700,000 separate contributions to NCPAC. Those contributions amounted to

8 6 0 4 0 5 1 4 8 9 6

an aggregate total of $14,128,000.00 in 1984, the average contribution being approximately $20.00. To process that extraordinary volume of contributions, NCPAC utilizes the most sophisticated systems and procedures available. Those systems and procedures are designed specifically to assure compliance with the provisions of the Federal Election Campaign Act of 1971, as amended.

NCPAC maintains an active vigil to assure compliance with the provisions of the Act relating to limitations on contributions. For example, all contributions to NCPAC, and the attendant contributor data, are entered into a computer designed to aggregate the data relevant to a single contributor. This data entry system is maintained by Directech, Inc., 11600 Nebel Street, Rockville, Maryland. In order to secure compliance with the limitations contained in 2 U.S.C. 441 a (a) (1) (C), the Directech computer has an inquiry feature which regularly identifies and reports any contributor whose cumulative year-to-date total exceeds $5,000.00. Utilizing those reports, NCPAC refunds the excess over $5,000.00 to the contributor or secures written confirmation that the excess contribution is to be attributed to the contributor's spouse. The record will show that, in 1984, NCPAC refunded a total of $59,524.00 in excess contributions to various contributors.

The Directech system used to identify excessive contributions is known as a monthy batch updating system. Specifically, the way that system works is that contributor data is keyed, or entered, into the computer and, subsequent to the end of each month, the computer produces a list of contributions received in the previous month, a Schedule A for line 11a for each monthly report filed by NCPAC and a list of contributors, if any, who exceeded the $5,000.00 limit in that month. That material would be delivered to NCPAC just prior to the report filing deadline, usually the 20th day of the month following the month in question. NCPAC would utilize that material in preparing its reports and in identifying any contributor who might have exceeded the limitation of 2 U.S.C. 441a (a) (1) (C). Following the immediate requirement of compiling and filing the report, the staff would then turn to making any necessary refunds.

Specific examples of this monthly procedure can be found in reviewing NPCAC's reports. In May, 1984, for example, NCPAC received excessive contributions from six individuals. NCPAC learned of that fact when it received the Directech computer report prior to filing its May report on June 20, 1984. The excessive contributions were refunded on June 28, 1984. Similarly, in August, 1984, NPCAC received excessive contributions from nine individuals and it refunded the excess amounts on September 28, 1984, promptly after learning of them in preparing the August report due on September 20, 1984.

Section 103.3 (b) of Title 11 of the Code of Federal Regulations provides that the treasurer of a political committee must make his best efforts to determine the legality of contributions. That requirement was clearly met by the treasurer of NCPAC. As soon as excessive contributions came to the attention of the treasurer of NCPAC, he would (1) make and retain a written record noting the basis for the appearance of illegality, as required by 11 CFR 103.3 (b) (1); (2) include in the report for the relevant period a statement noting that the legality of the contributions were in question, as required by 11 CFR 103.3 (b) (1); and , (3) reported the refunds on the next required report, as required by 11 CFR 103.3 (b) (2).

The Office of General Counsel appears to interpret 11 CFR 103.3 (b) to mandate a refund of excessive contributions within ten days of the day they are received. This interpretation is made evident by the statement in the General Counsel's Factual and Legal Analysis to the effect that the Office of General Counsel believes that NCPAC's "batch" updating of contributions at the end of each month, rather than "on-line" updating of its receipts on a daily basis, is not sufficient for it to meet the requirements of 11 CFR 103.3 (b). That interpretation of the regulations is not correct.

Section 103.3 (b) (1) provides that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. First, that section only applies to contributions "which appear to be illegal". If an individual sends in a $25.00 check, there is no appearance of illegality in the check. The legality of the contribution can only be determined after that contribution is processed and the contribution aggregated with other contributions made previously by the same contributor in that year. The appearance of illegality can thus only be determined at a later date. Second, that section does not say that even contributions which do in fact appear to be illegal must be refunded within ten days. The section says that the contribution must be either returned to the contributor or deposited and reported within ten days. There is no suggestion that NCPAC failed to deposit the questioned contributions within ten days. As a result, because it availed itself of one of the two permissible alternatives, NCPAC did not violate 11 CFR 103.3 (b) (1). In fact, the applicable regulatory standard for situations such as these is found in 11 CFR 103.3 (b) (2).

Section 103.3 (b) (2) of Title 11 of the Code of Federal Regulations provides, as follows:

> "When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time, and the treasurer shall note the refund by amending the current report or noting the change on the committee's next required report." (Emphasis added.)

Thus, the regulatory requirement is that refunds be made within "a reasonable time" once it is determined that a contribution is not legal. Neither the Act, nor the regulations, provides that illegal contributions must be refunded within ten days of the day they are received or even of the day they are found to be illegal. As a consequence, absent more specific regulatory language, the system followed by NCPAC violated neither the Act nor the regulations.

The Office of General Counsel may nevertheless point out that in two cases it took NCPAC approximately 100 days between the date a contribution was received and the date the excessive amount was either reattributed to the contributor's spouse or refunded to the contributor. In reply, NCPAC reminds the Office of General Counsel that those were 2 out of 700,000 contributions. That is an incidence of error of .00028%. It is not reasonable to suggest that those two situations or that incidence of error is proof that the treasurer of NCPAC failed in meeting the best efforts standard in 11 CFR 103.3 (b).

Notwithstanding the fact that no showing has been made that NCPAC violated the standards of 11 CFR 103.3 (b) by utilizing a monthly batch updating system, NCPAC has now voluntarily instituted a system of daily "on-line" updating. Enclosed is a copy of a letter from Directech, Inc. to the Treasurer of NCPAC, confirming the institution of that system; a system which the Office of General Counsel seems to believe is the panacea to this problem.

It is evident from the foregoing that no additional action is justified or warranted in this matter. In view of the fact that, in 1984, NCPAC had approximately 250,000 contributors, who contributed approximately $14,128,000.00 in approximately 700,000 separate contributions, NCPAC's record of ferreting out contributors who exceed the limitation of 2 U.S.C. 441 a (a) (1) (C) must be considered excellent. Virtually all those problems were found, reported and corrected as required by 11 CFR 103.3 (b). The one or two isolated situations which did not fall within those parameters are statistically insignificant and do not justify a finding that the Treasurer of NCPAC failed to use his best efforts in identifying and correcting problems. The regulations do not require that refunds be made within ten days, or that a daily "on-line" updating system be used as opposed to a monthly batch updating system. If it is the view of the Commission that such is required, then the Commission should be specific and amend its regulations accordingly and apply them prospectively. Nevertheless, NCPAC has now voluntarily instituted a daily "on-line" updating system in an effort to identify and refund excessive contributions even more promptly.

It is suggested, therefore, that the actions taken by NPCAC under the circumstances are actions that should be encouraged by the Commission without penalty and be recognized as meeting the best efforts requirement of the Act. As a result, no further action should be taken on this matter and the file should be closed.

We appreciate this opportunity to respond and are willing to provide such other documentation or information as may be reasonably required to dispose of this matter.

Sincerely yours,

J. Curtis Herge
Counsel to National
Conservative Political
Action Committee

directech INC.
11600 NEBEL STREET, ROCKVILLE, MARYLAND 20852 PHONE (301)881-0664

September 6, 1985

Leif Noren
NCPAC
1001 Prince Street
Alexandria, VA 22314

Dear Leif:

In regard to your memo of August 19, 1985, I want to briefly inform you of the steps DirecTech has taken to help NCPAC improve on it's processing of donors who have reached, or exceeded the $5000.00 yearly donation limit.

DirecTech, as you know keys all donations "on-line" into the NCPAC masterfile as we receive the source documents. We have made the necessary programming changes so that when an individuals' donation is entered into the file, and their current-year-to-date donation total is at, or above the $5000.00 level, the data entry operator will receive a message on the terminal, requiring that the source document be pulled, and given to the supervisor. The supervisor will then call you or one of your associates with the information you need to fulfill your obligations as required by the FEC.

One other situation that has been improved upon is the time delay between when a donation is received and then actually entered into the system. Since we are going to begin fulfilling the "thank you acknowlegement letters", we will receive the source in a more timely manner.

Leif, if this procedure is not satisfactory, or if there are any additional steps you would like us to take, please let me know.

Sincerely,

Dan Sullivan

Dan Sullivan
Production Manager

85040514901

Specializing in Direct Marketing Applications for Mini-Computers

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 15, 1985

Leif E. Noren, Treasurer
1001 Prince Street
Alexandria, VA 22314

RE: MUR 2066
National Conservative
Political Action Committee
Leif E. Noren, Treasurer

Dear Mr. Noren:

On July 16 , 1985, the Federal Election Commission determined that there is reason to believe The National Conservative Political Action Committee and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). 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. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, within fifteen days of your receipt of this letter.

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

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. <u>See</u> 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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 each counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Paul Reyes, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

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

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 2066

STAFF MEMBER(S) AND TEL. NO.
Paul Reyes (202) 523-4000

RESPONDENT: National Conservative
Political Action Committee
Leif E. Noren, as treasurer

SUMMARY OF ALLEGATIONS

The National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f) by accepting contributions from individuals in 1984 made in excess of the limit of 2 U.S.C. § 441a(a)(1)(C).

FACTUAL AND LEGAL ANALYSIS

Section 441a(f) of Title 2, United States Code, provides that no political committee shall knowingly accept contributions in violation of the Act's limitations.

Section 441a(a)(1)(C), of Title 2, United States Code, "no person shall make contributions to any political committee in any calendar year, which in the aggregate, exceed $5,000."

According to information referred to the Office of General Counsel from the Commission's Reports Analysis Division ("RAD") NCPAC received contributions in excess of the allowable limitation from six (6) individuals.

The excessive contributions were disposed of by refund, or reattribution to the original contributor's spouse.

NCPAC received an RFAI or IN from RAD concerning excessives each month in 1984. On January 9, 1985, NCPAC's treasurer called

RAD to complain about receiving an RFAI every month when he had already explained that NCPAC does not know about its receipt of excessives until the end of each month when its computer vendor runs a printout of its receipts just prior to filing its monthly report. Then, according to the treasurer, NCAPC takes steps to remedy the matter.

The Office of General Counsel continues to believe that NCPAC's "batch" updating of contributions at the end of each month rather than "on-line" updating of its receipts on a daily basis is not sufficient for it to meet the requirements of 11 C.F.R. § 103.3(b). That section requires that contributions which appear to be illegal must, within 10 days be returned or deposited and reported. In the instant matter, all six contributions were apparently illegal since each was for an amount over $5,000. The refunds of reattributions were in every instance well over the ten day limitation ranging from 35 days to 107 days.

As indicated herein, NCPAC took action on the excessive contributions it received, but its operating system simply does not allow it to take that action within the time frame required by the Act. Therefore, the General Counsel recommended that the Commission find there is reason to believe that NCPAC and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of National Conservative Political Action Committee and Leif E. Noren, Treasurer	)))))	RAD Referral 85L-21

CERTIFICATION

86040514906

I, Mary W. Dove, recording secretary for the Federal Election Commission meeting on July 16, 1985, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in RAD Referral 85L-21:

1. Find reason to believe that NCPAC and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f).

2. Draft a revised Legal and Factual Analysis to reflect the reason to believe find relates to the six individuals whose contributions were in excess of the allowable limitation.

Commissioners Aikens, Elliott, Harris, McGarry, and Reiche voted affirmatively in this matter. Commissioner McDonald did not cast a vote.

Attest:

7-17-85
Date

Mary W. Dove
Mary W. Dove
Recording Secretary

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COMMISSION SECRETARY

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

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FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION ____________

RAD REFERRAL NO. 85L-21
STAFF MEMBER Paul Reyes

SOURCE OF REFERRAL: INTERNALLY GENERATED

RESPONDENTS'S NAME: National Conservative Political Action Committee
Leif E. Noren, Treasurer

RELEVANT STATUTE: 2 U.S.C. § 441a(f)

SENSITIVE

RELEVANT REPORTS CHECKED: Committee Reports
RAD Referral 83L-34

FEDERAL AGENCIES CHECKED: None

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GENERATION OF MATTER

Based on information obtained in the ordinary course of its supervisory responsibilities under the Federal Election Campaign Act of 1971, as amended, (the "Act"), the Reports Analysis Division ("RAD") of the Federal Election Commission (the "Commission") referred this matter to the Office of General Counsel on May 10, 1985. The referral was received in the Office of General Counsel on May 13, 1985.

SUMMARY OF ALLEGATIONS

The National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f) by accepting contributions from individuals in 1984 made in excess of the limit of 2 U.S.C. § 441a(a)(1)(C) which aggregated in the amount of $52,860.50.

FACTUAL AND LEGAL ANALYSIS

Section 441a(f) of Title 2, United States Code, provides that no political committee shall knowingly accept contributions in violation of the Act's limitations.

Section 441a(a)(1)(C), of Title 2, United States Code, provides that "no person shall make contributions to any political committee in any calendar year, which in the aggregate, exceed $5,000."

According to RAD's Referral, NCPAC received contributions totaling $52,860.50 in excess of the allowable limitation from 30 individuals. Some apparent violations, according to the Referral, were transferred to NCPAC's state election fund ("SEF") within 30 days. This Office's review of the Referral materials indicates that the excessive contributions were disposed of by refund, transfer, or in three instances reattribution to the original contributor's spouse, in an average of 36 days. However, 40-60 days is the more representative time frame seen in the respondent's reports included in the Referral materials. The average excessive contribution is approximately $938. This average includes only 4 contributors who gave in excess of $1,000 over the $5,000 limit of section 441a(a)(1)(C). The rest are generally well under that amount, typically in the $25-500 range.

NCPAC received an RFAI or IN from RAD concerning excessives each month in 1984. On January 9, 1985, NCPAC's treasurer called RAD to complain about receiving an RFAI every month when he had already explained that NCPAC does not know about its receipt of excessives until the end of each month when its computer vendor runs a printout of its receipts just prior to filing its monthly report. Then, according to the treasurer, NCAPC takes steps to remedy the matter.

This matter is virtually identical to RAD Referral 83L-34 involving excessive contributions received by NCPAC in 1982. In RAD Referral 83L-34 NCPAC was referred for receiving $30,290 in apparent excessive contributions. NCPAC had initiated corrective measures with respect to $28,840 prior to notification from RAD. The Commission declined to open a matter under review.

In both 83L-34 and the instant referral, RAD noted that NCPAC had recently been referred for possible audit under 2 U.S.C. § 438(b). The Commission declined to institute audits. The only apparent difference between the instant matter and 83L-34 is that here three contributions were reattributed to the contributors' spouses. In one such instance a copy of the spouse's written authorization was included in the Referral. The excess amount involved in the other two instances totals $1,042.50. This Office recommends that no action be taken as to these reattributions in view of the relatively small amount involved.

The Office of General Counsel continues to believe that NCPAC's "batch" updating of contributions at the end of each month rather than "on-line" updating of its receipts on a daily basis is not sufficient for it to meet the requirements of 11 C.F.R. § 103.3(b). That section requires that contributions which appear to be illegal must within 10 days be returned or deposited and reported. When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time, and the treasurer shall note the refund by amending the current report or noting the change on the committee's next required report.

As indicated herein, NCPAC took action on the excessive contributions it received, but its operating system simply does not allow it to take that action within the time frame required by the Act. Therefore, the General Counsel recommends that the Commission find there is reason to believe that NCPAC and Leif E., Noren, as treasurer, violated 2 U.S.C. § 441a(f).

RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that NCPAC and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441a(f).
3. Approve and send the attached proposed letter and Legal and Factual Analysis.

Charles N. Steele
General Counsel

June 21, 1985

BY: Kenneth A. Gross
Associate General Counsel

Attachments

RAD Referral
Proposed Letter and Factual and Legal Analysis

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 10 May 1985

ANALYST: Pamela C. Brown

I. COMMITTEE: National Conservative Political Action Committee (C00024687)
Leif Noren, Treasurer
1001 Prince Street
Alexandria, VA 22314

II. RELEVANT STATUTE: 2 U.S.C. §441a(f)

III. BACKGROUND:

Receipt of Excessive Contributions from Individuals

The National Conservative Political Action Committee ("NCPAC") disclosed approximately $52,860.50 in apparent excessive contributions from thirty (30) individuals during calendar year 1984 (Attachments 2 through 31). In most cases, NCPAC either refunded the excessive amounts, or transferred the latter to its State Election Fund ("NCPAC SEF").

Requests for Additional Information and Informational Notices were sent to NCPAC on the following dates concerning the receipt of apparent excessive contributions:

Report	Date of Notice
1984 March Monthly	June 20, 1984 (Attachment 32)
1984 April Monthly	June 20, 1984 (Attachment 33)
1984 May Monthly	July 13, 1984 (Attachment 34)
1984 June Monthly	August 22, 1984 (Attachment 35)
1984 July Monthly	September 5, 1984 (Attachment 36)
1984 August Monthly	October 11, 1984 (Attachment 37)
1984 September Monthly	October 11, 1984 (Attachment 38)
1984 October Monthly	November 21, 1984 (Attachment 39)
1984 12 Day Pre-General	January 4, 1985 (Attachment 40)
1984 30 Day Post-General	January 30, 1985 (Attachment 41)
1984 Year End	February 27, 1985 (Attachment 42)

On January 9, 1985, NCPAC's treasurer, Leif Noren, contacted the analyst in the Reports Analysis Division regarding the notices sent for the excessive contributions (Attachment 43). Mr. Noren stated he did not know why he continued to receive the notices month after month. He explained that NCPAC's contributions are processed and deposited by a vendor which maintains the committee's data base. NCPAC becomes aware of the excessive contributions just prior to filing its monthly report, and takes steps to remedy the matter by the end of the next month. The analyst stated that the notices were sent to all committees receiving excessive contributions and were to serve as notification that the Commission may take further legal action.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None

FEDERAL ELECTION COMMISSION

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

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