FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2153

DATE FILMED 10/29/87 CAMERA NO. 3

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PUBLIC RECORD INDEX - MUR 2153

1. Memo, 10 Dec 85, Robert J. Costa (Audit Division) to Charles N. Steele (General Counsel), Subj: Proposed Interim Audit Report on the .ebraska Democratic State Central Committee (NDSCC), w/atch (Audit Package).

2. Certification of Commission action, 10 Jan 86.

3. Memo, 7 Mar 86, Office of Cmsn Secretary (OCS) to R.J. Costa, Subj: Objections to Final Audit Report on the NDSCC.

4. Certification of Commission action, 19, Mar 86.

5. Memo, 20 Mar 86, R.J. Costa to C.N. Steele, Subj: Referral of the NDSCC, w/atch (Referral Package).

6. First General Counsel's Report, 31 Oct 86.

7. Memo, 5 Nov 86, OCS to OGC, Subj: Objections to First General's Report.

8. Certifications of Commission action, 19 Nov 86.

9. Ltr, dtd 24 Nov 86, Joan D. Aikens to Marcia Malone (Treas, NDSCC).

10. Ltr, dtd 12 Dec 86, Brian Coyne (Exec. Dir., NDSCC) to FEC, w/atch (ltr, 11 Nov 86).

11. Ltr, dtd 16 Dec 86, Charles M. Pallesen, Jr. (Counsel for NDSCC) to FEC, w/atch (Response), (Statement of Designation of Counsel).

12. General Counsel's Report, 2 Feb 87.

13. Memo, 6 Feb 87, OCS to OGC, Subj: Objections to General Counsel's Report, signed 5 Feb 87.

14. Certification of Commission action, 20 Feb 87.

15. Ltr, dtd 10 FEb 87, B. Coyne to FEC, w/atch (copy of cancelled check).

16. Ltr, dtd 5 Mar 87, Lawrence M. Noble (Dep. General Counsel) to B. Coyne.

17. Ltr, dtd 27 Mar 87, C.M. Pallesen to FEC

18. Copy of Civil Penalty Payment, 29 Apr 87.

19. General Counsel's Report, 5 May 87.

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20. Certification of Commission action, 8 May 87.

21. Clsg. ltr, dtd 11 May 87, L.M. Noble to C.M. Pallesen, w/atch (Executed Conciliation Agreement).

-END-

NOTE: In preparing its file for the public record, O.G.C. routinely removes those documents in which it perceives little or no public interest, and those documents, or portions thereof, which are exempt from disclosure under the Freedom of Information Act.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 10, 1985

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Proposed Interim Audit Report on the Nebraska Democratic State Central Committee

The Office of General Counsel has reviewed the Interim Audit Report on the Nebraska Democratic State Central Commitee (hereinafter "the Committee"). After consulting with the Audit Staff, this Office has the following comments.

A. Reporting of Joint Fundraising Proceeds

The Audit Report correctly states that 11 C.F.R. § 102.8(b)(1) and (2) require every person who receives a contribution of $50 or less for a political committee which is not an authorized committee to forward such contribution to the treasurer of the political committee. The Report accurately notes that under these sections, if the contribution exceeds $50, such person shall forward: the contribution, the name and address of the contributor; and the date of receipt of the contribution; and if the contribution exceeds $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 C.F.R. § 100.12, and the date of receipt of the contribution.

8 7 0 4 0 5 6 1 2 9 0

The Audit Report is correct in stating that 11 C.F.R. § 104.3(a) requires that each report filed under 11 C.F.R. § 104.1 must disclose the total amount of receipts for the reporting period and the calendar year, and shall disclose the information set forth at 11 C.F.R. § 104.3(a)(1) through (4).

The Audit Report correctly states that 11 C.F.R. § 104.3(a)(i) requires that each report disclose the identification of each contributor whose contribution or contributions aggregate in excess of $200 per calendar year, together with the date of receipt and the amount of any such contributions, as well as the aggregate year to date total for such contributor.

The Audit Report is correct when it notes that Advisory Opinions 1977-20, 1979-12, and 1979-75 deal specifically with joint fundraising by federal and non-federal committees. The Report correctly states that in the Advisory Opinions, the Commission announced that a special transmittal account must be used for receipt and disbursement of the fundraising proceeds. In addition, the report correctly states that Advisory Opinion 1979-12 warned that the participating federal committee must pay its proportional share of the fundraising expenses in order to avoid the occurrence of a contribution in-kind by the non-federal committee.

The Audit Report states that the Committee received two transfers totalling $12,000 from the Governor Kerry Committee, and that the Committee participated in a joint fundraiser with the Governor Kerry Committee after verbally agreeing that 25% of the proceeds would go to the Committee, while the Governor Kerry Committee would receive 75%. The Report notes that the Committee did not provide any further information or documentation with respect to 1) gross proceeds, which data is necessary to insure permissibility of contributions and compliance with the recordkeeping and reporting requirements of the Act/Regulations; 2) allocation or payment of expenses, including start-up costs; or 3) the terms of the fundraising agreement. Accordingly, the report states, the Audit Staff could not determine the permissibility of the funds received ($12,000), the extent of any reporting violations, and the need of the Governor Kerry Committee to register.

Assuming that the report accurately states the facts, then it follows that the Committee has failed to report as required under 11 C.F.R. § 102.8(b) and 104.3(a). Additionally, it is possible that the Committee has failed to comply with Advisory Opinions 1977-20, 1979-12, and 1979-75.

Accordingly, we agree with the Audit Staff's recommendations with respect to reporting of joint fundraising proceeds.

B. **Excessive Contributions**

The Audit Report correctly states that 2 U.S.C. 441a(a)(1)(c) dictates that no person shall make contributions to any other political committee in any calendar year, which in the aggregate, exceed $5,000.

In addition, the Audit Report correctly states that 2 U.S.C. § 431(8)(A)(i) defines the term "contribution" as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal Office.

The Audit Report details the contribution histories of three individuals, each of whom appear to have exceeded the $5000 limitation of § 441a(a)(1)(c). According to the report, the Committee has refunded the excessive contributions in two of the three cases. In the third case, the report states, the Committee has yet to refund the remaining portion of the excessive contribution, such unrefunded portion totalling $128.

Assuming the Audit Report accurately states the facts, then it appears that § 441a(a)(1)(c) was violated. Accordingly, we agree with the Audit Staff's recommendation that the Committee 1) provide evidence that the individuals did not exceed the contribution limitation, 2) refund the remaining excessive contribution of $128, and 3) provide a copy of both sides of the cancelled check.

C. <u>Disclosure of Earmarked Contributions</u>

The Audit Report correctly states that 11 C.F.R. § 110.6(b) defines the term "earmarked" as a designation, instruction or encumbrance which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or candidate's authorized committee.

The Audit Report correctly states that 11 C.F.R. § 110.6(c) requires the intermediary or conduit of the earmarked contribution to report the original source and intended recipient of the contribution to the Commission.

Further, the Audit Report correctly states that 11 C.F.R. § 110.6(c)(4)(ii) requires that the reports shall contain the amount, date, and the intended recipient as designated by the contributor.

The Audit Report notes that the Committee received 68 contributions earmarked to candidates from unregistered local organizations, totalling $13,470.41. With respect to 66 of these contributions, totalling $12,470.41, the report states that the Committee failed to disclose the intended recipients of the contributions on its receipt Schedule A's.

Assuming that the Audit Report's statement of these facts is accurate, then the Committee violated § 110.6(c). Therefore, we agree with the Audit Staff's recommendation that the Committee amend its reports to disclose the intended recipients of the earmarked contributions.

D. <u>Disclosure of Transfers</u>

The Audit Report correctly states that 2 U.S.C. § 434(b)(3)(D) requires that each report under this section shall disclose the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period.

The Audit Report states that the Committee received 77 transfers totalling $16,537.67. According to the Audit Staff, five of the transfers were received from affiliated committees, totalling $8,366, and were not itemized. Additionally, the report notes that the dollar percentage of the errors is 50.86%.

Assuming that the Audit Report accurately states the relevant facts, the Committee violated § 434(b). Consequently, we agree with the Audit Staff's recommendation that the Committee file amended reports to disclose such transfers.

Attachment
Proposed Interim Audit Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A85-23

INTERIM REPORT OF THE AUDIT DIVISION
ON
NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Nebraska Democratic State Central Committee ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. [redacted]

The Committee registered with the Clerk of the House of Representatives on April 17, 1972 as the State Committee of the Democratic Party of Nebraska and is a multicandidate committee as defined in Section 441a(a)(4) of Title 2, United States Code. The Committee maintains its headquarters in Lincoln, Nebraska. The audit covered the period January 1, 1983 through December 31, 1984. The Committee reported an opening cash balance on January 1, 1983 of $745.55; total receipts of $440,928.33; total disbursements of $440,551.95; and a closing cash balance on December 31, 1984 of $1,133.23. 1/

This audit report is based on documents and work papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to the Commissioners and appropriate staff for review.

1/ The reported totals do not calculate correctly due to an adjusting entry made by the Committee to the reported closing balance.

B. Key Personnel

The Treasurer of the Committee during the period covered by the audit was Christopher Beutler. 2/

C. Scope

The Audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations

A. Reporting of Joint Fundraising Proceeds 3/

Sections 102.8(b)(1) and (2) of Title 11, Code of Federal Regulations state, in part, that every person who receives a contribution of $50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the political committee. If in excess of $50 such person shall forward: the contribution; the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution.

Section 104.3(a) of Title 11, Code of Federal Regulations, states, in part, that each report filed under 11 CFR 104.1 shall disclose the total amount of receipts for the reporting period and the calendar year and shall disclose the information set forth at 11 CFR 104.3(a)(1) through (4).

Section 104.3(a)(4)(i) of Title 11, Code of Federal Regulations states, in part, each report shall disclose the identification of each contributor and the aggregate year-to-date total for such contributor whose contribution or contributions aggregate in excess of $200 per calendar year, together with the date of receipt and the amount of any such contributions.

2/ According to Committee officials, Marsha Malone became Treasurer as of August/September 1984; however, the Committee has not amended its Statement of Organization to reflect the change.

3/ Citations used in this Finding refer to sections of Title 11, Code of Federal Regulations, in effect during the period of the activity (January-June, 1983).

Advisory Opinions 1977-20, 1979-12, and 1979-75 deal specifically with joint fundraising by federal and non-federal committees. In the three Advisory Opinions, the Commission stated that a special transmittal account must be used for receipt and disbursement of the fundraising proceeds. Further, Advisory Opinion 1979-12 warned that the participating federal committee must pay its proportional share of the fundraising expenses in order to avoid the occurrence of a contribution in-kind by the non-federal committee.

The Committee received two transfers totaling $12,000 ($5,000 on 2/10/83 + $7,000 on 6/30/83) from the Governor Kerrey (Gubernatorial) Committee. According to a Committee official, the Committee participated in a joint fundraiser with the Governor Kerrey Committee and it was verbally agreed prior to the fundraiser, that the proceeds would be split 25% for the Committee and 75% for the Governor Kerrey Committee. The Committee could not provide any further information regarding this matter.

It is the opinion of the Audit staff that since the funds were disbursed from the Governor Kerrey Committee's account, the Governor Kerrey Committee acted as the fundraising agent. It should be noted that the Governor Kerrey Committee is not a registered political committee.

The Committee could not provide the requested information/documentation necessary to determine the following:

- information with regard to gross proceeds to insure permissibility of contributions 4/ and compliance with the recordkeeping and reporting requirements of the Act/Regulations; and

- allocation/payment of expenses, including start-up costs.

Since the Committee could not provide the above information/documentation, the Audit staff could not determine if the funds received ($12,000) were permissible, the extent of any reporting violations, and status of the Governor Kerrey Committee.5/

4/ On July 13, 1983, an official of the Governor Kerrey Committee notified the Committee in writing that the proceeds represented individual contributions, i.e., not corporate, labor or PAC donations.

5/ Receiving (depositing) and transferring the proceeds of the fundraising event and paying the Committee's share of the any start-up costs may have resulted in the Governor Kerrey Committee exceeding the threshold for registration as a political committee.

Recommendation

The Audit staff recommends that, within 30 days of receipt of this report, the Committee obtain and submit documentation which supports the following:

- the terms of the fundraising agreement (written or verbal).
- the gross proceeds of the fundraising event (i.e., a listing of all contributors and related information required by 11 CFR § 102.8(b)(1));
- a schedule of the total expenses for the fundraising event (including identification of those expenses considered to be start-up costs and copies of canceled checks representing the total costs).

Further recommendations may be made as a result of our review of the requested material.

B. Excessive Contributions

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

Section 431(8)(A)(i) of Title 2, United States Code, states, in part, that the term contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

The Audit staff identified two individuals who co-signed a loan for $15,000 on December 10, 1984. The value of each individual's endorsement for the Committee's loan equaled $7,500. Thus, a contribution in the amount of $7,500 was made by each individual via the endorsement of a Committee loan. Further, each endorser made direct contributions to the Committee of $503 and $175. After allowance for the $5,000 contribution limit for each individual, the excessive portions total $3,003 and $2,675 respectively, through April 8, 1985 (see Exhibit A).

On April 9, 1985, the Committee made a loan repayment of $5,750, which resulted in each endorsement being reduced by $2,875. However, one endorser's aggregate contributions still exceeded the limitation by $128 ($3,003 - 2,875), while the other endorser is now within the limitation (see Exhibit A).

In addition, the Audit staff identified an individual who endorsed a bank loan for $3,333.33, on November 17, 1983.6/ The amount of the loan endorsement, direct contributions and a personal loan resulted in this individual exceeding the limitation by $883.33. Subsequent loans and another loan endorsement increased the excessive portion to $3,883.33. Further, the Committee has made payments on the outstanding loans which resulted in the individual's contributions now being within the limitation (see Exhibit B).

Finally, the Audit staff identified an individual who made a personal loan to the Committee of $7,000 on September 30, 1983, which resulted in the limitation being exceeded by $2,000. On November 21, 1983, the Committee repaid the entire outstanding balance of $7,000.

The Committee official chose not to respond at this time. The Committee was presented with a schedule identifying the contributors whose contributions exceeded the limitation.

Recommendation

The Audit staff recommends that, within 30 days of receipt of this report, the Committee provide evidence to show that the individuals have not exceeded the contribution limitation or refund the remaining excessive contribution of $128 and provide a copy of the cancelled refund check (front and back).

C. Disclosure of Earmarked Contributions

Section 110.6(b) of Title 11, Code of Federal Regulations, states, in part, that earmarked means a designation, instruction or encumbrance which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or candidate's authorized committee.

Section 110.6(c) of Title 11, Code of Federal Regulations, states, in part, that the intermediary or conduit of the earmarked contribution shall report the original source and intended recipient of the contribution to the Commission.

6/ This individual is also one of the endorsers of the $15,000 loan (in 1984) noted above.

Further, Section 110.6(c)(4)(ii) of Title 11, Code of Federal Regulations, states, in part, that the reports shall contain the amount, date, and the intended recipient as designated by the contributor.

The Committee received 68 contributions earmarked to candidates from unregistered local organizations, totaling $13,470.41.7/ The Audit staff noted that for 66 earmarked contributions, totaling $12,470.41, the Committee failed to disclose the intended recipients of the contributions on its receipt Schedule A's. It should be noted that the Committee properly disclosed the disbursement of these funds to the intended recipients.

The Committee official chose not to respond at this time. The Audit staff presented the Committee with schedules identifying the 66 earmarked contributions.

Recommendation

The Audit staff recommends that, within 30 days of receipt of this report, the Committee amend its reports to disclose the intended recipients of the earmarked contributions.

D. Disclosure of Transfers

Section 434(b)(3)(D) of Title 2, United States Code, states, in part, that each report under this section shall disclose the identification of each affiliated committee which makes a transfer to the reporting committee during the reporting period.

The Committee received 77 transfers totaling $16,537.67. The Audit staff identified 5 transfers received from affiliated committees, totaling $8,366, which were not itemized by the Committee. The dollar percentage of the errors is 50.86%.

The Committee official chose not to respond at this time. The Committee was presented with a schedule identifying the transfers noted above.

Recommendation

The Audit staff recommends that, within 30 days receipt of this report, the Committee file amended reports to properly disclose the transfers.

7/ The Committee chose to deposit the earmarked contributions and issue its own checks to the intended recipients.

Exhibit A

Dianna Schimek

Loan Endorsement(12/84)	$7,500.00
Direct Contributions (2/84-10/84)	503.00
Total	$8,003.00
Less:	
Individual Limitation	5,000.00
Excessive Portion	$3,003.00
Less:	
Loan Repayment (total $5,750 - 4/85)	2,875.00
Outstanding Excessive Portion	$ 128.00

David Newell

Loan Endorsement (12/84)	$7,500.00
Direct Contributions (3/84-11/84)	175.00
Total	$7,675.00
Less:	
Individual Limitation	5,000.00
Excessive Portion	$2,675.00
Less:	
Loan Repayment (total $5,750 - 4/85)	2,875.00
Outstanding Excessive Portion	$ -0-

Exhibit B

1983 Contribution History of Dianna Schimek

Type of Activity	Date	Amount	Aggregate Amount of Contributions	Amount in Excess of Limitation
Contribution	4/7/83	$ 200	$ 200	$ -
Contribution	6/23/83	100	300	-
Contribution	10/20/83	250	550	-
Personal Loan	11/3/83	2,000	2,550	-
Loan Endorsement	11/17/83	3,333.33	5,883.33	883.33
Loan Repayment	11/21/83	(2,000)	3,883.33	-
Personal Loan	12/5/83	1,000	4,883.33	-
Personal Loan	12/16/83	1,000	5,883.33	883.33
Loan Repayment	12/20/83	(2,000)	3,883.33	-
Loan Endorsement	12/20/83	5,000	8,883.33	3,883.33
Loan Repayment	3/12/84	(333.33)	8,550	3,550
Loan Repayment	3/19/84	(5,000)	3,550	-

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Interim Audit Report - Nebraska Democratic State Central Committee	)	A85-23

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of January 8, 1986, do hereby certify that the Commission decided by a vote of 6-0 to approve the Interim Audit Report - Nebraska Demoratic State Central Committee, as submitted under staff memorandum dated December 12, 1985.

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

Attest:

1-10-86 — Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

file

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: ROBERT COSTA

FROM: MARJORIE W. EMMONS/ CHERYL A. FLEMING

DATE: MARCH 7, 1986

SUBJECT: OBJECTION - FINAL AUDIT REPORT ON THE NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE DATED MARCH 5, 1986

The above-named document was circulated to the Commission Thursday, March 6, 1986 at 11:00 A.M.

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

Commissioner Aikens	
Commissioner Elliott	X
Commissioner Harris	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, March 18,1986.

Please advise the Office of Commission Secretary in writing no later than 10:00 A.M. on Friday, March 14, 1986 who will represent your Division before the Commission on this matter. (Pursuant to Directive #17)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Audit Report - Nebraska) A85-23
Democratic State Central)
Committee

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of March 18, 1986, do hereby certify that the Commission decided by a vote of 6-0 to approve the Final Audit Report - Nebraska Democratic State Central Committee as submitted under staff memorandum dated March 5, 1986.

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

Attest:

3-19-86
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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AR-86-13
NRN

MUR 2153

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A85-23

March 20, 1986

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: NEBRASKA DEMOCRATIC STATE
CENTRAL COMMITTEE

On March 18, 1986, the Commission approved the Final Audit Report of the Audit Division on the above named Committee. Attached at Exhibit A is a matter noted in the Final Audit Report which the Commission also voted to refer to your office for review and consideration.

Should you have any questions regarding this matter, please contact Tom Nurthen or Rick Halter at 376-5320.

Attachment as stated

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Reporting of Joint Fundraising Proceeds 1/

Sections 102.8(b)(1) and (2) of Title 11, Code of Federal Regulations state, in part, that every person who receives a contribution of $50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the political committee. If in excess of $50 such person shall forward: the contribution; the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution.

Section 104.3(a) of Title 11, Code of Federal Regulations, states, in part, that each report filed under 11 CFR 104.1 shall disclose the total amount of receipts for the reporting period and the calendar year and shall disclose the information set forth at 11 CFR 104.3(a)(1) through (4).

Section 104.3(a)(4)(i) of Title 11, Code of Federal Regulations states, in part, each report shall disclose the identification of each contributor and the aggregate year-to-date total for such contributor whose contribution or contributions aggregate in excess of $200 per calendar year, together with the date of receipt and the amount of any such contributions.

Advisory Opinions 1977-20, 1979-12, and 1979-75 deal specifically with joint fundraising by federal and non-federal committees. In the three Advisory Opinions, the Commission stated that a special transmittal account must be used for receipt and disbursement of the fundraising proceeds. Further, Advisory Opinion 1979-12 warned that the participating federal committee must pay its proportional share of the fundraising expenses in order to avoid the occurrence of a contribution in-kind by the non-federal committee.

1/ Citations used in this Finding refer to sections of Title 11, Code of Federal Regulations, in effect during the period of the activity (January-June, 1983).

The Committee received two transfers totaling $12,000 ($5,000 on 2/10/83 + $7,000 on 6/30/83) from the Governor Kerrey (Gubernatorial) Committee. According to a Committee official, the Committee participated in a joint fundraiser with the Governor Kerrey Committee and it was verbally agreed prior to the fundraiser, that the proceeds would be split 25% for the Committee and 75% for the Governor Kerrey Committee. The Committee could not provide any further information regarding this matter.

It is the opinion of the Audit staff that, since the funds were disbursed from the Governor Kerrey Committee's account, the Governor Kerrey Committee acted as the fundraising agent. It should be noted that the Governor Kerrey Committee is not a registered political committee.

The Committee could not provide the requested information/documentation necessary to determine the following:

- information with regard to gross proceeds to insure permissibility of contributions 2/ and compliance with the recordkeeping and reporting requirements of the Act/Regulations; and

- allocation/payment of expenses, including start-up costs.

Since the Committee could not provide the above information/documentation, the Audit staff could not determine if the funds received ($12,000) were permissible, the extent of any reporting violations, and status of the Governor Kerrey Committee.3/

2/ On July 13, 1983, an official of the Governor Kerrey Committee notified the Committee in writing that the proceeds represented individual contributions, i.e., not corporate, labor or PAC donations.

3/ Receiving (depositing) and transferring the proceeds of the fundraising event and paying the Committee's share of any start-up costs may have resulted in the Governor Kerrey Committee exceeding the threshold for registration as a political committee.

The Audit staff recommended that, within 30 days of receipt of this report, the Committee obtain and submit documentation which supports the following:

- the terms of the fundraising agreement (written or verbal).
- the gross proceeds of the fundraising event (i.e., a listing of all contributors and related information required by 11 CFR § 102.8(b)(1));
- a schedule of the total expenses for the fundraising event (including identification of those expenses considered to be start-up costs and copies of canceled checks representing the total costs).

On February 27, 1986, the Committee responded, in part, that

> "Because the Democratic Party traditionally has used this event as a way of raising funds for its state activities, a verbal agreement was made between the governor-elect and the chair of the Nebraska Democratic Party that 25% of the net proceeds would go to the Nebraska Democratic Party to help support its non-federal activities. In fact, the Nebraska Democratic Party has given substantial sums of money to the Kerrey Committee during the campaign the preceeding year.
>
> The Nebraska Democratic Party had no costs associated with the event, including start-up costs. It was solely a Kerrey Committee event designed to help overcome its campaign debt.
>
> The Nebraska Democratic Party clearly made an error associated with this event by depositing the money given to the Party from the Kerrey Committee in its federal account. It quite obviously should have been deposited in the Nebraska Democratic Party's non-federal account, as the event and subsequent monies had nothing to do with federal activities.

> As a result, the Nebraska Democratic Party is willing to go back and make the appropriate bookkeeping transfer to put the money in its non-federal account."4/

The Committee further stated that, since the inaugural ball was solely a Kerrey Committee event, with all costs associated with the event taken care of by the Kerrey Committee, the information requested of the Nebraska Democratic Party in the audit recommendations is unavailable to them.

It should be noted that the Committee has not submitted information with respect to the gross proceeds of the fundraising event or a schedule of the total expenses for the fundraising event (including start-up costs) as recommended.

Recommendation

The Audit staff recommends this matter be referred to the Office of General Counsel for further action.

4/ The full text of the Committee's response can be found at Attachment I.

ATTACHMENT I
P. 1 of 2

REPORTING OF JOINT FUNDRAISING PROCEEDS

Terms of Fundraising Agreement. Traditionally, the inauguration ball of a governor-elect has been done by the Nebraska Democratic Party. After the 1982 election, however, the Kerrey Campaign Committee had a sizable campaign debt. The governor-elect, therefore, decided to have the Kerrey Committee hold the inauguration ball.

Because the Democratic Party traditionally has used this event as a way of raising funds for its state activities, a verbal agreement was made between the governor-elect and the chair of the Nebraska Democratic Party that 25% of the net proceeds would go to the Nebraska Democratic Party to help support its non-federal activities. In fact, the Nebraska Democratic Party had given substantial sums of money to the Kerrey Committee during the campaign the preceeding year.

The Nebraska Democratic Party had no costs associated with the event, including start-up costs. It was solely a Kerrey Committee event designed to help overcome its campaign debt.

Proceeds of the Fundraising Event. The Nebraska Democratic Party clearly made an error associated with this event by depositing the money given to the Party from the Kerrey Committee in its federal account. It quite obviously should have been deposited in the Nebraska Democratic Party's non-federal account, as the event and subsequent monies had nothing to do with federal activities.

As a result, the Nebraska Democratic Party is willing to go back and make the appropriate bookkeeping transfer to put the money in its non-federal account.

ATTACHMENT I
P. 2 OF 2

The Nebraska Democratic Party accepts full responsibility for this error. The Nebraska Democratic Party should have known full well that the Kerrey Committee was not a registered political committee with the Federal Election Commission, and should have taken careful note of this and the fact that this event was a non-federal activity and deposited all monies in its non-federal account.

Because the Nebraska Democratic Party did not in fact deposit the money in its non-federal account, the Nebraska Democratic Party as another option is willing to simply pay back the Kerrey Committee $12,000 for its mistake to correct this matter.

Because the Kerrey Committee had no knowledge this mistake had happened, nor did it have any ability to prevent this mistake from happening, (since the Nebraska Democratic Party deposits its own checks), it seems duly unfair in our opinion to now bring the Kerrey Committee under federal election requirements when it was our mistake and when it was entirely a non-federal activity. The Kerrey Committee, I am sure, does not want to be treated as a registered political committee with the Federal Election Commission as it is a state committee, and had it known that the Nebraska Democratic Party, through negligence, would cause this unnecessary problem for the Kerrey Committee, I am sure it would not have given any money to the Nebraska Democratic Party.

Since the inaugural ball was solely a Kerrey Committee event, with all costs associated with the event taken care of by the Kerrey Committee and only a net percentage check given to the Nebraska Democratic Party to simply help support the Nebraska Democratic Party in its non-federal activities, the rest of the information requested of the Nebraska Democratic Party in the audit recommendations is unavailable to us. The Nebraska Democratic Party has no books on this matter, except a net percentage check from the Kerrey Committee.

The Nebraska Democratic Party would like advice from the Federal Election Commission on how it should proceed with this matter, and whether either of the options listed above are sufficient to address the matter in question.

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

86 OCT 31 P3:16

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION: ____________________

MUR # 2153
STAFF MEMBER:
John Drury

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

RESPONDENT'S NAME: Nebraska Democratic State Central Committee; Marcia Malone, Treasurer

RELEVANT STATUTES: 11 C.F.R. § 102.5(a)(1)(i); 2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: C Index

FEDERAL AGENCIES CHECKED: None

GENERATION OF THE MATTER

This matter was referred to this Office by the Audit Division. In November, 1982, Bob Kerrey was elected Governor of Nebraska. After the election, the Governor Kerrey Committee (hereinafter "the Kerrey Committee") and the Nebraska Democratic State Central Committee (hereinafter "NDSCC") decided to conduct a fundraising inaugural ball.

As NDSCC states, "because the Democratic Party traditionally has used this event as a way of raising funds for its state activities, a verbal agreement was made between the governor-elect and the chair of the Nebraska Democratic Party that 25% of the net proceeds would go to the Nebraska Democratic Party to help support its non-federal activities." On February 10, 1983, the Kerrey Committee transferred five thousand dollars ($5,000) in proceeds from the ball to NDSCC. On June 30, 1983, the Kerrey Committee sent an additional seven thousand dollars ($7,000) to

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NDSCC. NDSCC deposited these amounts into its federal account.

In explanation, the respondents state:

> The Nebraska Democratic Party clearly made an error associated with this event by depositing the money given to the Party from the Kerrey Committee in its federal account. It quite obviously should have been deposited in the Nebraska Democratic Party's non-federal account, as the event and subsequent monies had nothing to do with federal activities.

(See Attachment I, page 7). For this reason, it appears that this transaction was the result of a mistake rather than any intent to evade the law. Accordingly, the recommendations in this report are not coextensive with those which appeared in the Final Audit Report on NDSCC.

SUMMARY OF ALLEGATIONS

NDSCC deposited funds collected for non-federal purposes into its federal account, and hence it appears that NDSCC violated § 102.5(a)(1)(i). Because Nebraska law permits corporations and labor organizations to contribute to state candidates, it appears that NDSCC has also violated 2 U.S.C. § 441b.

FACTUAL AND LEGAL ANALYSIS

Section 102.5(a)(1)(i) provides that only funds subject to the prohibitions and limitations of the Act shall be deposited into a separate federal account created under that section. NDSCC and its treasurer, Marcia Malone, deposited money collected by the Kerrey Committee for non-federal purposes into its federal account. Thus, it appears that NDSCC and Marcia Malone violated § 102.5(a)(1)(i).

Because Nebraska law permits labor unions and corporations to contribute to a non-federal account, it appears likely that NDSCC violated 2 U.S.C. § 441b by accepting the funds in question and depositing them into its federal account.

Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that the respondents violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a)(1)(i).

RECOMMENDATION

1. Find reason to believe that the Nebraska Democratic State Central Committee, and Marcia Malone, treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a)(1)(i).

2. Approve the attached Factual and Legal Analysis.

Charles N. Steele
General Counsel

10/31/86
Date

BY: Lawrence M. Noble
Lawrence M. Noble
Deputy General Counsel

Attachments
I., II. Referral Materials
III. Summary of Reason to Believe Finding
IV. Proposed Letter to Malone

Attachment(s) I+II, IV

to First General Counsel's Report

have been removed from this

position in Public Record File.

See Index Item(s) 1+5, 9

87040461317

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/CHERYL A. FLEMING CAF

DATE: NOVEMBER 5, 1986

SUBJECT: OBJECTION TO MUR 2153 - FIRST GENERAL COUNSEL'S SIGNED OCTOBER 31, 1986

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The above-captioned document was circulated to the Commission on Monday, November 3, 1986 at 11:00 A.M.

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

Commissioner Aikens	X
Commissioner Elliott	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the Executive Session agenda for Tuesday, November 18, 1986.

7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Nebraska Democratic State Central Committee	)	MUR 2153
Marcia Malone, Treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 18, 1986, do hereby certify that the Commsision decided by a vote of 5-0 to take the following actions in MUR 2153:

1. Find reason to believe that the Nebraska Democratic State Central Committee and Marcia Malone, treasurer, violated 11 C.F.R. § 102.5(a)(2).
2. Direct the Office of General Counsel to send an appropriate legal and factual analysis.
3. Direct the Office of General Counsel to send an appropriate letter.

Commissioners Aikens, Elliott, Josefiak, McDonald, and Thomas voted affirmatively for the decision; Commissioner McGarry was not present during the consideration of this matter.

Attest:

11-19-86
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

8704056319

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 24, 1986

Marcia Malone, Treasurer
Nebraska Democratic State
Central Committee
715 South 14th Street
Lincoln, Nebraska 68508

RE: MUR 2153
Nebraska Democratic State
Central Committee and
Marcia Malone, Treasurer

Dear Ms. Malone:

On November 18 , 1986, the Federal Election Commission determined that there is reason to believe that the Nebraska Democratic State Central Committee, and you, as treasurer, violated 11 C.F.R. § 102.5(a)(2), a section of the Regulations promulgated under 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 your committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit such materials within fifteen days of your receipt of this letter.

If pre-probable cause conciliation is requested, the Commission may decide not to propose a conciliation agreement until it has completed its review and analysis of the submitted materials. 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. You should be advised, however, that the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. <u>See</u> 11 C.F.R. § 111.18(d).

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact John Drury, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

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

8704061321

TOM MONAGHAN
Chairman

BRIAN COYNE
Executive Director

Phone 402/475-4584

RECEIVED AT THE FEC
GCC# 2346
86 DEC 23 P 1:39

December 12, 1986

Mr. John Drury
Office of General Counsel
Federal Election Commission
999 E St., N.W.
Washington, D.C. 20463

Dear Mr. Drury,

For your information, please find a copy of a letter which amended our reports to replace Marcia Malone as Treasurer. The letter was sent to the Federal Election Commission on November 11, 1986.

I hope by now you have received notification of this change from the department that handles these matters.

Sincerely,

Brian Coyne
Executive Director

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Nebraska Democrats
NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE / 715 SO. 14TH ST., LINCOLN, NE 68508

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GCC# 2346

Phone 402/475-4584

FILE COPY

November 11, 1986

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Dear Sirs or Madams:

This letter is to serve as an amendment to the Nebraska Democratic State Central Committee F.E.C. report to replace Marcia Malone with Marvin E. Jewell as treasurer.

Marvin E. Jewell's address is:

Marvin E. Jewell
400 Executive Building
521 South 14th Street
Lincoln, NE 68508

The Nebrask Democratic State Central Committee's F.E.C. number is C00003988.

Sincerely,

Marvin E. Jewell

Marvin E. Jewell,
Treasurer

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Nebraska Democrats

NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE / 715 SO. 14TH ST., LINCOLN, NE. 68508

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#2 341

LAW OFFICES OF

CLINE, WILLIAMS, WRIGHT, JOHNSON & OLDFATHER

1900 FIRSTIER BANK BUILDING

LINCOLN, NEBRASKA 68508

(402) 474-6900

TELECOPIER (402) 474-5393

December 16, 1986

86 DEC 23 P3:20

Joan D. Aikens
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2153
Nebraska Democratic State Central Committee and Marcia Malone, Treasurer

Dear Chairman Aikens:

This is in response to your letter of November 24, 1986 with respect to the above matter. Enclosed please find "Statement of Designation of Counsel" with respect to our firm. Please accept this letter as the request of the Nebraska Democratic State Central Committee and its Treasurer for pre-probable cause conciliation. In support of our request, enclosed please find our letter of February 24, 1986 wherein we requested guidance as to whether or not we should make adjustments in our entries to change the questioned deposit in the federal account to the non-federal account. We received no reply to that requested guidance, otherwise the matter could have been taken care of many months ago. Throughout the investigation, we have readily admitted that erroneous deposits of $5,000.00 and $7,000.00 were made on February 10, 1983 and June 30, 1983, respectively, in the federal rather than the nonfederal account. Absent the reply by the Federal Election Commission to our February 24, 1986 letter and in view of your November 24, 1986 letter with the allegations, we have taken it upon ourselves to actually institute the proceedings to make the transfer from the federal to the non-federal account and that will be accomplished this week.

We might also add that our Treasurer is Marvin Jewell, not Marcia Malone, and that change had been previously communicated to the Federal Election Commission, and again recently a copy of the letter was sent to your attorney, John Drury.

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In view of the mitigating circumstances above mentioned, we would request that no financial or other penalty of that nature be assessed and that a reprimand for our previous erroneous actions and an approval of our correcting entries this week would be appropriate.

Thank you for your courtesies.

Yours very truly,

Charles M. Pallesen Jr.

CMP/nms/L3
Enclosures
cc. w/enc.: Don Nelson
Tom Monaghan
Brian Coyne
Marvin Jewell
John Drury, Esq.
Kim Robak, Esq.

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2153

NAME OF COUNSEL: Charles Pallesen

ADDRESS: Cline, Williams, Wright & Johnson
1900 First National Bank Bldg.
Lincoln, Ne 68503

TELEPHONE: 402/474-6900

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12-9-86
Date

Signature
Tom Monaghan, State Chair

12-22-86
DATE

Signature Marvin E. Jewell, Treasurer

RESPONDENT'S NAME: Tom Monaghan

ADDRESS: Nebraska Democrtic Party
715 So. 14th St.
Lincoln, Ne 68508

HOME PHONE: 402-551-3191

BUSINESS PHONE: 402-397-5757
402-4754584 (Democratic Party Office)

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Phone 402/475-4584

February 24, 1986

Mr. Robert J. Costa
Assistant Staff Director
for the Audit Division
Federal Election Commission
999 "E" Street, NW
Washington, DC 20463

Dear Mr. Costa:

Enclosed please find documents and amended statements from the Nebraska Democratic Party to comply with the recommendations of the Audit Report presented to us last month.

In addition, please find attached to this letter additional information from the Nebraska Democratic Party to comply with the recommendations of the Audit Report presented to us last month.

If you have any questions regarding these matters, please contact me at (402) 475-4584.

Sincerely,

Brian Coyne
Brian Coyne
Executive Director

BC/vn

Enclosures

87040561327

Nebraska Democrats

NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE / 715 SO. 14TH ST., LINCOLN, NE 68508

11

EXCESSIVE CONTRIBUTIONS

Exhibit A

$15,000 Loan (December 10, 1984). On Exhibit A, DiAnna Schimek and Dave Newell are listed as endorsers of a $15,000 loan with Gateway Bank and Trust. Enclosed please find a letter from Gateway Bank and Trust which states that these two individuals were not endorsers of the loan, but simply individual officers of the Nebraska Democratic Party who signed on behalf of the Nebraska Democratic Party.

If this document from Gateway Bank is sufficient enough to show that these individuals were not endorsers of the loan in question, then both DiAnna Schimek and Dave Newell never exceeded the contribution limitation as outlined on Exhibit A.

From our conversations with Mr. Thomas Nurthen and Mr. Rick Halter during the past month, it is our understanding that this letter will be sufficient to address the Audit Staff recommendation with regard to Exhibit A.

Exhibit B

$5,000 Loan (December 20, 1983). On Exhibit B, DiAnna Schimek is listed as endorser of a $5,000 loan with Gateway Bank and Trust. Enclosed please find a letter from Gateway Bank and Trust which states that this individual was not endorser of the loan, but simply an individual officer of the Nebraska Democratic Party who signed on behalf of the Nebraska Democratic Party.

If this document from Gateway Bank is sufficient to show that this individual was not endorser of the loan in question (12/20/83), then DiAnna Schimek was not in excess of the contribution limitation on 12/20/83 or any date thereafter listed on Exhibit B.

From our conversations with Mr. Thomas Nurthen and Mr. Rick Halter during the past month, it is our understanding that this letter will be sufficient to address the Audit Staff recommendation with regard to this particular section of Exhibit B.

With regard to the loan endorsement on 11/17/83 for the amount of $3,333.33, DiAnna Schimek was a guarantor and did exceed the contribution limitation by $883.33 according to reports filed. However, four days later, on 11/21/83, a loan repayment was made. Although this did not change the aggregrate figures of contribution limitation in actuality (which the Party realizes), it did then put her under the contribution limitation. The Nebraska Democratic Party would like to note that under this particular instance, November 17, 1983 was a Thursday and November 21, 1983 was a Monday. The Nebraska Democratic Party corrected this problem of excess of limitation quickly over the weekend as it juggled its financial problems from personal to bank loans.

Excessive Contributions (cont.)
Similarly, with regard to the personal loan on 12/16/83 for the amount of $1,000, DiAnna Schimek did exceed the contribution limitation by $833.33 according to reports filed. However, four days later, on 12/20/83, a loan repayment was made which, again, although not changing the aggregrate figures of contribution limitation in actuality (which the Party realizes), did then put her under the contribution limitation. The Nebraska Democratic Party would like to note that under this particular instance, December 16, 1983 was a Friday and December 20, 1983 was a Tuesday. The Nebraska Democratic Party again corrected the problem of excess of limitation quickly over the weekend as it juggled its financial problems from personal to bank loans.

It also should be noted that the personal loans made by DiAnna Schimek were for immediate financial problems, i.e. staff and other immediate financial obligations. From reviewing the financial reports of the Nebraska Democratic Party during the time periods in question on Exhibit B, it is my opinion that these loans made to cover overhead expenses of the Nebraska Democratic Party were not properly distributed to reflect the actual costs of the Nebraska Democratic Party's federal and non-federal work. Much of the money needed to cover these immediate expenses should have been attributed to the Nebraska Democratic Party's non-federal account--in my opinion, more than the $833.33 that DiAnna Schimek is listed as having exceeded contribution limitation on both occasions. Accordingly then, many of the personal loans DiAnna Schimek made to the Nebraska Democratic Party should have been deposited in the Nebraska Democratic Party's non-federal account, which I believe to be proper and not in violation of any law. I realize this did not occur, but feel it important to note for the record as to how the accounting should have been done.

REPORTING OF JOINT FUNDRAISING PROCEEDS

Terms of Fundraising Agreement. Traditionally, the inauguration ball of a governor-elect has been done by the Nebraska Democratic Party. After the 1982 election, however, the Kerrey Campaign Committee had a sizable campaign debt. The governor-elect, therefore, decided to have the Kerrey Committee hold the inauguration ball.

Because the Democratic Party traditionally has used this event as a way of raising funds for its state activities, a verbal agreement was made between the governor-elect and the chair of the Nebraska Democratic Party that 25% of the net proceeds would go to the Nebraska Democratic Party to help support its non-federal activities. In fact, the Nebraska Democratic Party had given substantial sums of money to the Kerrey Committee during the campaign the preceeding year.

The Nebraska Democratic Party had no costs associated with the event, including start-up costs. It was solely a Kerrey Committee event designed to help overcome its campaign debt.

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Reporting of Joint Fund-raising Proceeds (cont.)

Proceeds of the Fundraising Event. The Nebraska Democratic Party clearly made an error associated with this event by depositing the money given to the Party from the Kerrey Committee in its federal account. It quite obviously should have been deposited in the Nebraska Democratic Party's non-federal account, as the event and subsequent monies had nothing to do with federal activities.

As a result, the Nebraska Democratic Party is willing to go back and make the appropriate bookkeeping transfer to put the money in its non-federal account.

The Nebraska Democratic Party accepts full responsibility for this error. The Nebraska Democratic Party should have known full well that the Kerrey Committee was not a registered political committee with the Federal Election Commission, and should have taken careful note of this and the fact that this event was a non-federal activity and deposited all monies in its non-federal account.

Because the Nebraska Democratic Party did not in fact deposit the money in its non-federal account, the Nebraska Democratic Party as another option is willing to simply pay back the Kerrey Committee $12,000 for its mistake to correct this matter.

Because the Kerrey Committee had no knowledge this mistake had happened, nor did it have any ability to prevent this mistake from happening, (since the Nebraska Democratic Party deposits its own checks), it seems duly unfair in our opinion to now bring the Kerrey Committee under federal election requirements when it was our mistake and when it was entirely a non-federal activity. The Kerrey Committee, I am sure, does not want to be treated as a registered political committee with the Federal Election Commission as it is a state committee, and had it known that the Nebraska Democratic Party, through negligence, would cause this unnecessary problem for the Kerrey Committee, I am sure it would not have given any money to the Nebraska Democratic Party.

Since the inaugural ball was solely a Kerrey Committee event, with all costs associated with the event taken care of by the Kerrey Committee and only a net percentage check given to the Nebraska Democratic Party to simply help support the Nebraska Democratic Party in its non-federal activities, the rest of the information requested of the Nebraska Democratic Party in the audit recommendations is unavailable to us. The Nebraska Democratic Party has no books on this matter, except a net percentage check from the Kerrey Committee.

The Nebraska Democratic Party would like advice from the Federal Election Commission on how it should proceed with this matter, and whether either of the options listed above are sufficient to address the matter in question.

DISCLOSURE OF EARMARKED CONTRIBUTIONS

Enclosed please find receipt schedule A's to amend previously itemized line entries for reporting periods in 1984, which disclose intended recipients of 66 earmarked contributions.

As noted in the Audit Report, the Nebraska Democratic Party properly disclosed the disbursement of these funds to the intended recipients.

DISCLOSURE OF TRANSFERS

Enclosed please find amended reports to properly disclose five transfers from affiliated committees, totaling $8,366.00 from reporting periods 7-1-83 through 12-31-83 and 7-1-84 through 9-30-84.

Respectfully submitted by,

Brian Coyne

Brian Coyne
Executive Director
Nebraska Democratic Party

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Nebraska Democratic State Central Committee	)	MUR 2153
	)	
Marvin Jewell, treasurer	)	

87 FEB 5 A10:07

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 19, 1986, the Commission found reason to believe that the Nebraska Democratic State Central Committee ("NDSCC") and Marcia Malone, treasurer, violated 11 C.F.R. § 102.5(a)(2). On December 19, 1986, this Office received a letter from the respondents requesting pre-probable cause conciliation and noting that the current treasurer is Marvin Jewell. 1/

II. LEGAL ANALYSIS

Pursuant to 11 C.F.R. § 102.5(a)(2), only contributions which a) are designated for the federal account, b) result from a solicitation stating that the contributions will be used in connection with a federal election, and c) are given by contributors informed that all contributions are subject to the prohibitions and limitations of the Act, may be deposited into a federal account. The respondents deposited into NDSCC's federal

1/ At Attachment III-1, the respondents state by letter of December 16, 1986 that the change in treasurers "had been previously communicated to the Federal Election Commission," implying that this Office has long been aware that Malone was not the treasurer, and that recommending a finding of reason to believe against her was therefore unwarranted. Actually, they did not inform this Office of the new treasurer until November 19, 1986, the day after the Commission determined that there was reason to believe the respondents violated the Act. While NDSCC's statement that it recently sent further correspondence to this Office is correct, said letter was received on December 23, 1986.

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account $12,000 in funds which failed to satisfy these conditions, since the funds were collected at a fundraising event held to support state election activities.

IV. RECOMMENDATIONS

1. Enter into conciliation with the Nebraska Democratic State Central Committee and Marvin Jewell, treasurer, prior to a finding of probable cause to believe.
2. Approve the attached, proposed conciliation agreement.
3. Approve and send the attached letter.

Charles N. Steele
General Counsel

2/5/87
Date

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

Attachments
1. Proposed conciliation agreement
2. Letter to Respondents
3. Request for pre-probable cause conciliation

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Attachment(s) 1, 2, 3

to GENERAL Counsel's Report

have been removed from this

position in Public Record File.

See Index Item(s) 23, 16, 11

87040461335

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ JOSHUA MCFADDEN JM

DATE: FEBRUARY 6, 1987

SUBJECT: OBJECTION TO MUR 2153 - GENERAL COUNSEL'S REPORT
SIGNED FEBRUARY 5, 1987

The above-captioned document was circulated to the Commission on Thursday, February 5, 1987 at 4:00.

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

Commissioner Aikens	
Commissioner Elliott	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	

This matter will be placed on the Executive Session agenda for Wednesday, February 18, 1987.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Nebraska Democratic State	)	MUR 2153
Central Committee	)	
Marvin Jewell, treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 18, 1987, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2153:

1. Enter into conciliation with the Nebraska Democratic State Central Committee and Marvin Jewell, treasurer, prior to a finding of probable cause to believe.

3. Approve and send the letter attached to the General Counsel's report dated February 5, 1987.

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

Attest:

2-20-87
Date

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

87040561337

TOM MONAGHAN
Chairman

BRIAN COYNE
Executive Director

OCC 2686

Phone 402/475-4584

2/10/87

Dear Mr. Drury,

Attached is a copy of the cancelled check which transferred the $12,000.00 out of the federal account to the non-federal account. Also attached is a copy of the deposit record.

If there's anything else I can do, please don't hesitate to contact me.

BRIAN COYNE

Re: MUR 2153

87 FEB 11 P 1:48

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Nebraska Democrats

NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE / 715 SO. 14TH ST., LINCOLN, NE 68508

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PAY TO THE ORDER OF
UNION BANK & TRUST CO.
LINCOLN, NEBRASKA
FOR DEPOSIT ONLY

1111 67810

Nebraska Democratic Party
Non-Federal Account
104910795

PAY ANY BANK P.E.G.
UNION BANK &
TRUST COMPANY
LINCOLN, NEBRASKA
1049-10795

JAN -6 87

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GCC 2686

15

DEPOSIT TICKET

76-1079/1049

NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE
STATE (NON FEDERAL) ACCOUNT

UNION BANK AND TRUST COMPANY
Box 6155 Lincoln, Nebraska 68506

DATE Jan 6, 1987

	DOLLARS	CENTS
CURRENCY		
COIN		
CHECKS LIST EACH SEPARATELY		
1 NE Dem State		
2 Central Fed Acc't	12,000	
TOTAL FROM OTHER SIDE OR ATTACHED LIST		
TOTAL	12,000	00
TOTAL DEPOSIT	12,000	00

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement.

⑆104910795⑆ 627 725 5⑈ 05 ⑈0001200000⑈

DELUXE CHECK PRINTERS

NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE
715 S. 14TH ST. PH. 402-475-4584
LINCOLN, NE 68508

1287

Jan 6 19 86

76-1079/1049

PAY TO THE ORDER OF Nebraska Democratic State Central Committee Non-Fed Acc't $ 12,000.00

Twelve thousand and no/100 DOLLARS

UNION BANK AND TRUST COMPANY
Box 6155 Lincoln, Nebraska 68506

FOR Reverse transaction to remove Kerrey Comm contributions from Federal Acc't

⑈001287⑈ ⑆104910795⑆ 627 721 4⑈ ⑈0001200000⑈

GCC 2686

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OFFICE OF THE GENERAL COUNSEL
87 FEB 11 P2:38

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glmn

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 5, 1987

Bryan Coyne, Executive Director
Nebraska Democratic
State Central Committee
715 South 14th Street
Lincoln, Nebraska 68508

RE: MUR 2153
Nebraska Democratic
State Central Committee
and Marvin Jewell,
treasurer

Dear Mr. Coyne:

On November 18, 1986, the Commission found reason to believe the Nebraska Democratic State Central Committee and Marcia Malone, treasurer violated 11 C.F.R. § 102.5(a)(2). At your request, the Commission determined on February 18, 1987, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved 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. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible. If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact John Drury, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure

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GCC#3014
87 MAR 31 A10:41

LAW OFFICES OF
CLINE, WILLIAMS, WRIGHT, JOHNSON & OLDFATHER
1900 FIRSTIER BANK BUILDING
LINCOLN, NEBRASKA 68508
(402) 474-6900
TELECOPIER (402) 474-5393

WARREN C. JOHNSON
CHARLES E. WRIGHT
ALLEN L. GRAVES
CHARLES M. PALLESEN, JR.
FREDRIC H. KAUFFMAN
DONALD F. BURT
ALAN E. PETERSON
STEPHEN E. GEHRING
KEVIN COLLERAN
L. BRUCE WRIGHT
JAMES M. BAUSCH
LARRY A. HOLLE
DAVID R. BUNTAIN
STEPHEN H. NELSEN
MICHAEL C. MUELLER
LAUREN W. WISMER
DANIEL R. STOGSDILL
SCOTT D. KELLY
TERRY R. WITTLER
KENT SEACREST
KATHLEEN A. JAUDZEMIS
THOMAS E. GEU
PAMELA HASTINGS CARRIER
DAVID A. BARRON
MARK A. CHRISTENSEN
RICHARD P. GARDEN, JR.
LISA DRULINER DeBUSE
DAVID R. WILSON
SHAWN D. RENNER
JOHN C. MILES
PETER W. KATT
THOMAS C. HUSTON

EARL CLINE (1888-1978)
FRANK D. WILLIAMS (1880-1980)

FLAVEL A. WRIGHT, COUNSEL
CHARLES E. OLDFATHER, COUNSEL

March 27, 1987

87 MAR 31 A11:47
RECEIVED
OFFICE OF GENERAL COUNSEL

Lawrence Noble, Esq.
Deputy General Counsel
Federal Election Commission
Washington, D.C. 20463

Attn: John Drury, Esq.

Dear Mr. Noble:

This is in response to your letter of March 5, 1987 addressed to Mr. Coyne, which letter was received by me as counsel for the Nebraska Democratic State Central Committee on March 12, 1987.

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Lawrence Noble, Esq.
March 27, 1987
Page -2-

If further information is desired, please advise.

Yours very truly,

Charles M. Pallesen Jr.

CMP/nms/L11
cc: Brian Coyne

87040361343

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NEBRASKA DEMOCRATIC STATE CENTRAL COMMITTEE 1386

715 S. 14TH ST. PH. 402-475-4584
LINCOLN, NE 68508

April 24 19 87 76-1079/1040

PAY TO THE ORDER OF Federal Election Commission $ 1,000.00

One thousand and 00/100 DOLLARS

UNION BANK AND TRUST COMPANY
Box 6155 Lincoln, Nebraska 68506

FOR MUR 2153

Brian Cyre

⑈001386⑈ ⑆104910795⑆ 627 721 4⑈

GCC# 3246

MEMORANDUM

TO: Debra A. Reed TO: Cecilia Lieber ~~Judy Smith~~

FROM: Cecilia Lieber ~~Judy Smith~~ FROM: Debra A. Reed

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
87 APR 29

CHECK NO. 1386 (a copy of which is attached) RELATING TO MUR 2153 AND NAME Nebraska Dem. St. Central Cmte. WAS RECEIVED ON 4-27-87. PLEASE INDICATE THE ACCOUNT INTO WHICH IT SHOULD BE DEPOSITED:

/✓/ BUDGET CLEARING ACCOUNT (#95F3875.16)

/ / CIVIL PENALTIES ACCOUNT (#95-1099.160)

/ / OTHER ______

SIGNATURE Retha L. Dixon DATE 4-29-87

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Nebraska Democratic State)
Central Committee) MUR 2153
Marvin Jewell, as treasurer)

GENERAL COUNSEL'S REPORT

I. <u>DISCUSSION</u>

Attached is a conciliation agreement which has been signed by Charles Pallesen, Jr., Esquire, counsel for the respondents.

Thus, a penalty of $1,000 seems appropriate in this case, and a check in this amount has been received. Therefore, this Office recommends that the Commission accept the agreement and close the file.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Nebraska Democratic State Central Committee and Marvin Jewell, as treasurer.

2. Close the file.

3. Approve the attached letter.

5/5/87
Date

Lawrence M. Noble
Acting General Counsel

Attachments:
1. Conciliation Agreement
2. Photocopy of civil penalty check
3. Letter to Respondent

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Attachment(s) 1, 2, 3

to GENERAL Counsel's Report

have been removed from this

position in Public Record File.

See Index Item(s) 21, 18, 21

8704056 1347

87040561348

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Nebraska Democratic State Central Committee	)	MUR 2153
Marvin Jewell, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 8, 1987, the Commission decided by a vote of 6-0 to take the following actions in MUR 2153:

1. Accept the conciliation agreement with Nebraska Democratic State Central Committee and Marvin Jewell, as treasurer, as recommended in the General Counsel's Report signed May 5, 1987.
2. Close the file.
3. Approve the letter, as recommended in the General Counsel's Report signed May 5, 1987.

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

Attest:

5-8-87 — Date

Mary W. Dove for
Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary:	Wed., 5-6-87, 10:22
Circulated on 48 hour tally basis:	Wed., 5-6-87, 4:00
Deadline for vote:	Fri., 5-8-87, 4:00

/jm/

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 11, 1987

Charles M. Pallesen, Jr. Esquire
1900 Firstier Bank Building
Lincoln, Nebraska 68508

RE: MUR 2153
Nebraska Democratic State Central Committee
Marvin Jewell, as treasurer

Dear Mr. Pallesen:

On May 8, 1987, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 11 CFR § 102.5(a)(2), a provision of the Federal Regulations promulgated under the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter. This matter will become a part of the public record within 30 days. If 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.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact John Drury, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble

Lawrence M. Noble
Acting General Counsel

Enclosure
Conciliation Agreement

8 7 0 4 0 5 6 1 3 4 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Nebraska Democratic State Central Committee and Marvin Jewell, treasurer	)	MUR 2153
	)	
	)	

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. Reason to believe was found that the Nebraska Democratic State Central Committee ("NDSCC") and Marvin Jewell, as treasurer ("Respondents") violated 11 C.F.R. § 102.5(a)(2) by depositing funds collected in connection with State activities into the NDSCC federal account.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

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

II. 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. Respondent, the Nebraska Democratic State Central Committee is a political committee, and Respondent Marvin

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Jewell is the treasurer of that political committee.

2. Respondents were prohibited from depositing contributions not meeting the conditions of 11 C.F.R. § 102.5(a)(2)(i)-(iii) into NDSCC's federal account.

3. Respondents deposited into NDSCC's federal account funds which may not meet the conditions of 11 C.F.R. § 102.5(a)(2)(i)-(iii).

V. Respondents' deposit of these funds may have been in violation of 11 C.F.R. § 102.5(a)(2).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of One Thousand and no/100 Dollars ($1,000.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

IX. 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.

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:

Lawrence M. Noble
Acting General Counsel

Date 5/11/87

FOR THE RESPONDENTS:

BY:
Attorney for Nebraska
Democratic State Central
Committee

April 10, 1987

CMP/A3

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2153

DATE FILMED 10/29/87 CAMERA NO. 3

CAMERAMAN GPC

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