



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20543

THIS IS THE END OF MUR # 218

Date Filmed 3/13/79 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

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

February 7, 1979

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Waller:

This is to advise you that the Commission has found no reasonable cause to believe that your clients Mr. Barnard and Mr. Presley violated 2 U.S.C. § 441b in connection with the \$10,000 loan from the Georgia Railroad Bank and Trust Company and the Barnard for Congress Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "William O. Oldaker".

William O. Oldaker
General Counsel

70010103001



FEDERAL ELECTION COMMISSION

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

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

2/8/79

Re: MUR 218(76)

Dear Mr. Waller:

This is to advise you that the Commission has found no reasonable cause to believe that your clients Mr. Barnard and Mr. Presley violated 2 U.S.C. § 441b in connection with the \$10,000 loan from the Georgia Railroad Bank and Trust Company and the Barnard for Congress Committee.

Sincerely,

15/

William C. Oldaker
General Counsel

JBM 2/7/79

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218 (76)
Georgia Railroad Bank &)
Trust Company)
The Barnard for Congress)
Committee)

CERTIFICATION

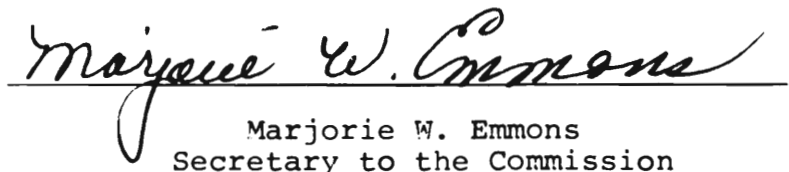
I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on February 6, 1979, the Commission determined by a vote of 5-0 to adopt the following recommendations, as set forth in the General Counsel's Report dated January 21, 1979, regarding the above-captioned matter:

1. Find no reasonable cause to believe that the D. Douglas Barnard and Charles B. Presley violated 2 U.S.C. §41b in connection with the transaction.
2. Send the letter attached to the above-named report.

Voting for this determination were Commissioners Springer, Aikens, McGarry, Thomson, and Harris.

Attest:

2/6/79
Date


Marjorie W. Emmons
Secretary to the Commission

Report signed by General Counsel: 2-1-79
Received in Office of Commission Secretary: 2-1-79, 3:53
Circulated on 48 hour vote basis: 2-2-79, 3:00

February 1, 1979

MEMORANDUM TO: Marge Emons
FROM: Elissa T. Garr
SUBJECT: MUR 218

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

Thank you.

79040105095

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

January 21, 1979

79 FEB 1 P 3: 53

In the Matter of)
)
Georgia Railroad Bank &)
Trust Company)
and)
The Barnard for Congress)
Committee)

MUR 218 (76)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 11, 1976, the Commission received a complaint from Mr. John D. Hemenway which questioned, inter alia, a \$10,000 loan. On October 7, 1976, after a preliminary inquiry, the Commission found that there was reason to believe that the Georgia Railroad Bank & Trust Company (hereinafter "the Bank") had violated 2 U.S.C. § 441b in making the \$10,000 loan out of the ordinary course of business; that Charles B. Presley, the Chairman of the Bank, had violated that provision by consenting to the loan; and that D. Douglas Barnard, Jr. had violated that provision by receiving the loan.

The Commission subsequently found reasonable cause to believe that the Bank had violated section 441b, and reason to believe and reasonable cause to believe that the Barnard for Congress Committee (hereinafter "the Committee") violated that provision by accepting the loan. Conciliation agreements with the Bank and the Committee were approved by the Commission on December 6, 1978, at which time the

Commission also voted to close the file. No further findings, however, were made as to Mr. Presley and Mr. Barnard.

II. DISCUSSION

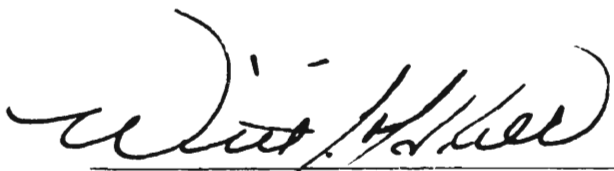
Mr. Barnard did not negotiate, accept or guarantee the loan, and so we believe that it would be appropriate for the Commission to find no reasonable cause to believe that he violated 2 U.S.C. § 441b.

Mr. Presley, as chairman of the Bank, negotiated and approved this loan for the Bank. However, inasmuch as the loan was fully repaid and the Commission has entered into a conciliation agreement with the Bank which will prevent the Bank from making similar loans in the future to committees supporting the Bank's officers, directors or other insiders, we believe that it is unnecessary to further pursue this matter and that the Commission should find no reasonable cause to believe that Mr. Presley violated 2 U.S.C. § 441b.

III. RECOMMENDATION

The Office of General Counsel recommends that the Commission find no reasonable cause to believe that D. Douglas Barnard and Charles B. Presley violated 2 U.S.C. § 441b in connection with this transaction and that the attached letter be sent.

2/1/79
Date


William C. Oldaker
General Counsel

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S. C.)
REGINALD MAXWELL, JR.
Wm. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
RICHARD E. MILEY (ALSO S. C.)
ROY D. TRITT
CHARLES C. STEBBINS, III (ALSO ALA.)
JAMES E. BLANCHARD

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION
JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1999)
78 DEC 18 AM 10:30
TELEPHONE
(404) 722-7541

December 14, 1978

808496

Jay Meyerson, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20433

Re: MUR 218 (76)

Dear Jay:

I acknowledge receipt of an executed copy of the Conciliation Agreement between Georgia Railroad Bank & Trust Company and the Federal Election Commission, with reference to the above matter. I appreciate your courtesy and cooperation in this unhappy controversy, and am pleased that at last it has been disposed of, hopefully to the satisfaction of all concerned.

For my information, I would like to know what evidence there will be, of record, that the investigations of Mr. Barnard and Mr. Presley have resulted in no action being taken against them. I realize that the Conciliation Agreement referred to herein as well as that reached between the Commission and the Barnard for Congress Committee will be filed and available for public inspection. However, is one to assume, when a Conciliation agreement involving one party in the investigation is filed, that that is the conclusion of all possible action in the case? Or could it be construed to mean that until a finding is made and reduced to writing, with respect to each person under investigation, the investigation of the others is continuing?

Some time back, before you entered the case, the Commission, after having found "reason to believe" that Mr. Barnard and Mr. Presley had committed a violation, thereafter failed to find "reasonable cause to believe" that they had violated any provision of the Act.

Jay Meyerson, Esq.
December 14, 1978
Page Two

At that time, I asked the attorney handling the matter (presumably Mr. Stein) whether the Commission would dismiss the complaint against Messrs. Barnard and Presley and I was advised that such action would not take place until the case was finally disposed of. Your comments in enlightening me on this would be greatly appreciated.

Again, many thanks for your help and cooperation.

Very sincerely yours,



Samuel C. Waller

SCW:jc

200105177

OFFICE OF

NIXON, YOW WALLER & CAPERS

500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

Jay Meyerson, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20433



FEDERAL ELECTION COMMISSION

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

January 5, 1979

John D. Hemenway
4816 Rodman Street, N.W.
Washington, D. C. 20016

Re: MUR 218 (76)

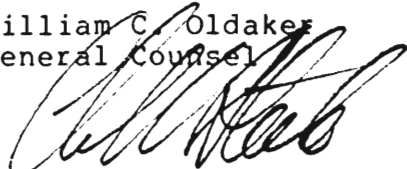
Dear Mr. Hemenway:

This is to advise you that the Commission has taken final action on the complaint you filed against Mr. D. Douglas Barnard in 1976. In your complaint you alleged several violations of the Act relating to the 1974 campaign of Mr. Barnard. The Commission found reasonable cause to believe that the \$10,000 loan made by the Georgia Railroad Bank & Trust Company to the Doug Barnard for Congress Committee was made outside the ordinary course of business and therefore violated 2 U.S.C. § 441b. The Commission entered into conciliation agreements with the Bank and with the Doug Barnard for Congress Committee and closed the file in this matter. Copies of the agreements are attached.

If you have any questions, please telephone Sharon Snyder, who is the acting public information officer for the Commission, or Jay B. Myerson, who is the attorney who was assigned to this matter.

Sincerely,

William C. Oldaker
General Counsel


Charles N. Steele
Associate General Counsel

Enclosures

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FEDERAL ELECTION COMMISSION

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

December 8, 1978

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30903

Re: MUR 218(76)

Dear Mr. Waller:

The Commission has approved the conciliation agreements in settlement of MUR 218(76) and has, accordingly, closed the file in this matter. Enclosed is a copy of the executed agreement.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. G. Oldaker".

William G. Oldaker
General Counsel

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FEDERAL ELECTION COMMISSION

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

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30903

Re: MUR 218(76)

Dear Mr. Waller:

The Commission has approved the conciliation agreements in settlement of MUR 218(76) and has, accordingly, closed the file in this matter. Enclosed is a copy of the executed agreement.

Sincerely,

William C. Oldaker
General Counsel

Jay B. Myerson
12/7/78

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter)
) MUR 218 (76)
Georgia Railroad Bank)
& Trust Company)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, Georgia Railroad Bank & Trust Company (hereinafter "Respondent"), may have violated 2 U.S.C. § 441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission"), and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. § 437g(a)(4).

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3. The pertinent facts and law in this matter are as follows:

(a) The Barnard for Congress Committee (hereinafter "Borrower") was the principal campaign committee authorized by D. Douglas Barnard, Jr., a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Borrower that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Borrower that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Respondent as an Executive Vice President.

(d) On May 14, 1976, the Borrower borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all property of the Borrower then left with

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the Respondent or which might thereafter have come into possession of the Respondent, including any and all balances, credits, deposits and accounts of the Borrower left with the Respondent. As of May 14, 1976, the property of the Borrower in the possession of the Respondent was \$7,396.78. This amount varied from time to time. The loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Respondent.

(f) The loan was negotiated for the Borrower by the Borrower's chairman, Mr. Hugh Connolly, who also signed the note for the Borrower.

(g) The Borrower's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan

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as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Respondent intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Respondent authorized the loan to the Borrower. In authorizing the loan he took into consideration the character and reputation of the chairman of the Borrower, of other members of the Borrower, of the candidate and that the candidate was worthy of the support of the members of the Borrower.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Borrower for personal loans with the Respondent. As of that date the Bank's prime rate was 7% and loans to the Bank's prime customers were then being made at rates of 7% and higher. However, in general, unsecured business loans were then being extended under the Respondent's guidelines at 8 3/4%.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This daily report was presented to the Finance Committee of the Bank's Board of Directors.

(k) The loan has been paid in full.

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WHEREFORE, the Respondent agrees that:

4. The Commission construes the phrase "ordinary course of business" as set forth in 2 U.S.C. § 431(e)(5)(G) to require more than that the loan be made in accordance with the applicable banking laws and regulations.

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent made a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, the negotiation and execution of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be made to committees supporting Respondent's officers, directors, or other insiders.

8. 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

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may institute a civil action for relief in the United States District Court for the Southern District of Georgia.

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

ATTEST:

[Handwritten Signature]

Georgia Railroad Bank & Trust Company

By *[Handwritten Signature]*

Its Chairman of The Board

ATTEST:

Federal Election Commission

By *[Handwritten Signature]*
William C. Oldaker
General Counsel

DATE 12/2/78

70010107111



FEDERAL ELECTION COMMISSION

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

December 8, 1978

Jay M. Sawilowsky, Esq.
902 Georgia Railroad Bank Building
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Sawilowsky:

The Commission has approved the conciliation agreements in settlement of MUR 218(76) and has, accordingly, closed the file in this matter. Enclosed is a copy of the executed agreement.

Sincerely,

A handwritten signature in cursive script, appearing to read "William C. Oldaker".

William C. Oldaker
General Counsel



FEDERAL ELECTION COMMISSION

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

Jay M. Sawilowsky, Esq.
902 Georgia Railroad Bank Building
Augusta, Georgia 30902

Re: MUR 218(76)

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The Commission has approved the conciliation agreements in settlement of MUR 218(76) and has, accordingly, closed the file in this matter. Enclosed is a copy of the executed agreement.

Sincerely,

William C. Oldaker
General Counsel

Jay B. Myerson 12/7/78

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218(76)
The Barnard for Congress)
Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, The Barnard for Congress Committee (hereinafter "Respondent"), may have violated 2 U.S.C. § 441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission"), and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. § 437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) The Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia, in the 1976 primary and general elections;

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Respondent that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Respondent that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Georgia Railroad Bank and Trust Company (hereinafter "Bank"), as an Executive Vice President.

(d) On May 14, 1976, the Respondent borrowed from the Bank the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all of Respondent's property then left with the Bank or which might thereafter have come into the possession of the Bank, including any and all balances, credits, deposits and accounts of the Respondent left with the Bank. As of May 14, 1976, the

property of the Respondent in the possession of the Bank was \$7,396.78, not including the loan proceeds. With the loan proceeds, it was \$17,396.78. This amount varied from time to time. The Bank's loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Bank.

(f) The loan was negotiated for the Respondent by D. Hugh Connolly, the Respondent's chairman; the chairman of the Respondent, Mr. D. Hugh Connolly, signed the note for the Respondent.

(g) The Respondent's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan

to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Bank intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Bank authorized the loan to the Respondent. In authorizing the loan he took into consideration the character and reputation of the chairman of the Respondent, of other members of the Respondent, of the candidate and that the candidate was worthy of the support of the members of the Respondent.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Respondent for personal loans with the Bank. Unsecured business loans, however, were then being extended under the Bank's guidelines at 8 3/4.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This daily report was presented to the Finance Committee of the Bank's Board of Directors. The loan was paid in full.

WHEREFORE, the respondent agrees that:

4. The Commission construes the phrase "ordinary course of business" as set forth in 2 U.S.C. § 431(e)(5)(G) to require more than that the loan be made in accordance with the applicable banking laws and regulations.

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Register of April 7, 1978, or as thereafter adopted. (The Commission's invitation for comment.)

8. 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 Southern District of Georgia.

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

21150101000

ATTEST:

Jay M. Stribovich

The Barnard for Congress
Committee

BY

A. Hugh Conway

ITS

Chairman

ATTEST:

Federal Election Commission

BY

William C. Oldaker

William C. Oldaker
General Counsel

DATE

12/7/78

70710103113

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Georgia Railroad Bank &)
Trust Company)
)
and)
)
The Barnard for Congress)
Committee)

MUR 218 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, certify that on December 6, 1978, the Commission, meeting in an executive session at which a quorum was present, determined by a vote of 4-2 to take the following actions in MUR 218 (76):

1. Rescind the August 9, 1978, findings of probable cause to believe the above-named respondents were in violation of 2 U.S.C. §441b
2. Accept the conciliation agreements attached to the General Counsel's Report on MUR 218 (76) dated November 22, 1978.
3. Close this file.
4. Send the letters attached to the General Counsel's Report dated November 22, 1978.

Commissioners Aikens, Harris, McGarry, and Tiernan voted affirmatively for the above actions. Commissioners Springer and Thomson dissented.

Attest:

12/5/78

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Georgia Railroad Bank &)	
Trust Company)	MUR 218 (76)
)	
and)	
)	
The Barnard for Congress)	
Committee)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 30, 1978, the Commission, meeting in an executive session at which a quorum was present, failed to pass the following motion in the above-captioned matter:

MOVED that the Commission adopt the recommendation of the Office of General Counsel to take the following actions in MUR 218 (76):

1. Accept the agreements attached to the General Counsel's Report on MUR 218 (76) dated November 22, 1978.
2. Close this file.
3. Send the letters attached to the General Counsel's Report dated November 22, 1978.

The vote was 3-2. Commissioners Aikens, McGarry, and Tiernan voted affirmatively. Commissioners Harris and Thomson dissented. Commissioner Springer was not present at the time of the vote.

Attest:

12/1/78

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

20010111

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Register of April 7, 1978, or as thereafter adopted. (The Commission's invitation for comment.)

8. 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 Southern District of Georgia.

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

BEFORE THE FEDERAL ELECTION COMMISSION

November 22, 1978

In the Matter of)
)
Georgia Railroad Bank &)
Trust Company) MUR 218 (76)
and)
The Barnard for Congress)
Committee)

GENERAL COUNSEL'S REPORT

I. PROCEDURAL BACKGROUND

John D. Hemenway initiated this matter by filing a complaint with the Commission on August 11, 1976. Mr. Hemenway questioned, inter alia, a \$10,000 loan from the Georgia Railroad Bank & Trust Company ("Bank") to the Barnard for Congress Committee ("Committee"). On October 7, 1976, after a preliminary inquiry, the Commission found that there was reason to believe that the Bank had violated 2 U.S.C. § 441b in making the \$10,000 loan out of the ordinary course of business; that Charles B. Presley, the Chairman of the Bank had violated that provision by consenting to the loan; and that D. Douglas Barnard, Jr., the candidate who was being supported by the Committee and who was also an executive vice president of the Bank, had violated that provision by receiving the loan.^{1/} On October 19, 1977, the Commission found that there was reasonable cause to believe that the Bank had violated section 441b and reason to believe that the Committee had violated that provision. On March 15, 1978, the Commission found reasonable

^{1/} The Commission also found no reason to believe that the Act had been violated as otherwise alleged in Mr. Hemenway's complaint. No further findings have been made as to Mr. Presley and Mr. Barnard.

cause to believe that the Committee violated the law by approving the loan. Conciliation efforts were unsuccessful, and so, in August 1978, the Commission found probable cause to believe that the Bank and the Committee had violated section 441b and authorized the General Counsel to file a lawsuit. Before filing the lawsuit, members of this Office met with counsel for the Bank, and engaged in a number of telephone conversations with counsel for both of the respondents. These final attempts at resolving this matter informally in an effort to avoid litigation through conference, conciliation, and persuasion, resulted in the attached agreements, which have been approved by the respondents.^{2/}

II. DISCUSSION

This matter involves a \$10,000 loan from a bank to the principal campaign committee of that bank's executive vice president. The Act exempts from the term "contribution" loans by "a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business..." The issue in this matter is whether

^{2/} It should be noted that in August 1978, Mr. Hemenway filed a lawsuit in United States District Court against the Commission and Mr. Barnard, seeking to have this matter transferred from the Commission to the Department of Justice and seeking damages from Mr. Barnard. Both defendants have filed motions to dismiss and the Court has scheduled oral argument on these motions for Wednesday, November 29, 1978.

this loan was in the ordinary course of business. The Commission has been of the view that it was not, and that therefore the loan was a contribution prohibited by the Act.

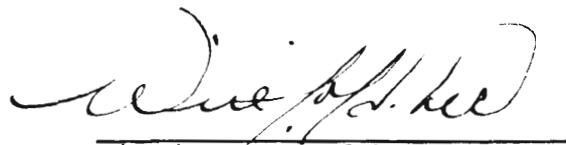
In the attached agreements the respondents agree that under the Commission's construction of the Act, the loan was made outside the ordinary course of business, as that term is set forth in the Act, and, as a result thereof, that the Bank made a contribution to the Committee in violation of section 441b(a) and that the Committee accepted a contribution in violation of that provision. Additionally, the Bank has agreed that "similar loans will not be made to committees supporting [the Bank's] officers, directors, or other insiders" and the Committee has agreed not to accept similar loans, except in compliance with Commission regulations and guidelines.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. accept the attached agreements
2. close this file
3. send attached letters

11/23/78
Date _____



William C. Oldaker
General Counsel

Attachments: two conciliation agreements
two letters

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 218(76)
The Barnard for Congress)	
Committee)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, The Barnard for Congress Committee (hereinafter "Respondent"), may have violated 2 U.S.C. § 441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission"), and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. § 437g(a)(4).
3. The pertinent facts and law in this matter are as follows:

(a) The Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia, in the 1976 primary and general elections;

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Respondent that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Respondent that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Georgia Railroad Bank and Trust Company (hereinafter "Bank"), as an Executive Vice President.

(d) On May 14, 1976, the Respondent borrowed from the Bank the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all of Respondent's property then left with the Bank or which might thereafter have come into the possession of the Bank, including any and all balances, credits, deposits and accounts of the Respondent left with the Bank. As of May 14, 1976, the

property of the Respondent in the possession of the Bank was \$7,396.78, not including the loan proceeds. With the loan proceeds, it was \$17,396.78. This amount varied from time to time. The Bank's loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Bank.

(f) The loan was negotiated for the Respondent by D. Hugh Connolly, the Respondent's chairman; the chairman of the Respondent, Mr. D. Hugh Connolly, signed the note for the Respondent.

(g) The Respondent's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan

to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Bank intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Bank authorized the loan to the Respondent. In authorizing the loan he took into consideration the character and reputation of the chairman of the Respondent, of other members of the Respondent, of the candidate and that the candidate was worthy of the support of the members of the Respondent.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Respondent for personal loans with the Bank. Unsecured business loans, however, were then being extended under the Bank's guidelines at 8 3/4.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This daily report was presented to the Finance Committee of the Bank's Board of Directors. The loan was paid in full.

WHEREFORE, the respondent agrees that:

4. The Commission construes the phrase "ordinary course of business" as set forth in 2 U.S.C. § 431(e)(5)(G) to require more than that the loan be made in accordance with the applicable banking laws and regulations.

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq., but was an unintentional violation. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Registry of April 7, 1978, or as thereafter adopted.

8. 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 Southern District of Georgia.

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

ATTEST:

Jay M. Saitowitz

The Barnard for Congress
Committee

BY

A. Hugh Conway

ITS

Chairman

ATTEST:

Federal Election Commission

BY

William C. Oldaker
General Counsel

DATE _____

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter)	
)	MUR 218(76)
Georgia Railroad Bank)	
& Trust Company)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, Georgia Railroad Bank & Trust Company (hereinafter "Respondent"), may have violated 2 U.S.C. § 441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission"), and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. § 437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) The Barnard for Congress Committee (hereinafter "Borrower") was the principal campaign committee authorized by D. Douglas Barnard, Jr., a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Borrower that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Borrower that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Respondent as an Executive Vice President.

(d) On May 14, 1976, the Borrower borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all property of the Borrower then left with

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the Respondent or which might thereafter have come into possession of the Respondent, including any and all balances, credits, deposits and accounts of the Borrower left with the Respondent. As of May 14, 1976, the property of the Borrower in the possession of the Respondent was \$7,396.78. This amount varied from time to time. The loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Respondent.

(f) The loan was negotiated for the Borrower by the Borrower's chairman, Mr. Hugh Connolly, who also signed the note for the Borrower.

(g) The Borrower's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan

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as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Respondent intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Respondent authorized the loan to the Borrower. In authorizing the loan he took into consideration the character and reputation of the chairman of the Borrower, of other members of the Borrower, of the candidate and that the candidate was worthy of the support of the members of the Borrower.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Borrower for personal loans with the Respondent. As of that date the Bank's prime rate was 7% and loans to the Bank's prime customers were then being made at rates of 7% and higher. However, in general, unsecured business loans were then being extended under the Respondent's guidelines at 8 3/4%.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This daily report was presented to the Finance Committee of the Bank's Board of Directors.

(k) The loan has been paid in full.

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may institute a civil action for relief in the United States District Court for the Southern District of Georgia.

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

ATTEST:

[Handwritten Signature]

Georgia Railroad Bank & Trust Company

By [Handwritten Signature]

Its Chairman of The Board

ATTEST:

Federal Election Commission

By William C. Oldaker
General Counsel

DATE _____

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Attachment III



FEDERAL ELECTION COMMISSION

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

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30903

Re: MUR 218(76)

Dear Mr. Waller:

The Commission has approved the conciliation agreements in settlement of MUR 218(76) and has, accordingly, closed the file in this matter. Enclosed is a copy of the executed agreement.

Sincerely,

William C. Oldaker
General Counsel

79040105130

Attachment TU



FEDERAL ELECTION COMMISSION

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

Jay M. Sawilowsky, Esq.
902 Georgia Railroad Bank Building
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Sawilowsky:

The Commission has approved the conciliation agreements in settlement of MUR 218(76) and has, accordingly, closed the file in this matter. Enclosed is a copy of the executed agreement.

Sincerely,

William C. Oldaker
General Counsel

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5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq., but was an unintentional violation. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Registry of April 7, 1978, or as thereafter adopted.

8. 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 Southern District of Georgia.

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

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq., but was an unintentional violation. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Registry of April 7, 1978, or as thereafter adopted.

8. 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 Southern District of Georgia.

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

TELEPHONE 722-8853

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

808086

November 21, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Myerson
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218(76)

Dear Mr. Myerson:

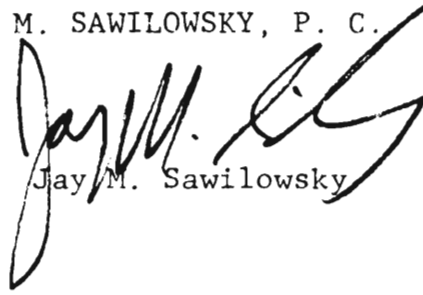
Per our telephone conference today, enclosed, in duplicate, is a revised page 5, containing certain changes in paragraphs 6 and 7 of the proposed conciliation agreement. Please insert this new page 5 in both your copies of the proposed conciliation agreement and discard the old page 5.

This should now conclude the matter. Please let me hear from you.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet
Mr. Don Grantham
Mrs. Nancy McJunkin
Mr. Samuel Waller

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Registry of April 7, 1978, or as thereafter adopted. (The Commission's invitation for comment.)

8. 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 Southern District of Georgia.

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

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Registry of April 7, 1978, or as thereafter adopted. (The Commission's invitation for comment.)

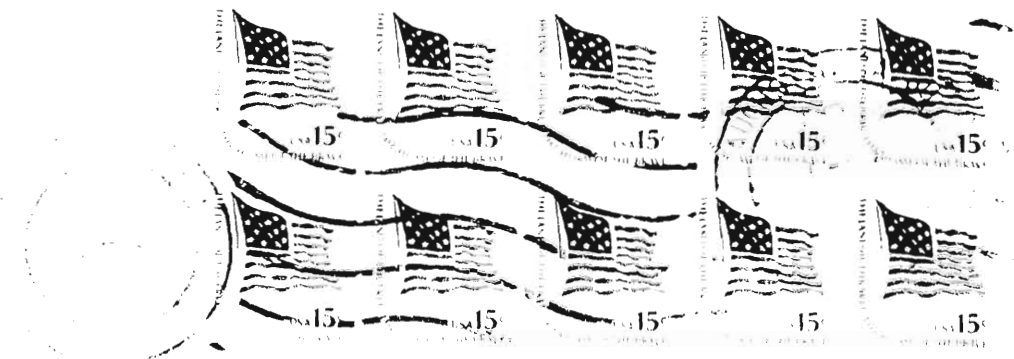
8. The Commission on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a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

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

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



CERTIFIED MAIL
RETURN RECEIPT REQUESTED



Mr. Jay Myerson
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

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GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S. C.)
REGNOLD MAXWELL, JR.
Wm. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
RICHARD E. MILEY (ALSO S. C.)
ROY D. TRILL
CHARLES C. STEBBINS, III (ALSO ALA.)
JAMES E. BLANCHARD

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION
JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1969)
NOV 13 PM 2:46
TELEPHONE
(404) 722-7541

807781

November 7, 1978

Jay Meyerson, Esq.
Office of General Council
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

Re: MUR 218 (76)

Dear Jay:

Pursuant to our agreement, I have modified the proposed Conciliation Agreement which you sent me, in the particulars which we discussed over the phone and have had the agreement re-typed. It has been executed in duplicate by the Bank and is enclosed herewith. If it meets with the approval of the Federal Election Commission, I request that you return to me one of the executed copies.

If there are any questions, please call me.

Thank you again for your help and cooperation.

Very sincerely yours,


Samuel C. Waller

SCW:jc
Enclosures

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LAW OFFICES OF
W. WALLER & CAPERS
RAILROAD BANK BUILDING
ATLANTA, GEORGIA 30902

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NOV 13 1978

Jay Meyerson, Esq.
Office of General Council
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

TELEPHONE 722-8853

RECEIVED
FEDERAL ELECTION
COMMISSION

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5325

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

NOV 5 PM 1:01

November 3, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Myerson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 218(76)

Dear Mr. Myerson:

Per our telephone conference today, enclosed, in duplicate, is your proposed Conciliation Agreement, which I have redrawn in part. Also enclosed is a photostat of another copy with the additional parts underlined.

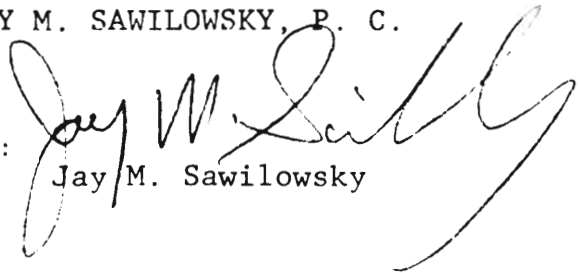
Please let me know of the Commission's action. Further, it would be greatly appreciated by the Committee if you would notify me of the Commission's action before releasing it to the news media.

Thank you for your help and cooperation in this matter.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mrs. Nancy McJunkin
Mr. Don Grantham
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
The Barnard for Congress) MUR 218(76)
Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, The Barnard for Congress Committee (hereinafter "Respondent"), may have violated 2 U.S.C. § 441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission"), and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. § 437g(a)(4).
3. The pertinent facts and law in this matter are as follows:

(a) The Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia, in the 1976 primary and general elections;

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Respondent that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Respondent that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Georgia Railroad Bank and Trust Company (hereinafter "Bank"), as an Executive Vice President.

(d) On May 14, 1976, the Respondent borrowed from the Bank the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all of Respondent's property then left with the Bank or which might thereafter have come into the possession of the Bank, including any and all balances, credits, deposits and accounts of the Respondent left with the Bank. As of May 14, 1976, the

property of the Respondent in the possession of the Bank was \$7,396.78, not including the loan proceeds. With the loan proceeds, it was \$17,396.78. This amount varied from time to time. The Bank's loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Bank.

(f) The loan was negotiated for the Respondent by D. Hugh Connolly, the Respondent's chairman; the chairman of the Respondent, Mr. D. Hugh Connolly, signed the note for the Respondent.

(g) The Respondent's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan

to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Bank intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Bank authorized the loan to the Respondent. In authorizing the loan he took into consideration the character and reputation of the chairman of the Respondent, of other members of the Respondent, of the candidate and that the candidate was worthy of the support of the members of the Respondent.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Respondent for personal loans with the Bank. Unsecured business loans, however, were then being extended under the Bank's guidelines at 8 3/4.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This daily report was presented to the Finance Committee of the Bank's Board of Directors. The loan was paid in full.

WHEREFORE, the respondent agrees that:

4. The Commission construes the phrase "ordinary course of business" as set forth in 2 U.S.C. § 431(e)(5)(G) to require more than that the loan be made in accordance with the applicable banking laws and regulations.

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

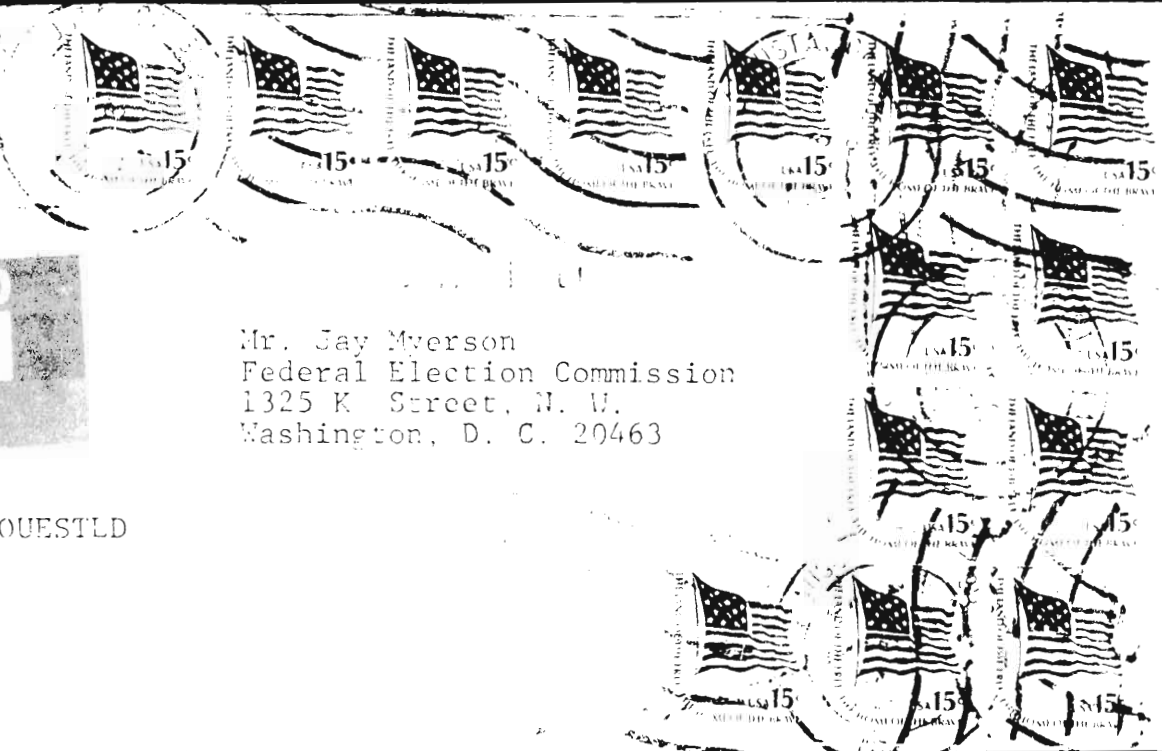
6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq., but was an unintentional violation. The Commission does not accuse Respondent of election fraud.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted, except in compliance with those guidelines set forth in the Commission's proposed regulations dated April 3, 1978, set forth in the Federal Registry of April 7, 1978, or as thereafter adopted.

8. 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 Southern District of Georgia.

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

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



CERTIFIED
No. [redacted]
MAIL

Mr. Jay Myerson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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FEDERAL ELECTION COMMISSION

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

October 26, 1978

Jay M. Sawilowsky, Esq.
902 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Sawilowsky:

On August 9, 1978, the Commission found that there is probable cause to believe that the Barnard for Congress Committee violated 2 U.S.C. § 441b and authorized this Office to file a lawsuit.

As you know, we have refrained from filing a lawsuit while endeavoring a final time to resolve this matter informally with a conciliation agreement acceptable to both your client and the Commission. Enclosed is an agreement which, if accepted by your client, I am prepared to recommend be approved by the Commission. Your response should be submitted to the Commission within five days after receipt of this notification.

If you have any questions, please contact Jay B. Myerson at (202) 523-4178.

Sincerely,

William C. Oldaker
General Counsel

Enclosure

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IVERSON MUR RIX

SENDER Complete items 1, 2, and 3. Add your address in the RETURN TO space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered. c
 Show to whom, date, and address of delivery. c
 RESTRICTED DELIVERY
 Show to whom and date delivered. c
 RESTRICTED DELIVERY
 Show to whom, date, and address of delivery. \$
 CONSULT POSTMASTER FOR FEES.

2. ARTICLE ADDRESSED TO
 C. J. SHAWLOCKY ESQ
 762 MEDICAL RE BANK BLDG.
 WYOMING, WY 82001

3. ARTICLE DESCRIPTION
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 943775

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE: *[Signature]* Addressee: _____ Authorized agent: _____

4. DATE OF DELIVERY
 NOV 1 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE



RETURN RECEIPT REGISTERED AND CERTIFIED MAIL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218(76)
The Barnard for Congress)
Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, The Barnard for Congress Committee (hereinafter "Respondent"), may have violated 2 U.S.C. § 441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission"), and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. § 437g(a)(4).
3. The pertinent facts and law in this matter are as follows:

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(a) The Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia, in the 1976 primary and general elections;

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Respondent that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Respondent that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Georgia Railroad Bank and Trust Company (hereinafter "Bank"), as an Executive Vice President.

(d) On May 14, 1976, the Respondent borrowed from the Bank the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all of Respondent's property then left with the Bank or which might thereafter have come into the possession of the Bank, including any and all balances, credits, deposits and accounts of the Respondent left with the Bank. As of May 14, 1976, the

property of the Respondent in the possession of the Bank was \$7,396.78. This amount varied from time to time. The loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Bank.

(f) The loan was negotiated for the Respondent by Donald Gratham, who was the Respondent's finance chairman; however, the chairman of the Respondent, Mr. Hugh Connolly, signed the note for the Respondent.

(g) The Respondent's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan

to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Bank intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Bank authorized the loan to the Respondent. In authorizing the loan he took into consideration the character and reputation of the chairman of the Respondent, of other members of the Respondent, of the candidate and that the candidate was worthy of the support of the members of the Respondent.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Respondent for personal loans with the Bank. Unsecured business loans, however, were then being extended under the Bank's guidelines at 8 3/4.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This daily report was presented to the Finance Committee of the Bank's Board of Directors.

WHEREFORE, the respondent agrees that:

4. The Commission construes the phrase "ordinary course of business" as set forth in 2 U.S.C. § 431(e)(5)(G) to require more than that the loan be made in accordance with the applicable banking laws and regulations.

707105167

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent accepted a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, acceptance of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be accepted and will pay a civil penalty of \$100.

8. 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.

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

1 6 1 3 0 1 0 3 1 6 1

ATTEST:

The Barnard for Congress
Committee

BY _____

ITS _____

ATTEST:

Federal Election Commission

BY _____
William C. Oldaker
General Counsel

DATE _____

00000105163





FEDERAL ELECTION COMMISSION

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

October 23, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

On August 9, 1978, the Commission found that there is probable cause to believe that the Georgia Railroad Bank & Trust Company violated 2 U.S.C. § 441b and authorized this Office to file a lawsuit.

As you know, we have refrained from filing that lawsuit while endeavoring a final time to resolve this matter informally with a conciliation agreement acceptable to both your client and the Commission. Enclosed is an agreement which, if accepted by your client, I am prepared to recommend be approved by the Commission. Your response should be submitted to the Commission within five days after receipt of this notification.

If you have any questions, please contact Jay B. Myerson at (202) 523-4178.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. C. Oldaker", is written over a horizontal line.

William C. Oldaker
General Counsel

Enclosure

216 Myerson

SENDER Complete items 1, 2, and 3
Add your address in the "RETURN TO" space on reverse

1. The following service is requested (check one)
 Show to whom and date delivered C
 Show to whom, date, and address of delivery C
 RESTRICTED DELIVERY
 Show to whom and date delivered C
 RESTRICTED DELIVERY
 Show to whom, date, and address of delivery \$ _____
 CONSULT POSTMASTER FOR FEES!

2. ARTICLE ADDRESSED TO
 Samuel C. Waller, Esq.

3. ARTICLE DESCRIPTION
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 943145

(Always obtain signature of addressee or agent)

I have received the article described above:
 SIGNATURE Addressee Authorized agent
 By: Mary McAllister

4. DATE OF DELIVERY POSTMARK

5. ADDRESS (use delivery requested)

6. UNABLE TO DELIVER BECAUSE CLERK'S INITIALS

RETURN RECEIPT REQUESTED (STAMP AND CERTIFIED MAIL)

200101000

3. The pertinent facts and law in this matter are as follows:

(a) The Barnard for Congress Committee (hereinafter "Borrower") was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) Mr. Barnard announced his candidacy in February 1976. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Borrower that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the primary election. It was determined by the Borrower that \$10,000 would have to be borrowed for this purpose.

(c) Mr. Barnard was then employed by the Respondent as an Executive Vice President.

(d) On May 14, 1976, the Borrower borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral of said loan was a security interest in all property of the Borrower then left with

70010105165

the Respondent or which might thereafter have come into possession of the Respondent, including any and all balances, credits, deposits and accounts of the Borrower left with the Respondent. As of May 14, 1976, the property of the Borrower in the possession of the Respondent was \$7,396.78. This amount varied from time to time. The loan data sheet reported this as an unsecured loan.

(e) The application for the loan was made to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company. No formal application was submitted, nor was one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than to one of the lending officers, because of Mr. Barnard's connection with the Respondent.

(f) The loan was negotiated for the Borrower by Donald Gratham, who was the Borrower's finance chairman; however, the chairman of the Borrower, Mr. Hugh Connolly, signed the note for the Borrower.

(g) The Borrower's representative represented that he and other members of the Committee would be responsible for seeing that the debt would be paid.

70010105167

Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan to be unsecured, also shows Mr. Connolly's net worth, as evidence that the Respondent intended that Mr. Connolly would see to it that the loan was paid.

(h) The chairman of the Respondent authorized the loan to the Borrower. In authorizing the loan he took into consideration the character and reputation of the chairman of the Borrower, of other members of the Borrower, of the candidate and that the candidate was worthy of the support of the members of the Borrower.

(i) The interest rate on the loan was set at 7.6% based on the rates being given the chairman of the Borrower for personal loans with the Respondent. Unsecured business loans, however, were then being extended under the Respondent's guidelines at 8 3/4.

(j) After the loan was made, pursuant to Bank procedures, the details of the loan were summarized on a computer print-out which was prepared daily. This

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daily report was presented to the Finance Committee of the Bank's Board of Directors.

WHEREFORE, the respondent agrees that:

4. The Commission construes the phrase "ordinary course of business" as set forth in 2 U.S.C. § 431(e)(5)(G) to require more than that the loan be made in accordance with the applicable banking laws and regulations.

5. That according to this construction, the loan was made outside the ordinary course of business as set forth in 2 U.S.C. § 431(e)(5)(G) and, as a result thereof, that Respondent made a contribution to the Committee in violation of 2 U.S.C. § 441b(a).

6. That under this construction, the negotiation and execution of the loan by the Respondent was not a knowing and willful violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq.

7. For the purpose of settling this controversy, Respondent agrees that similar loans will not be made to committees supporting Respondent's officers, directors, or other insiders.

79040105167

8. 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.

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

ATTEST:

Georgia Railroad Bank &
Trust Company

BY _____

ITS _____

ATTEST:

Federal Election Commission

BY _____
William C. Oldaker
General Counsel

DATE _____

79040103170

Q00#4490

TELEPHONE 722-8853

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
802 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

'78 AUG 14 AM 11:36

August 10, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Myerson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Dear Mr. Myerson:

My earlier letter today was signed and mail before our long distance telephone conferences today. This letter will confirm the substance of our long distance conferences today.

1. You informed me that yesterday the Federal Election Commission had made a determination that there was probable cause to believe that both the bank and the Barnard for Congress Committee had violated the law.

2. You understand that, on behalf of the Barnard for Congress Committee, I insist upon my client's right to a meaningful conference and that the Federal Election Commission, pursuant to law, attempt to resolve this matter by conference, persuasion and negotiation - in a meaningful form. This cannot consist of telephone conferences in which I am informed of the position of the Federal Election Commission but not of the specific basis for that position.

3. Mr. Samuel Waller is to meet with you and Mr. Charles Steele, who is the number two man on the Commission's legal staff. General counsel, Mr. Oldaker, will not be present. You and Mr. Steele have no authority to bind Federal Election Commission in any manner whatsoever. Your only authority is to discuss the matter and make a recommendation to general counsel, who then will either accept or reject your recommendation. If he accepts your recommendation, general counsel will then recommend your

70040105171

Mr. Jay Myerson
August 10, 1978
Page 2

recommendation to the Commission, who will either accept it or reject it. In short, you and Mr. Steele have, at best, only very, very limited authority.

4. The Barnard for Congress Committee takes the position that the duty of Federal Election Commission, under 2 USC 437 (g), to make every endeavor to correct or prevent a violation by "informal methods of conference, conciliation and persuasion" must include a meaningful conference in which the information sought in my letter to Mr. Oldaker dated June 12, 1978, is furnished. In light of that information, there can be an intelligent and informed discussion about the contents of a conciliation agreement. Such a conference should be between me and someone with authority to make recommendations to the Commission.

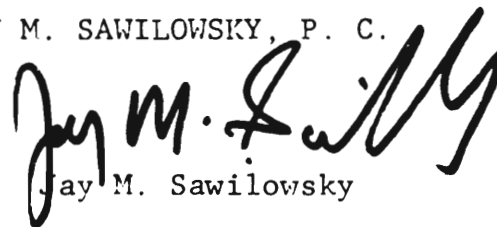
Mr. Samuel Waller represents the bank only. Thus Mr. Waller's conference with you and Mr. Steele on August 14, 1978, does not bind my client in any way whatsoever.

Please let me hear from you.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

cc: Mr. William C. Oldaker
Mr. Paul Lovejoy
Mr. D. Hugh Connolly
Mrs. Nancy McJunkin
Mr. J. Carlisle Overstreet
Mr. Don Grantham
Mr. Samuel Waller

70040103171

Y. M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

N
AUGUST 1 1963
J. M. Sawilowsky

CERTIFIED
No. [REDACTED]
MAIL

Mr. Jay Mverson
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 AUG 14 AM 9:39

August 10, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Myerson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

805287

Re: MUR 218 (76)

Dear Mr. Myerson:

My earlier letter today was signed and mail before our long distance telephone conferences today. This letter will confirm the substance of our long distance conferences today.

1. You informed me that yesterday the Federal Election Commission had made a determination that there was probable cause to believe that both the bank and the Barnard for Congress Committee had violated the law.

2. You understand that, on behalf of the Barnard for Congress Committee, I insist upon my client's right to a meaningful conference and that the Federal Election Commission, pursuant to law, attempt to resolve this matter by conference, persuasion and negotiation - in a meaningful form. This cannot consist of telephone conferences in which I am informed of the position of the Federal Election Commission but not of the specific basis for that position.

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Mr. Jay Myerson
August 10, 1978
Page 2

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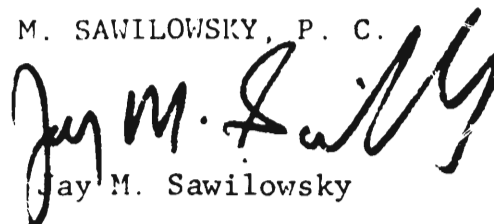
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Please let me hear from you.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

cc: ✓ Mr. William C. Oldaker
Mr. Paul Lovejoy
Mr. D. Hugh Connolly
Mrs. Nancy McJunkin
Mr. J. Carlisle Overstreet
Mr. Don Grantham
Mr. Samuel Waller

79040105173

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902



1973 AUG 14 AM 9:30

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

TELEPHONE 722-8853

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

AUG 14 AM 11:35

August 10, 1978

✓ Mr. William C. Oldaker
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul Lovejoy
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Mr. Jay Myerson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: MUR 218 (76)

Gentlemen:

Please respond to my letters to you of May 17, 1978,
May 22, 1978, June 12, 1978, July 6, 1978 and August 2,
1978.

Enclosed is a photostat of the article in the "Augusta
Chronicle" for August 10, 1978 reporting the results of the
primary last Tuesday. Please note Mrs. Hemenway's gracious
statement conceding defeat in which she gives due credit to
the newspaper and Federal Election Commission, and other
unnamed co-conspirators. For your ready reference, Mrs.
Hemenway's complaint against "the new Augusta weekly" was
that it refused to distribute her campaign literature,
enclosed in their newspaper, for free. Apparently it, and
the other two newspapers, also refused to print, for free,
her campaign literature as news articles. My last letter
to you included her last broad side before the election.

Reference to your file, and the enclosed, will show that
Mr. Barnard and the members of the Barnard for Congress

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Mr. William C. Oldaker
Mr. Paul Lovejoy
Mr. Jay Myerson
August 10, 1978
Page 2

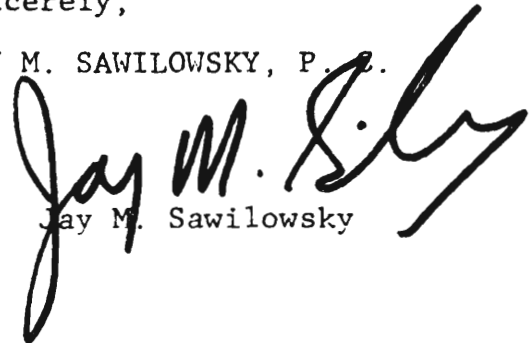
Committee have been harrassed ever since Mr. Hemenway filed his original complaint against Mr. Barnard. They are anxious that this harrassment, which now includes substantial expenses, be brought to an end.

Please let me hear from you.

Sincerely,

JAY M. SAWILOWSKY, P. E.

BY:



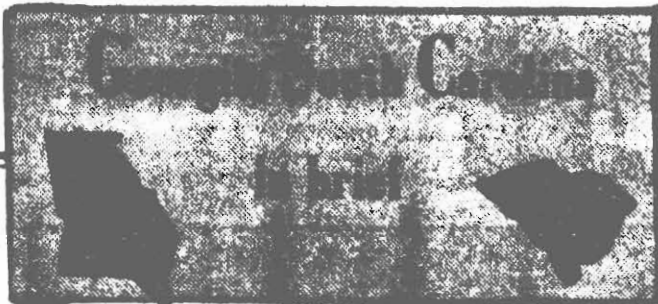
Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. D. Hugh Connolly
Mr. Don Grantham
Mr. J. Carlisle Overstreet
Mrs. Nancy McJunkin
Mr. Samuel Waller

70040105173



Guards vote to take steps to better prison security

REIDSVILLE, Ga. (AP) — A group of guards at the Georgia State Prison have voted to take legal steps to improve security at the prison after several recent incidents of violence.

About 70 guards met at the Tattnall County Courthouse Tuesday night, and voted to ask attorneys to file the action under the Civil Rights Act.

Bobby Jones, an attorney of Metter, Ga., said, "We're considering it. If something is done, it'll be done in the next couple of months."

Jones and attorney Ogden Doremus represent a legal fund whose 126 members include guards and other prison employees, said Jake Edenfield, the fund's president.

Edenfield said Doremus discussed the matter with guards last Thursday.

Edenfield said the petition will ask, among other things, that the number of guards at the prison be increased from 360 and that they be given more riot training, plus additional pay.

Insurance rate hikes sought

COLUMBIA (AP) — The state's largest automobile insurer and four other companies are asking the courts to grant them rate increases recently denied in part by the South Carolina Insurance Commission.

State Farm Insurance Co. and four companies of the Crum and Foster group have filed petitions with the circuit court challenging the Insurance Commission's orders in July.

The commission granted only a 15 percent rate increase. State Farm is seeking the full 24.8 percent increase sought from the commission.

School board members recalled

DOUGLASVILLE, Ga. (AP) — Residents of Douglas County sought to bring order to their chaotic school administration by recalling four of five school board members Tuesday.

School Superintendent Eugene Sheets, whom the board tried to fire, but whose job was saved by a court order, said he was "extremely pleased with what the voters did to me."

Sheets is the only elected county official who cannot be pulled out of office under the recall law.

"I made every effort to work with the board and I believe citizens knew I made every effort," Sheets said.

Only board member Selby Price survived the recall, and only by a five-vote margin, 327-322.

Recalled in the district-by-district voting were board President Zell Hatcher, 418-314; Edward Hood 930-304; Lloyd Brown 230-78; and Diane Theridge, 2,150-362.

Rediversion project debated

CHARLESTON (AP) — The Cooper River Rediversion project being undertaken to relieve siltting in Charleston Harbor may not work as well as expected, says a University of South Carolina geologist.

The U.S. Army Corps of Engineers, however, says it believes the rediversion project will be effective.

Donald Van Nieuwenhuise, a geologist who spent two years studying the siltting problem, says corps and the State Ports Authority are

Barnard wins 10th District by landslide

By Bryant Steele
Chronicle Staff Writer

With most of the votes counted, 10th District Congressman D. Douglas Barnard Jr., who was declared an early winner in Tuesday's primary, maintained the large percentage he had held since early in the voting over challenger Betty Hearn Hemenway of Eatonton.

Returns Wednesday afternoon showed Barnard with 38,591 votes, or almost 72 percent, to Mrs. Hemenway's 15,052.

The former Augusta banker carried Richmond County with 12,372 votes, or almost 73 percent, to Mrs. Hemenway's 4,640.

He also carried Mrs. Hemenway's home county, Putnam, by a slim 11 vote margin, 637-626.

Columbia Countians voted for Barnard 2,903 times and for Mrs. Hemenway 1,461 times.

Barnard gave a prepared victory statement Tuesday night in which he thanked his supporters and pledged his best efforts in the future.

Mrs. Hemenway said Wednesday evening in a prepared statement that Barnard's election "was due in large measure to the refusal of the press in the 10th District, especially the two Augusta dailies and the new Augusta weekly, to reveal the details of his voting record and the illegal financial arrangements which allowed the former banker-lobbyist to finance his first campaign (in 1976).

Mrs. Hemenway's husband, John D. Hemenway, recently filed suit in U.S. District Court in the District of Columbia against Barnard and the Federal Elections Commission and charged the FEC has not acted expeditiously in an investigation of alleged wrongdoing in Barnard's 1976 campaign. Barnard denied any wrongdoing after the suit was filed.

Wednesday Mrs. Hemenway said the suit would be followed-up.

"The next development will be in the law courts. Already one suit is filed against Barnard in the U.S. District Court of the District of Columbia and further actions are being discussed with counsel concerning abuse of power and conspiracy to manipulate the news by persons enjoined to control the Augusta daily newspapers," she said.

Mrs. Hemenway said "It remains to be seen" if she will be a candidate for the same post in 1980.

Democratic rally to be Aug. 31

A Democratic rally featuring at least 18 party candidates and officials from South Carolina and Georgia has

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JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



CERTIFIED
No.
MAIL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William C. Oldaker
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

TELEPHONE 722-8883

300*
4492

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 AUG 14 AM 9:39

August 10, 1978

805285

Mr. William C. Oldaker
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

✓ Mr. Paul Lovejoy
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Mr. Jay Myerson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: MUR 218 (76)

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Hemenway's complaint against "the new Augusta weekly" was
that it refused to distribute her campaign literature,
enclosed in their newspaper, for free. Apparently it, and
the other two newspapers, also refused to print, for free,
her campaign literature as news articles. My last letter
to you included her last broad side before the election.

Reference to your file, and the enclosed, will show that
Mr. Barnard and the members of the Barnard for Congress

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Mr. William C. Oldaker
Mr. Paul Lovejoy
Mr. Jay Myerson
August 10, 1978
Page 2

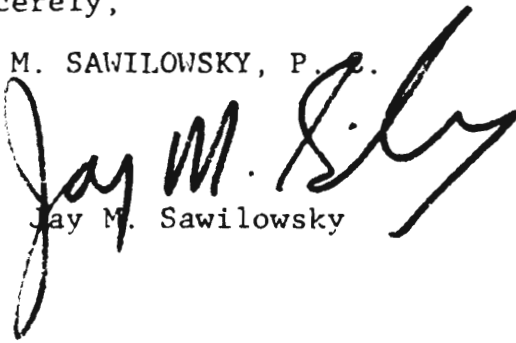
Committee have been harrassed ever since Mr. Hemenway filed his original complaint against Mr. Barnard. They are anxious that this harrassment, which now includes substantial expenses, be brought to an end.

Please let me hear from you.

Sincerely,

JAY M. SAWILOWSKY, P. E.

BY:

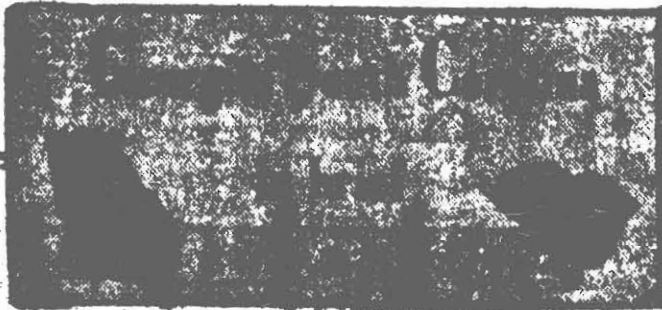

Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. D. Hugh Connolly
Mr. Don Grantham
Mr. J. Carlisle Overstreet
Mrs. Nancy McJunkin
Mr. Samuel Waller

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Guards vote to take steps to better prison security

REIDSVILLE, Ga. (AP) — A group of guards at the Georgia State Prison have voted to take legal steps to improve security at the prison after several recent incidents of violence.

About 70 guards met at the Taittall County Courthouse Tuesday night, and voted to ask attorneys to file the petition under the Civil Rights Act.

John Jones, an attorney at Macon, Ga., said, "It's a consideration of something that will be done in the next couple of weeks."

Jones and attorney Ogden Edwards represent a legal fund whose 125 members include guards and other prison employees, said Jake Edenfield, the fund's president.

Edenfield said. Deacons discussed the matter with guards last Thursday.

Edenfield said the petition will ask, among other things, that the number of guards at the prison be increased from 300 and that they be given more riot training, plus additional pay.

Insurance rate hikes sought

COLUMBIA (AP) — The state's largest automobile insurer and other companies are asking the state to grant them rate increases recently denied in part by the South Carolina Insurance Commission.

State Farm Insurance Co. and four companies of the Crum and Foster group have filed petitions with the circuit court challenging the Insurance Commission's orders in July.

The commission granted only a 15 percent rate increase. State Farm is seeking the full 24.8 percent increase sought from the commission.

School board members recalled

DOUGLASVILLE, Ga. (AP) — Residents of Douglas County sought to bring order to their chaotic school administration by recalling four of five school board members Tuesday.

School Superintendent Eugene Sheets, whom the board tried to fire, but whose job was saved by a court order, said he was "extremely pleased with what the voters did to me."

Sheets is the only elected county official who cannot be pulled out of office under the recall law.

"I made every effort to work with the board and I believe citizens know I made every effort," Sheets said.

Only board member Selby Price survived the recall, and only by a six-vote margin, 327-323.

Recalled in the district-by-district voting were board President Zell Hatcher, 618-314; Edward Hood 930-304; Lloyd Brown 230-78; and Diane Etheridge, 2,164-863.

Rediversion project debated

CHARLESTON (AP) — The Cooper River Rediversion project being undertaken to relieve siltting in Charleston Harbor may not be as well as expected, says a University of South Carolina geologist.

The U.S. Army Corps of Engineers, however, says it believes the rediversion project will be effective.

Donald Van Nieuwenhuise, a geologist who spent two years studying the siltting problem, says corps and the State Ports Authority are

Barnard wins 10th District by landslide

By Bryant Steele
Chronicle Staff Writer

With most of the votes counted, 10th District Congressman D. Douglas Barnard Jr., who was declared an early winner in Tuesday's primary, maintained the large percentage he had held since early in the voting over challenger Betty Hearn Hemenway of Eatonton.

Returns Wednesday afternoon showed Barnard with 38,591 votes, or almost 72 percent, to Mrs. Hemenway's 15,052.

The former Augusta banker carried Richmond County with 12,372 votes, or almost 73 percent, to Mrs. Hemenway's 4,640.

He also carried Mrs. Hemenway's home county, Putnam, by a slim 11 vote margin, 687-686.

Columbia Countians voted for Barnard 2,903 times and for Mrs. Hemenway 1,461 times.

Barnard gave a prepared victory statement Tuesday night in which he thanked his supporters and pledged his best efforts in the future.

Mrs. Hemenway said Wednesday evening in a prepared statement that Barnard's election "was due in large measure to the refusal of the press in the 10th District, especially the two Augusta dailies and the new Augusta weekly, to reveal the details of his voting record and the illegal financial arrangements which allowed the former banker-lobbyist to finance his first campaign (in 1976).

Mrs. Hemenway's husband, John D. Hemenway, recently filed suit in U.S. District Court in the District of Columbia against Barnard and the Federal Elections Commission and charged the FEC has not acted expeditiously in an investigation of alleged wrongdoing in Barnard's 1976 campaign. Barnard denied any wrongdoing after the suit was filed.

Wednesday Mrs. Hemenway said the suit would be followed-up.

"The next development will be in the law courts. Already one suit is filed against Barnard in the U.S. District Court of the District of Columbia and further actions are being discussed with counsel concerning abuse of power and conspiracy to manipulate the news by persons enjoined to control the Augusta daily newspapers," she said.

Mrs. Hemenway said "It remains to be seen" if she will be a candidate for the same post in 1980.

Democratic rally to be Aug. 31

A Democratic rally featuring at least 18 party candidates and officials from South Carolina and Georgia has

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JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



10 10 10 AM 9:30

Mr. Paul Lovejoy
Federal Election Co-mission
1325 K Street, N. W.
Washington, D. C. 20463

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western union

Telegram

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ICS IPMMTZZ CSP '78 AUG 10 AM 8:46

1978 AUG-9 PM 9:28

4047227541 TDMT AUGUSTA GA 63 08-09 0640P EST

PMS FEDERAL ELECTION COMMISSION, ATTN WILLIAM C OLDAKER, RPT
DLY BY MGM, DLR

1325 K ST NORTHWEST
WASHINGTON DC 20463

F05205
AUG 9 1978

RE: MUR 218. STRONGLY PROTEST ANY DECISION IN ABOVE MATTER AFFECTING
GEORGIA RAILROAD BANK AND TRUST COMPANY UNITED NEGOTIATIONS AS TO
POSSIBLE CONSILIATION AGREEMENT CONCLUDED. HAVE ACCEPTED INVITATION
ISSUED AUGUST 3 AND REISSUED AUGUST 8 TO MEET WITH FEC GENERAL
COUNSEL OLDAKER ON MONDAY AUGUST 14 TO CONSIDER TERMS OF AGREEMENT
SUBMITTED ON JULY 6 ON BEHALF OF BANK.

S C WALLER ATTORNEY FOR GEORGIA RAILROAD BANK AND TRUST CO
AUGUSTA GA (1500 GEORGIA RAILROAD BANK BLDG AUGUSTA GA 30902)
NNNN



western union

Telegram

RDM 10 AM 1946

939PM



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Georgia Railroad Bank and)
Trust Company)
)
Doug Barnard for Congress)
Committee)

MUR 218 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on August 9, 1978, the Commission determined by a vote of 4-0 to adopt the recommendation of the General Counsel to take the following actions in the above-captioned matter:

1. Find probable cause to believe that the Georgia Railroad Bank and Trust Company violated 2 U.S.C §441b.
2. Find probable cause to believe that the Doug Barnard for Congress Committee violated 2 U.S.C. §441b.
3. Authorize the Office of the General Counsel to file a lawsuit against the respondents.

Voting for this determination were Commissioners Aikens, Harris, Springer and Staebler. Commissioners Thomson and Tiernan were not present at the time of the vote.

8/11/78

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Georgia Railroad Bank and) MUR 218 (76)
Trust Company)
)
Doug Barnard for Congress)
Committee)

General Counsel's Report

I. Background

On October 19, 1977, the Commission found reasonable cause to believe that the Georgia Railroad Bank and Trust Company ("the Bank") violated 2 U.S.C. § 441b in making a \$10,000 unsecured loan to the Doug Barnard for Congress Committee ("the Committee"). On March 15, 1978, the Commission found reasonable cause to believe that the Committee violated 2 U.S.C. §441b in accepting the loan from the Bank. Conciliation agreements prepared by this office were sent to both respondents.

II. Conciliation

This office has been in communication with Samuel C. Waller, counsel to the Bank, and Jay M. Sawilowsky, attorney for the Committee, regarding the conciliation of this matter. During this conciliation period alternative agreements were received by the Commission from counsel for the Committee on June 20, 1978, and from counsel for the Bank on July 7, 1978. Attachments I and II respectively. In addition to the alternative agreements submitted by respondents, this office and counsel for both the Bank and the Committee have engaged in numerous telephone conversations and written exchanges regarding the conciliation of this matter,

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including the submission of supplemental documents by the Committee.^{1/} All supplemental documents and communications from respondents have been reviewed by this office but have not altered our perception of this matter.

It is our belief that neither the alternative agreement submitted by the Committee nor the agreement proposed by the Bank is acceptable. We feel that a reasonable conciliation of this matter must include an agreement with respondents which contains an admission of violation and some civil penalty. Despite repeated discussions on these issues we have been unable to persuade the Bank or the Committee to accept these provisions as elements of a conciliation agreement to be entered into by respondents and the Commission.

We believe that the various communications with counsel for the respondents and the length of time during which this Office has attempted to conciliate this matter more than satisfies the statutory conciliation requirement. In light of the apparent reluctance of both respondents to accept certain provisions as part of a conciliation agreement which we believe to be fundamental to a reasonable resolution of this case, it is the recommendation of the Office of General Counsel that the Commission find probable cause to believe that the Georgia Railroad Bank and Trust Company and the Doug Barnard for Congress Committee violated 2 U.S.C. § 441b in connection with the loan from the Bank to the Committee.

^{1/} Attachment III consists of copies of written communications from respondents.

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III. Recommendation

1) Find probable cause to believe that the Georgia Railroad Bank and Trust Company violated 2 U.S.C. § 441b.

2) Find probable cause to believe that the Doug Barnard for Congress Committee violated 2 U.S.C. § 441b.

3) Authorize the Office of General Counsel to file a lawsuit against the respondents.

8/4/78

Date



William C. Oldaker
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	
The Barnard for Congress)	MUR 218(76)
)	
Committee)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reason to believe having been found that the Barnard for Congress Committee (hereinafter "Respondent") violated 2 U.S.C. §441b(a).

Now, therefore, the respective parties have in the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter pursuant to 2 U.S.C. § 437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) On May 14, 1976 respondent borrowed from the Georgia Railroad Bank & Trust Company the sum of \$10,000.00 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. This loan was secured, by the express terms of the promissory note of the respondent to said bank, by the respondent's checking account in said bank. On May 14, 1976, the respondent had

on deposit with that bank, exclusive of the aforesaid loan, \$7,396.78, securing the loan, leaving \$2,603.22 unsecured.

(c) The promissory note expressly provided that the bank was to have a security interest, securing the aforesaid loan, on the respondent's checking account. The promissory note further provided that at any time the bank should feel insecure for any reason whatsoever, the bank could, without demand or notice, declare the debt due and exercise its rights and remedies under its contract and the Uniform Commercial Code in effect in Georgia. Under Georgia Code §§ 109A-9-201, 203, 204 and 302, the bank had a perfected security interest in the respondent's checking account in favor of the bank. Under Georgia Code § 109A-1-208, the provision for acceleration of the debt, in the event that the bank should feel insecure for any reason whatsoever, is lawful and enforceable provided the bank acts in good faith, and the burden of establishing lack of good faith is on the party against whom the power has been exercised. Reference to the respondent's records of its checking account shows that, from May 14, 1976 until December 31, 1976, the bank was secured at all times and at times the bank was 100% secured and at other times the bank was secured in excess of 100%.

(d) Mr. D. Douglas Barnard was employed at the Georgia Railroad Bank & Trust Company as an Executive Vice President at the time the loan was made.

(e) The loan was negotiated and executed on behalf of respondent by its Chairman, Mr. D. Hugh Connolly.

(f) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of the Georgia Railroad Bank & Trust Company.

(g) Prior to May 14, 1976 D. Hugh Connolly had made a number of loans for himself personally from the said bank, which loans carried interest at rates of 7%, 7½% and 7½% per annum.

(h) On May 14, 1976 there were no regulations of the Federal Election Commission defining "ordinary course of business."

(i) On April 3, 1978 the Federal Election Commission submitted its request, set forth in the Federal Register of April 7, 1978, for comments for the purpose of proposing certain new regulations, including a specific proposal defining "ordinary course of business" under 2 U.S.C. 431(e)(5)(G) and 2 U.S.C. 431(f)(4)(K). The proposed definition of "ordinary course of business" contains seven standards.

(j) The respondent has submitted evidence that on May 14, 1976 the bank took into consideration, in making the loan, the impeccable character and reputation of D. Hugh Connolly and the other members of the Committee and that it is standard bank practice to consider the character of the borrower as among the most important things taken into consideration. The respondent further furnished evidence that since the loan was made, there have been two bank examinations by state and federal regulatory authorities and that the bank's loan portfolio is examined annually by the bank's independent auditors; neither the state and federal bank examiners nor the bank's independent auditors have ever criticized or taken exception to this loan. The respondent further submitted evidence that the Georgia Department of Banking & Finance, by letter dated May 5, 1978, gave its opinion that this loan was made in conformity with the Financial Institutions Code of Georgia (codified as Title 41A of the Code of Georgia) and appears to have been made in the ordinary course of business.

4. The Federal Election Commission takes the position that this loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G) and therefore it constituted a contribution to respondent in violation of 2 U.S.C. §441(b)(a).

The respondent takes the position that the loan was made in the ordinary course of business as set forth in 2 U.S.C. §431(e) (5)(G) and therefore did not constitute a contribution to respondent in violation of 2 U.S.C. §441b(a). The Federal Election Commission and the respondent have a sharp disagreement regarding the definition of the term "in the ordinary course of business" as used in the aforesaid Code Sections as applied to the facts in this case.

5. It appears that at worst the respondent may have committed an inadvertent, accidental, unknowing technical error in making this loan in an obscure and ambiguous situation, created in part by the absence of any regulations of the Federal Election Commission defining the term "in the ordinary course of business."

6. The negotiation and execution of the aforesaid loan by respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. By the execution of this Conciliation Agreement, the respondent does not admit any violation of 2 U.S.C. §431 et seq., and expressly denies any violation, and states that it had no knowledge of or intent to commit any violation or offense under 2 U.S.C. §431 et seq., and enters into this Conciliation Agreement for the sole purpose of resolving this dispute pursuant to the provisions of 2 U.S.C. §437g.

7. Hereafter the respondent will not make any loan except in compliance with the regulations of the Federal Election Commission set forth in its proposed regulation dated April 3, 1978, set forth in the Federal Register of April 7, 1978, or as thereafter adopted.

8. The Federal Election Commission on request of anyone filing a complaint under 2 U.S.C. §431g(a)(1) concerning the matter at issue herein or on its own motion may review

compliance with this agreement. If the Federal Election 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 Southern District of Georgia in accordance with 2 U.S.C. §437g(a)(7).

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

ATTEST:

BARNARD FOR CONGRESS COMMITTEE

Daggle D. Dennis
Notary Public for the State of Georgia
My Commission Expires 12/31/1981

D. Hugh Connolly
By D. Hugh Connolly

Its Chairman

Date 6-14-78

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker

General Counsel

Date _____

DRAFT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Georgia Railroad Bank) MUR 218(76)
 & Trust Company)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, Georgia Railroad Bank & Trust Company (hereinafter "Respondent"), may have violated 2 U.S.C. §441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission") and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g (a) (5), do hereby agree as follows:

1. Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. §437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) The Barnard for Congress Committee (hereinafter "Borrower") was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections;

(b) On May 14, 1976, the Borrower borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral securing said loan was a security interest in the property of Borrower then in, or which may later have come into, possession of Borrower. As of May 14, 1976 the property of Borrower in the possession of Borrower was \$7,396.78.

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(c) Mr. D. Douglas Barnard was employed by Respondent as an Executive Vice President at the time the loan was made;

(d) The loan was negotiated on behalf of Borrower by its Chairman, D. Hugh Connolly, who executed a promissory note evidencing the said loan, as follows: "Doug Barnard for Congress, by: D. Hugh Connolly;"

(e) The loan was authorized by Charles B. Presley, Chairman of the Board of Respondent, after satisfying himself that the risk of nonrepayment of the loan by Borrower was "minimal" based on his knowledge of Messers. Connolly and Barnard, and the other members of the committee whose reputations were impeccable and who assured him that the loan would be repaid.

4. The Commission contends that the loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(g) and, as a result thereof, that Respondent made a contribution to Borrower in violation of 2 U.S.C. §441b(a).

5. Respondent contends that the loan was made in the ordinary course of business and therefore was not in violation of 2 U.S.C. §441b(a).

6. The negotiation and execution of the loan by Respondent was not made in a knowing and willfull attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq.

7. For the purpose of settling this controversy, Respondent represents that similar loans will not be made by it to political committees without adequate security therefor, and that to avoid litigation in the matter at hand hereby accepts an admonition from the Commission that such conduct may have constituted a violation of 2 U.S.C. §441b(a).

8. 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, 2 U.S.C. §437g(a)(7).

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

ATTEST:

GEORGIA RAILROAD BANK &
TRUST COMPANY

By _____

Its _____

ATTEST:

FEDERAL ELECTION COMMISSION

By _____

William C. Oldaker
General Counsel

Date _____

FEDERAL ELECTION COMMISSION

In Re: Doug Barnard for Congress
Election Committee, MUR 218(76)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, CHARLES B. PRESLEY, who being first duly sworn deposes and says on oath as follows:

1. That he is Chairman of the Board of the Georgia Railroad Bank & Trust Company.

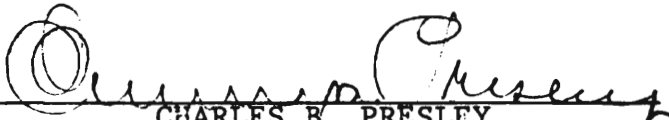
2. That in authorizing the loan to the above Committee on May 14, 1976, the deponent took into consideration the impeccable character and reputation of D. Hugh Connolly, Chairman of the Doug Barnard for Congress Committee, and the other members of the Committee; and further that D. Douglas Barnard, Jr. was well known and enjoyed an impeccable reputation and was worthy of the support of Mr. Connolly and the other members of that Committee.

3. In making loans, many things are taken into consideration. The character of the borrower is among the most important. Please refer to the attached reference material.

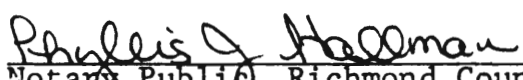
4. That the interest on the loan was set at 7½% per annum because Mr. D. Hugh Connolly, Chairman of the Committee, who was making arrangements about the loan, had been making personal loans with the bank with interest at 7½% per annum or less.

5. Since this loan was made, there have been two bank examinations by State and Federal regulatory authorities. In addition, the bank's loan portfolio is examined annually by the bank's independent auditors, Touche Ross & Company. Neither the State and Federal bank examiners nor the bank's independent auditors have ever classified (criticized or taken exception to)

this loan. In this connection, both the State and Federal bank examiners and the independent auditors search for loans in violation of State or Federal banking laws or which represent more than the average credit risk, and report such loans in a special section of their reports reserved for that purpose. Again, this loan has never been classified (criticized or exception taken thereto) by the bank examiners or the independent auditors. Attached is the letter of the Georgia Department of Banking & Finance, dated May 5, 1978, which shows that this loan was made in conformity with the Financial Institutions Code of Georgia (codified as Title 41A of the Code of Georgia) and appears to have been made in the ordinary course of business.


CHARLES B. PRESLEY

Sworn to and subscribed before me
this 26 day of May, 1978.


Notary Public, Richmond County, Ga.
Notary Public, Richmond County, Georgia
My Commission Expires July 6, 1981

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FEDERAL ELECTION COMMISSION

In Re: Doug Barnard for Congress

Election Committee, MUR 218(76)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, SARAH B. DeLOACHE, who being first duly sworn deposes and says on oath as follows:

1. She is a Vice-President of the Georgia Railroad Bank & Trust Company and is Manager of the Credit Department of said bank.

2. That attached hereto as Exhibit A, and incorporated herein by reference thereto, is a copy of a report prepared from said bank's records showing new and renewed loans for May 1976. The total number of new loans during that period was 307 and the total number of loans renewed was 502. The total number of all such loans which were made with interest at the rate of 7½% or under was 73, of which 36 were made on a secured basis and 37 on an unsecured basis.

3. That the records of the bank show that D. Hugh Connolly had the following personal loans with the Georgia Railroad Bank & Trust Company, open on the following dates, for the following amounts, with the following interest, and due on the dates indicated:

<u>DATE OF LOAN</u>	<u>AMOUNT OF LOAN</u>	<u>INTEREST RATE</u>	<u>DUE DATE</u>
3/21/74	\$17,000.00	8%	3/21/75
As of May 1976	Renewed for \$12,000.00	At 7½%	12/16/76
12/23/74	\$ 4,950.00	8%	3/24/75
As of May 1976	Renewed for \$ 4,950.00	At 7½%	3/22/76
3/25/76	\$ 4,950.00	7%	6/21/76
6/23/76	\$ 4,950.00	7½%	9/20/76
3/10/75	\$ 3,750.00	7½%	3/8/76
3/8/76	\$ 3,650.00	7%	6/7/76
6/7/76	\$ 3,650.00	7%	9/7/76
3/5/76	\$ 4,000.00	7%	9/1/76

6/3/76

\$ 4,000.00

7%

9/1/76

Loan of Hugh Connolly and O. P. Hollis:

5/3/74

\$ 993.75

8%

Monthly at \$65.65 per mo.

Sarah B. DeLoache
SARAH B. DeLOACHE

Sworn to and subscribed before me

this 22 day of May, 1978

Jay M. Smith
Notary Public, Richmond County, Ga.

FEDERAL ELECTION COMMISSION

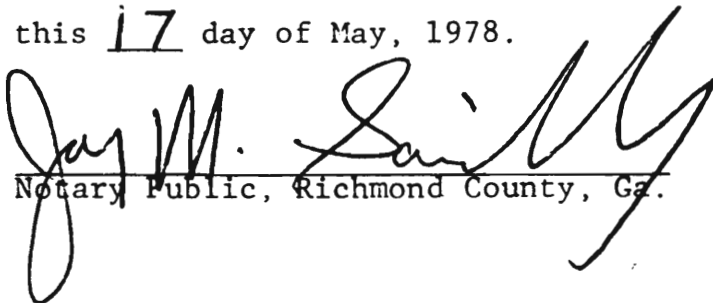
In re: Doug Barnard for Congress
Election Committee, MUR 218(76)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, NANCY J. McJUNKIN, who being first duly sworn deposes and says on oath as follows:

- 1. That she was and is Treasurer of the Doug Barnard for Congress Election Committee.
- 2. That attached hereto are true and correct copies of the bank statements of the checking accounts of said Committee at the Georgia Railroad Bank and Trust Company for 1976.
- 3. That on May 14, 1976, the date of the note in question, the said Committee had a balance in its checking account of \$7,396.78. That the loan proceeds of \$10,000.00 were not deposited into said checking account until May 17, 1976, three days after the date of the note.


NANCY J. McJUNKIN

Sworn to and subscribed before me
this 17 day of May, 1978.


Notary Public, Richmond County, Ga.



Department of Banking and Finance

148 International Bldg., N.E.

Suite 640

Atlanta, Georgia 30303

E. D. "JACK" DUNN
COMMISSIONER

ROBERT M. MOLER
DEPUTY COMMISSIONER

May 5, 1978

Mr. Samuel C. Waller
Attorney
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

As per your request the Department has caused to be performed a review of a certain loan originating May 14, 1976 in the original amount of \$10,000 to the Doug Barnard for Congress Committee. The loan was made to the committee by the Georgia Railroad Bank & Trust Company, Augusta, Georgia. After reviewing the loan and all supporting documents it is the opinion of the examiner that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business. Further, all terms in conditions of the loan were met by the borrower as contracted.

Yours very truly,

Robert M. Moler, CFE
Deputy Commissioner

RMM:kcd

79010103201

Ten thousand and no 00

DOLLARS.

(hereinafter shown in the "Statement of Transaction" set forth immediately preceding the attestation clause as "Amount Financed") at any banking house of the Bank, Augusta, Georgia, or at such other place as the Bank may designate and notify Borrower thereof, together with the FINANCE CHARGE (hereinafter shown in the said "Statement of Transaction"), payable in accordance with the method checked below:

180 days after date. (11/10/76)

In _____ consecutive (monthly) _____ payments, each in the amount of \$ _____ the first payment to be due _____ and the remaining payments to be due on the same day of each consecutive _____ month(s) thereafter with the final payment being the unpaid balance, except for: (BALLOON) (irregular) payment(s) of \$ _____ due on _____ and _____

In _____ consecutive (monthly) _____ payments, each in the amount of \$ _____ plus interest on the outstanding indebtedness at the rate of _____ % per annum, the first payment to be due _____ and the remaining payments to be due on the same day of each consecutive _____ month(s) thereafter with the final payment being the unpaid balance, except for: (BALLOON) (irregular) payment(s) of \$ _____ due on _____ and _____

Other: _____

The finance charge applies from _____ date of note

and all costs of collection, including 15% attorney's fees if collected by law or through an attorney at law. If this Note is not paid at maturity, whether said maturity shall be according to its terms or by the acceleration thereof under the powers hereinafter set forth, the unpaid balance of the indebtedness (hereinafter shown in the said "Statement of Transaction" as "Amount Financed") shall bear interest from date of such maturity at the rate of 8% per annum until paid. Whenever any payment is not paid when due, the Borrower will pay (at the option of the Bank in lieu of additional interest on such delinquent payment) a late charge of 5¢ for each dollar of the payment in default (not to exceed \$5.00) and the Bank may, at its option, declare the Note to be immediately due and payable. Borrower waives demand, presentment, notice of dishonor and protest. Should this Note be paid in full before maturity a partial refund of the FINANCE CHARGE (hereinafter shown in the said "Statement of Transaction") will be made, computed by the proportion which the total of remaining unpaid balances bears to the original total of all unpaid balances, known as the "Sum of the Digits" refund method, or if checked here based on the actuarial method of computation, as such term is used by the Bank in its normal banking procedures, after first deducting a maximum of \$15 acquisition cost from the FINANCE CHARGE. A Balloon Payment, which shall be a payment that is more than twice the amount of any otherwise regularly scheduled equal payment, may be refinanced only upon such terms and conditions as the then parties to this Note may agree as of its due date.

To secure the payment of the indebtedness evidenced by this Note, any extensions or renewals hereof, and any and all liabilities, direct or indirect, absolute or contingent, now existing or hereafter arising, of the Borrower to the Bank and all expenses and costs incident to the collection of said indebtedness and the enforcement and protection of the security interest created hereby (all hereafter called "Obligations") the Borrower hereby pledges, assigns, conveys, transfers and deposits the following property as collateral, with the intent of granting to the Bank a security interest therein and security title thereto:

including all interest thereon, dividends and distributions on or other rights which may arise in connection with any property hereinabove referred to, all of which is hereafter called "Collateral". Borrower hereby warrants that sole and lawful ownership in fee simple of Collateral is in the Borrower with full power and authority to transfer, convey and encumber.

As additional Collateral, Borrower further grants to the Bank a security interest in all property of the Borrower left with the Bank or which now is in, or may hereafter come into, possession of the Bank, and in any and all balances, credits, deposits and accounts of the Borrower with the Bank, whether any of them be general, special, individual, joint, or held as a tenant in common, and in any and all drafts, checks or other items deposited with the Bank by the Borrower for collection, with full authority to charge at any time without notice or demand any and all credits due Borrower represented by or resulting from any of the above against any obligation secured hereby, whether matured or not.

If more than one person shall execute this Note, the term "Borrower" as used herein shall mean all persons signing this Note and each of them, who shall be jointly and severally obligated hereunder. The term "the Bank" as used herein shall include the payee or other endorsee or transferee of this Note, or any other holder in due course who is in possession of it, or the bearer hereof, if this Note is at the time payable to the bearer.

INSURANCE

PROPERTY INSURANCE, if written in connection with this loan, may be obtained by Borrower through any person of his choice, subject only to the Bank's right to refuse any insurer offered by the Borrower, for reasonable cause. Such insurance cannot be obtained from or through the Bank.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the Borrower signs the appropriate statement below:

- (a) The cost for Credit Life and Disability Insurance will be \$ _____ for the term of the credit.
- (b) The cost for Credit Life Insurance alone will be \$ _____ for the term of the credit.

- I desire Credit Life Insurance only
- I desire Credit Life and Disability Insurance.
- I DO NOT desire Credit Life or Disability Insurance.

 (Date) (Signature)

STATEMENT OF TRANSACTION

1. Amount of Loan	\$ 10,000.00
2. Other Charges Included in the Amount of Credit Extended:	
Credit Life Insurance	\$ --
Disability Insurance	\$ --
Property Insurance	\$ --
_____	\$ --
_____	\$ --
3. AMOUNT FINANCED (1 and 2)	\$ 10,000.00
4. FINANCE CHARGE	\$ 375.00
Consisting of Interest	\$ 375.00
Loan Service Fee	\$ --
_____	\$ --
5. ANNUAL PERCENTAGE RATE	7.60%
6. TOTAL OF PAYMENTS (3 and 4)	\$ 10,375.00

THIS PROMISSORY NOTE IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH IN PRINT ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, the Borrower has executed this Agreement and hereby acknowledges receipt of a completed copy hereof.

c/o Sherman and Hemstreet 722-8334
 Home Address Home Phone
 739 Broad Street
 (Give Location if P. O. Box or Route No.)
 Augusta, Georgia
 Business Address Business Phone

Signatures (Sign name in Ink. Do Not Print)
 Doug Barnard for Congress
 By: D. Hugh Connolly (L.S.)
 D. Hugh Connolly

NEW & RENEWED LOANS - MAY, 1976

DAY	NEW	RENEW	NO. OF LOANS AT 1/2% & UNDER			7.5%		7.25%		7%		6.75%		6%		5%		4.875%				
						REAL	SEC	UNSEC	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW
3	24	33	12	4	8	2,800	2,800	200,000	200,000	50,000	300	1,000,000	100,000	--	--	--	--	--	--			
4	15	31	0	0	0	--	--	--	--	--	--	--	--	--	--	--	--	--	--			
7	18	25	1	4	2	80,000	80,000	--	--	24,000	480	--	--	--	--	--	--	--	--			
6	22	17	6	4	2	200,000	15,000	--	--	6,870	4,500	--	--	--	--	--	--	--	--			
11	11	12	2	1	1	100,000	10,000	--	--	--	--	--	--	--	--	--	--	--	--			
10	32	51	7	3	4	65,000	1,500	--	--	82,717	1,900	1,366,310	1,366,310	--	--	--	--	--	--			
11	13	25	1	1	3	--	--	--	--	211,250	1,800	--	--	--	500,000	500,000	--	--	--			
12	10	20	2	2	0	66,000	66,000	--	--	7,000	7,000	--	--	--	--	--	--	--	--			
13	17	18	5	4	1	42,000	2,000	--	--	9,398	2,500	--	--	--	--	--	--	--	--			
14	13	18	1	0	1	7,500	7,500	--	--	--	--	--	--	--	--	--	--	--	--			
17	14	27	1	3	1	--	--	--	--	3,800	1,000	--	--	10,000	10,000	--	--	--	--			
18	12	14	1	1	2	10,000	10,000	--	--	14,000	2,000	--	--	--	--	--	--	--	--			
19	15	30	2	0	2	--	--	--	--	130,000	1,500	--	--	--	--	--	--	--	--			
20	5	17	2	1	1	--	--	--	--	3,500	2,000	--	--	--	--	--	--	--	--			
21	9	10	0	0	0	--	--	--	--	--	--	--	--	--	--	--	--	--	--			
24	22	51	5	3	2	--	--	--	--	20,000	500	--	--	--	--	--	550,000	550,000	--			
25	13	27	1	2	1	--	--	--	--	243,343	500	--	--	--	--	--	--	--	--			
27	2	15	1	0	1	--	--	--	--	1,000	1,000	--	--	--	--	--	--	--	--			
27	11	2	1	2	1	100,000	100,000	--	--	10,004	900	--	--	--	--	--	--	--	--			
28	19	24	4	1	3	12,000	1,700	--	--	8,071	8,071	--	--	--	508,088	508,088	--	--				
	307	502	73	36	37																	

Exhibit A

7003612

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN S. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION
JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
'78 MAY 22 AM 11:09
TELEPHONE
(404) 722-7541

802904

May 16, 1978

Paul Lovejoy, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, DC 20463

Re: MUR 218 (76)

Dear Mr. Lovejoy:

I refer you to my letters to Mr. Oldaker of April 3, 1978 and of April 20, 1978 in connection with the above matter, and enclose herewith a letter from the Deputy Commissioner of Banking & Finance of the State of Georgia. He sets forth therein the opinion of the Department of Banking & Finance that the loan in question, which is the subject matter of your investigation, was made in conformity with the Financial Institutions Code of Georgia and further that it was made in the ordinary course of business.

The sole issue to be resolved in this matter, according to our understanding, which is confirmed in Mr. Oldaker's letter to me of March 28, 1978, is whether or not the said loan was made in "the ordinary course of business" as set forth in 2 U.S.C. §431(e)(5)(G). This subsection and one set forth thereafter [§431(f)(4)(K)] exclude from the definitions of "contribution" and "expenditure" "a loan of money by a national or state bank made in accordance with applicable banking laws and regulations and in the ordinary course of business..."

In §441(b) the Act provides that it is unlawful for certain entities, including "any corporation whatever" to make a contribution or expenditure in connection with any election at which a Representative in Congress is to be voted for, etc. Although the terms "contribution" and "expenditure" had been

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Paul Lovejoy, Esq.
May 16, 1978
Page Two

previously defined in the Act as excluding a loan made by a bank in the ordinary course of business, this section emphasizes that fact by restating the exclusion.

In resolving the issue in contention, it is first necessary to construe the language defining the type loan which is not prohibited under the Act. The loan must meet two tests: (1) that it is made in accordance with applicable banking laws and regulations, and (2) that it is made in the ordinary course of business.

Since the test is in the conjunctive, a question arises as to what is meant by a loan not made in "the ordinary course of business" if such loan is in compliance with applicable banking laws and regulations.:

Apparently, the Commission is not contending that the loan in question was made in violation of applicable banking laws and regulations. In any event, the opinion of the Georgia Department of Banking & Finance in this regard would constitute substantial evidence that the loan was not violative of the Georgia banking laws and regulations. In order, therefore, for the loan in question to constitute a violation of the Federal Election Campaign Act, it must, in our opinion, meet a narrower test. That is, it must be a loan which, although in compliance with applicable (state) laws, was one not made in the ordinary course of business.

The Federal Election Campaign Act does not define "ordinary course of business" or set guidelines for that purpose, although proposed regulations would attempt to do so. The Georgia Financial Institutions Code does not use or define this terminology. Nor is there any readily available treatise which provides a pertinent definition thereof. However, there are reported cases which deal with this language, but only rarely in banking contexts. The question is one of fact and ultimately depends for resolution on many factors.

It can be said generally that a transaction not made in the ordinary course of business results in some kind of penalty. Here, however, there would be no penalty under the Georgia banking laws. In most cases where transactions are analyzed as to whether they were made in the ordinary course of business, the purpose of the statute involved and the evil to be remedied are considered. In the matter under investigation, the purpose of the Act is to prevent contributions by corporations to certain political candidates, and not to prevent unwise or unusual loans from being made.

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Paul Lovejoy, Esq.
May 16, 1978
Page Three

It is submitted that any alleged irregularity in the making of the loan in question should, in determining culpability, bear directly on the donative intent of the corporation.

What guidelines should a bank follow in making loans? Different guidelines exist for different type loans. Loans should be commercially reasonable. They should generally be made in the geographical area of the bank's operation. They should be made to credit-worthy borrowers. The character of the borrower should be considered, as should the borrower's capacity to repay the loan.

All of these factors were presumably taken into account by the Georgia Department of Banking & Financing, when, in retrospect, it deemed the loan in question to have been made in the ordinary course of business.

Whether the interest rate on the loan should have been the same as that applicable to loans made to Mr. Connolly generally is a matter of permitted Bank discretion which, it is submitted, should not be subject to criticism by the Federal Election Commission. Mr. Connolly's character and credit worthiness were no different when he signed the note in behalf of the Barnard Committee than they were when he made a personal loan. The Bank's expectation of repayment, whether Mr. Connolly was personally liable or not (which has never been determined as a matter of law) was undoubtedly the same.

In summary, Georgia Railroad Bank & Trust Company maintains that it has not violated the Federal Election Campaign law. Further, it contends that any attempt on the part of a non-bank regulatory Commission, distantly removed from the site of the transaction, to determine whether the transaction, conceded to be legal, was made in the ordinary course of business or not, is beyond the Commission's area of expertise and its capacity to make a proper judgment thereof.

After considering the above, if you still intend to recommend to the Commission that it find probable cause to believe that Georgia Railroad Bank & Trust Company violated the Act, I ask that the Commission afford me the opportunity of conferring with you and the General Counsel in Washington with a view towards working out some satisfactory phraseology of a conciliation agreement. I realize that the General Counsel has provided me with a


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Paul Lovejoy, Esq.
May 16, 1978
Page Four

form for such an agreement but, as I have pointed out in the past, the terms thereof are inaccurate to some extent and, in my opinion, too harsh for the alleged violation which has taken place in this matter. .

I look forward to hearing from you in the near future.

Very sincerely yours,


Samuel C. Waller

SCW:jc

CC: Mr. Charles B. Presley
President
Georgia Railroad Bank &
Trust Company

Mr. Jay Sawilowsky

70040105211

TELEPHONE 722-8853

200381J
RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 JUN 15 AM 11:56

June 12, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: MUR 218 (76)

803635

Dear Mr. Oldaker:

On Friday, June 9, 1978, your Mr. Jay Myerson informed me that you, Mr. Lovejoy and Mr. Myerson could meet with the lawyers for the Bank and the Committee at 11:00 A. M. on June 19, 1978 at the offices of the Federal Election Commission in Washington, D. C. Mr. Myerson on that date, and on Monday, June 12, 1978, informed me that the sole purpose of that meeting would be to discuss the terms of the conciliation agreement. He further informed me that if we wanted to discuss anything else, such as the innocence of the Bank and the Committee, it would not be worth our while to meet with you and your staff.

The position of the Federal Election Commission is that it will confer with us about this matter only if we first concede that our clients committed a violation of the law. I will not go to a conference on such terms. Mr. Waller, who is now out of town, can speak for his own client.

I believe the position, stated above, of the Federal Election Commission is a violation of my client's rights under 2 USCA 437(g). The law specifically gives us "a reasonable opportunity to demonstrate that no action should be taken against such person by the Commission under this Act" and requires that "the Commission shall make every endeavor ... to correct or prevent such violation by informal methods of conference, conciliation, and persuasion ..."

That has not been done in this case. It cannot be done if the Commission takes the position that prior to any conference my client must be prepared to admit a violation of the law so that

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Mr. William C. Oldaker
June 12, 1978
Page 2

the only purpose of the conference is to discuss the terms of a conciliation agreement. The least that fair play and due process would require is that the Federal Election Commission discuss this matter fully with us, -and if my client has committed a violation, SHOW US HOW AND WHEREIN AND IN WHAT MANNER SUCH VIOLATION WAS COMMITTED.

We have submitted copious evidence that this loan was made in the ordinary course of business. The Federal Election Commission insists that the loan was not made in the ordinary course of business. Yet they have not explained HOW.

What witnesses do you have who will testify that this loan was made out of the ordinary course of business? What authorities do you rely upon to refute or rebut the opinion of the Georgia Department of Banking & Finance? I do not refer to argument of counsel. Just what evidence do you have which would create jury issues or which would prevent the court from rendering a summary judgment or directed verdict in favor of the Bank and the Committee?

My client and I are unaware that it has done anything wrong. We are not prepared to admit that it has done anything wrong unless it is shown that it has. In this connection, I must point out that it was not until April 1978 that the Federal Election Commission submitted regulations to Congress regarding the making of loans. The regulations submitted this year were not in existence on May 14, 1976.

We acknowledge that the Federal Election Commission has the power to embarrass the Committee and the individual members by the filing of a complaint in the District Court here. However, to my knowledge, the Commission has neither the legal nor the moral right to do so.

Unless the Commission is prepared to discuss this matter fully with us, as required by law, and to demonstrate to us how and wherein and in what manner a violation was committed, we

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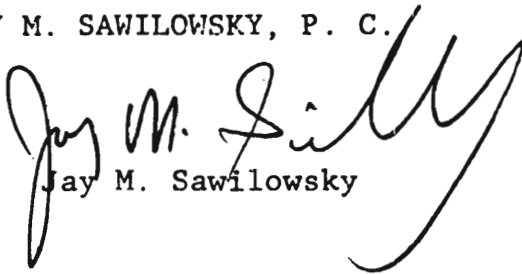
Mr. William C. Oldaker
June 12, 1978
Page 3

are not prepared to enter into a conference simply for the purpose of preparing a conciliation agreement which admits wrongdoing.

Very truly yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

cc: Mr. Samuel C. Waller
Mr. Paul Lovejoy
Mr. Jay Myerson
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet
Mrs. Nancy J. McJunkin

70040103214

TELEPHONE 722-8853

700 7003
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 JUL 10 PM 2:37

July 6, 1978

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

Re: MUR 218(76)

Dear Mr. Myerson:

Today one of Mr. Waller's partners mentioned to me that yesterday you remarked to Mr. Waller that the Federal Election Commission felt that the proposed conciliation agreement, prepared and submitted by the Barnard for Congress Committee, was not submitted in good faith.

Mr. Waller is out of town today so I cannot check with him personally. It may be that Mr. Waller's partner misunderstood something Mr. Waller said.

Please advise me at once if the Federal Election Commission does in fact feel that the Barnard for Congress Committee submitted its proposed conciliation agreement in bad faith. That would be a very serious matter which would require straightening out at once.

Mr. Connolly and I do not understand how such an attitude - if it exists - could exist. At your request we submitted a proposed conciliation agreement. The proposed conciliation agreement accurately sets forth the facts and contentions of the parties. Per our conference during the week of June 12, 1978, I mailed two signed copies of the proposed conciliation agreement to you on June 16, 1978. The return receipt shows that it was received by the Committee on June 20, 1978. So far, I have had no response whatever from you or any other member of the staff of the Federal Election Commission.

If the Federal Election Commission disapproves of the proposed conciliation agreement, prepared and submitted by the Barnard for

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Mr. Jay Myerson
July 6, 1978
Page 2

Congress Committee, I would think that it would notify me and point out where and wherein and how and why the proposed conciliation agreement was not acceptable.

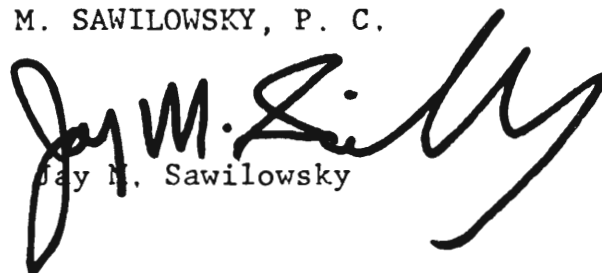
It may be that Mr. Waller's partner misunderstood something he said or that Mr. Waller misunderstood something you said. It may be that the proposed conciliation agreement, prepared and submitted by the Barnard for Congress Committee, is acceptable to Federal Election Commission, but you just haven't gotten around to letting me know.

Please advise me of the situation, whatever it is.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

cc: Mr. Samuel C. Waller
Mrs. Nancy McJunkin
Mr. Paul Lovejoy
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

79040105215

TELEPHONE 722-8853

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

GC
L874
FEDERAL ELECTION
COMMISSION

'78 AUG 4 PM 12:04

August 2, 1978

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

Re: MUR 218(76)

Dear Mr. Myerson:

Today I found out that yesterday (August 1, 1978) Mr. John D. Hemenway filed suit in the United States District Court for the District of Columbia against the Federal Election Commission and Congressman D. Douglas Barnard seeking relief which included \$200,000.00 punitive damages. For your ready reference, the plaintiff, who filed the action pro se, is the husband of Mrs. Betty Hemenway, Mr. Barnard's opponent in the Democratic primary to be held on August 8, 1978. Enclosed is a photostat of Mrs. Hemenway's press release.

The lawsuit, and the enclosed press release, show the political purpose of the complaint originally made in this matter - against Mr. Barnard. As you can see from the enclosed press release, your copy of the lawsuit, and the original affidavit filed, the target is Congressman Barnard - not my client. I am sure that the Federal Election Commission is by now very familiar with persons attempting to use it for the wrong political purposes. In this instance, you, and the Federal Election Commission, have my sympathy.

With reference to the allegations in the complaint, and in the press release, please note that the alleged witnesses (indicated on tab B) do not involve either Congressman Barnard or any member of the Barnard for Congress Committee. Reference to tab B shows it to be composed of compound hearsay. Mr. and Mrs. Hemenway will, I'm afraid, be disappointed when Mr. J. W.

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Mr. Jay Myerson
August 2, 1978
Page 2

Spence does not support the allegations. In that connection, Mr. Spence is not on Congressman Barnard's payroll and never has been.

If you want me to obtain information from my client about the various allegations in the complaint, and in the press release, please let me know and I will do so.

My client must insist that Federal Election Commission maintain the confidentiality, required by law, during this litigation. Of course, you are investigating the Barnard for Congress Committee and not Mr. Barnard.

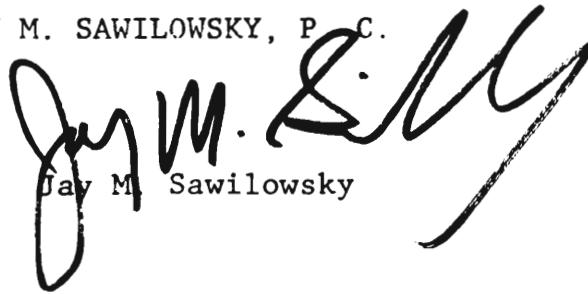
A copy of this letter is being sent to Mr. Barnard, the members of the Barnard for Congress Committee, and the attorney for the bank, for their information.

Finally, should Mr. Hemenway call you, or any other member of the staff of Federal Election Commission, please be informed that Mr. Hemenway is suspected of tape recording conversations without informing the person on the other end.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Honorable D. Douglas Barnard, Jr.
Mr. Samuel C. Waller
Mr. D. Hugh Connolly
Mrs. Nancy McJunkin
Mr. J. Carlisle Overstreet
Mr. Don Grantham
Mr. William C. Oldaker
Mr. Paul Lovejoy

700101213

CONGRESSIONAL RACE, 10th DISTRICT

Betty Hemenway Exposes Criminal Fraud of Barnard

Augusta, Ga August 2 - Betty Hemenway, candidate for Congress in the 10th District of Georgia, today announced that a suit was filed yesterday in the U.S. District Court for the District of Columbia naming Douglas Barnard and the Federal Elections Commission as defendants. This complaint and accompanying sworn affidavits support Betty Hemenway's August 20 charges that her opponent, former banker-lobbyist Barnard is guilty of gross violations of law and election regulations involving thousands of dollars and violations of the Corrupt Practices Act. She repeated her charge that the incumbent banker is a "common crook."

Direct Evidence of Fraud

Charges brought before the U.S. District Court for the District of Columbia detail names of witnesses and persons leading to other witnesses who have personal first hand knowledge of the election frauds of Douglas Barnard. These persons operated personally under the instructions of Douglas Barnard and under persons taking instructions from Barnard. Mrs. Hemenway charged "Illegal operations went this way:

1. In August, 1976 Barnard was hard pressed in his run-off campaign with Mr. Mike Padgett. Cash was urgently needed to pay campaign workers and current expenses in order to meet budget goals in a total campaign that reportedly spent \$250,000.00.
2. Barnard made internal arrangements at the Georgia Railroad Bank so that persons helping the campaign could get immediate credit without checks on credit background, or equity of any kind usual in the banking business.
3. Barnard arranged for a number of persons to negotiate loans from a reported \$20,000,000 to a reported high of \$75,000,000. The proceeds of this money from Georgia Railroad Bank loans was directly applied to the campaign.
4. Barnard personally made all of the arrangements in at least several instances, illegally using the deposits and assets of the Bank of which he was concurrently chief executive and drawing full salary illegally while campaigning full time for office.
5. Barnard personally promised certain individuals borrowing money future repayment of the loans signed and he promised others \$40,000.00 jobs in direct return for financial and other assistance given to raise needed cash and other support for the campaign.

Betty Hemenway circulated to the press a complaint filed in the U.S. Court for the District of Columbia, the court of first instance in FEC matters, under law, and sworn statements executed in 1976 and 1978 concerning the charges and supporting them which were forwarded to the U.S. Attorney General for determination as to possible prosecution and to the House Ethics Committee under Rep. Jack Flynt, Georgia Democrat.

New Evidence Reinforces Charges Made 2 Years Ago

Betty Hemenway said, "The charges made two years ago are totally parallel and consistent with the most charges of illegalities. We have more evidence of the persons involved. There are more witnesses with very definite knowledge of the charges which identified as legal at the time. The charges were filed in 1976 and 1978. The evidence is now more complete. The House Banking Committee's report on the same conflict of interest and a dozen other charges in the campaign of the incumbent."

Barnard's Cover-Up: Barnard's Refusal to Debate

These charges have not been cooked up at the last minute during an election. Betty Hemenway said. "This investigation has been underway for 2 years. Not only the banker incumbent has refused to debate even on the request he said he wanted to run on because of fear of exposure of these gross violations of law.

There is no legal reason why Barnard could not have made public all of his correspondence with the Federal Elections Commission concerning their investigation of him over the past two years - which is continuing. Betty Hemenway declared. "Naturally if the investigation has been thorough, some of the questions put to him by the FEC would have been as deeply embarrassing as the suit and related documents I am making public today. He said he wanted to run on his record, but when I challenged him to do so, he ran away from his record and has tried to cover it up and misrepresent it to the voting public."

\$8 Million 'Bribe' to the FEC

Barnard flatly refused to make public all correspondence he has had with the FEC, said the Eaton woman. "Yet while under investigation by the FEC, he actually voted for an \$8 million supplementary appropriation for the FEC which, under the circumstances, amounts to a special pleading by an incumbent congressman, former lobbyist (who understands these things) to encourage the FEC to let the investigation last forever and to cover this matter up."

1976 FEC Complaint is the Tip of the Iceberg

The purpose of the suit filed in the U.S. District Court for the District of Columbia, according to Mrs. Hemenway, is to force the FEC to move ahead to a final determination in the complaint filed against Barnard two years ago, or to permit a competent body of the U.S. Government to take over the complaint. Sworn statements accompanying the suit reveal the attitudes of the campaign staff of the former banker-lobbyist.

For example, his treasurer, Nancy McJunkin, then and now an official of the Georgia Railroad Bank said in 1976:

"You know, you have to be independently wealthy, looks like, or you have to have an arrangement somewhat like Mr. Barnard has been fortunate enough to have in order to run for public office." (Campaign Treasurer McJunkin, according to sworn statement to FEC of September 14, 1976.)

Is Congress Only For The Corrupt And Wealthy?

"Expect the concept that only crooks and wealthy persons can run for Congress," declared Betty Hemenway, who respects a hard-earned campaign with only \$100,000.00 but expected of our Republic, and not the type of politicians who are presently elected to Congress, security of the law. The present situation is necessary to permit people to step out to be law-abiding citizens. If we removed it in a time from our fathers.

"The basic problem of Congress today," declared Mrs. Hemenway, "is that we need them (Congressmen) to Washington poor and they come back rich."



BETTY HEMENWAY, July 4, 1978

"It is high time we straighten out Congress," the Eatonton challenger said. "A good Congress is the key to good government."

Clean Special Interests Out Of Congressional Seat In 10th

I am serving notice that bank-lobbyists and corrupted lawyers need not apply for congressional office in the 10th District, Betty Hemenway declared. "We have far too many lawyers now in Congress anyway - nearly 70% of the Congress. All voters should read LUKE 11: 45-52 to see what Jesus Christ had to say about the problem of lawyers in public life before voting for too many lawyers. Two thousand years has made little difference. I feel that it is not without significance that, among the principal contributors to the Barnard campaign is the American Bankers Association, whose Bankpak gave Barnard \$2,000.00 in February of this year to end down his support in the Banking Committee."

1978 Not The Year Of The Wheeler-Dealer In The 10th District

Obvious criminal activities, including violations of the Corrupt Practices Act, are involved in the matters raised by the complaint filed today in the U.S. District Court for the District of Columbia," Betty Hemenway commented. "Not only is the entire matter to be referred to the Department of Justice criminal division for appropriate action, I would not rule out the possibility that Mr. Barnard will spend much of 1978 and 1979 in legal actions designed to stay out of jail."

If The Banker Wins - You Lose!

Read this Betty Hemenway's charges against the Banker, Georgia, in a copy of our report on file with the Federal Election Commission, Washington, D.C. and save it for posterity. J.D. Hemenway, Treasurer.

11-27-78-1978
Betty Hemenway can file it
\$250,000 in charges in the civil act

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



Mr. William C. Oldaker
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

12:34

ACC 4083

TELEPHONE 722-8883

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
802 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

'78 JUL 10 PM 2:37

July 6, 1978

ABDON BOND
97 OCT 20 1978

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

Re: MUR 218(76)

Dear Mr. Myerson:

Today one of Mr. Waller's partners mentioned to me that yesterday you remarked to Mr. Waller that the Federal Election Commission felt that the proposed conciliation agreement, prepared and submitted by the Barnard for Congress Committee, was not submitted in good faith.

Mr. Waller is out of town today so I cannot check with him personally. It may be that Mr. Waller's partner misunderstood something Mr. Waller said.

Please advise me at once if the Federal Election Commission does in fact feel that the Barnard for Congress Committee submitted its proposed conciliation agreement in bad faith. That would be a very serious matter which would require straightening out at once.

Mr. Connolly and I do not understand how such an attitude - if it exists - could exist. At your request we submitted a proposed conciliation agreement. The proposed conciliation agreement accurately sets forth the facts and contentions of the parties. Per our conference during the week of June 12, 1978, I mailed two signed copies of the proposed conciliation agreement to you on June 16, 1978. The return receipt shows that it was received by the Committee on June 20, 1978. So far, I have had no response whatever from you or any other member of the staff of the Federal Election Commission.

If the Federal Election Commission disapproves of the proposed conciliation agreement, prepared and submitted by the Barnard for

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Mr. Jay Myerson
July 6, 1978
Page 2

Congress Committee, I would think that it would notify me and point out where and wherein and how and why the proposed conciliation agreement was not acceptable.

It may be that Mr. Waller's partner misunderstood something he said or that Mr. Waller misunderstood something you said. It may be that the proposed conciliation agreement, prepared and submitted by the Barnard for Congress Committee, is acceptable to Federal Election Commission, but you just haven't gotten around to letting me know.

Please advise me of the situation, whatever it is.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky

JMS:sf

cc: Mr. Samuel C. Waller
Mrs. Nancy McJunkin
Mr. Paul Lovejoy
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

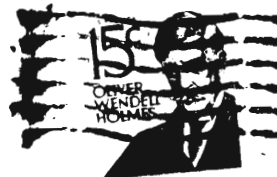
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JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902



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

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902



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

3094010520

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902 '78

RECEIVED
FEDERAL ELECTION
COMMISSION

JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1988)

TELEPHONE
(404) 722-7541

JUL 7 PM 3:04

804278

July 6, 1978

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

Re: MUR 218 (76)

Dear Mr. Myerson:

Pursuant to Mr. Waller's request, we are enclosing herewith a draft of the Conciliation Agreement between the Federal Election Commission and Georgia Railroad Bank & Trust Company.

Very sincerely yours,



Wm. Byrd Warlick

jc
Enclosure

Copy with enclosure sent to
2412 Albot, Reston, Virginia 22091

DRAFT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Georgia Railroad Bank)	MUR 218(76)
& Trust Company)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, Georgia Railroad Bank & Trust Company (hereinafter "Respondent"), may have violated 2 U.S.C. §441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission (hereinafter "the Commission") and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g (a) (5), do hereby agree as follows:

1. Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. §437g(a) (4).

3. The pertinent facts and law in this matter are as follows:

(a) The Barnard for Congress Committee (hereinafter "Borrower") was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections;

(b) On May 14, 1976, the Borrower borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. The sole collateral securing said loan was a security interest in the property of Borrower then in, or which may later have come into, possession of Borrower. As of May 14, 1976 the property of Borrower in the possession of Borrower was \$7,396.78.

(c) Mr. D. Douglas Barnard was employed by Respondent as an Executive Vice President at the time the loan was made;

(d) The loan was negotiated on behalf of Borrower by its Chairman, D. Hugh Connolly, who executed a promissory note evidencing the said loan, as follows: "Doug Barnard for Congress, by: D. Hugh Connolly;"

(e) The loan was authorized by Charles B. Presley, Chairman of the Board of Respondent, after satisfying himself that the risk of nonrepayment of the loan by Borrower was "minimal" based on his knowledge of Messers. Connolly and Barnard, and the other members of the committee whose reputations were impeccable and who assured him that the loan would be repaid.

4. The Commission contends that the loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(g) and, as a result thereof, that Respondent made a contribution to Borrower in violation of 2 U.S.C. §441b(a).

5. Respondent contends that the loan was made in the ordinary course of business and therefore was not in violation of 2 U.S.C. §441b(a).

6. The negotiation and execution of the loan by Respondent was not made in a knowing and willfull attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq.

7. For the purpose of settling this controversy, Respondent represents that similar loans will not be made by it to political committees without adequate security therefor, and that to avoid litigation in the matter at hand hereby accepts an admonition from the Commission that such conduct may have constituted a violation of 2 U.S.C. §441b(a).

8. 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, 2 U.S.C. §437g(a)(7).

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

ATTEST:

GEORGIA RAILROAD BANK &
TRUST COMPANY

By _____

Its _____

ATTEST:

FEDERAL ELECTION COMMISSION

By _____

William C. Oldaker
General Counsel

Date _____

EXPRESS MAIL
NEXT DAY SERVICE[®]

POST OFFICE TO ADDRESSEE



FROM:

NEVIN HOW MEMBER?
1000 ...
...

Customer Number (if any)

TO:

MR. JAY
1325 R ...
...

0 28185
DESTINATION:

Date of Delivery 12-29

Time of Delivery

5:00 PM

S. O. ... Agent

DELIVERY WAS ATTEMPTED

Date Time

Not on file

TO REMOVE PEEL BACK HERE

EXPRESS MAIL SERVICE

LABEL 118 DEC 77

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION

18 JUL 7 P 2: 49

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

h2 10 WA 1 100 85

100 85

TELEPHONE 722-8853

Lovejoy

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

JUN 20 PM 1:15

June 16, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

803775

Re: MUR 218(76)

Dear Mr. Myerson:

Per our conference, and my previous correspondence, enclosed, in duplicate, is a Conciliation Agreement which I have prepared on behalf of the Barnard for Congress Committee. It has already been signed by Mr. D. Hugh Connolly, its Chairman.

This Conciliation Agreement is acceptable to my client. In addition, it has the added advantage of being truthful.

If it meets with the approval of the Federal Election Commission, please have Mr. Oldaker sign and date one copy, having it attested, and return it to me. If anything else needs to be done to bring this matter to a conclusion, then please do so.

In drawing the Conciliation Agreement, I used as a form the Conciliation Agreement enclosed in the original letter to Mr. D. Hugh Connolly, dated March 21, 1978. In fact, a substantial portion of the enclosed Conciliation Agreement is copied from that proposed Conciliation Agreement.

The enclosed Conciliation Agreement is forwarded to you by the Barnard for Congress Committee by way of an offer in compromise of a disputed and possibly litigated matter.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. Samuel C. Waller
Mrs. Nancy McJunkin
Mr. Paul Lovejoy

cc: Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

79910105231

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
 The Barnard for Congress) MUR 218(76)
 Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reason to believe having been found that the Barnard for Congress Committee (hereinafter "Respondent") violated 2 U.S.C. §441b(a).

Now, therefore, the respective parties have in the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter pursuant to 2 U.S.C. § 437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) On May 14, 1976 respondent borrowed from the Georgia Railroad Bank & Trust Company the sum of \$10,000.00 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. This loan was secured, by the express terms of the promissory note of the respondent to said bank, by the respondent's checking account in said bank. On May 14, 1976, the respondent had

on deposit with that bank, exclusive of the aforesaid loan, \$7,396.78, securing the loan, leaving \$2,603.22 unsecured.

(c) The promissory note expressly provided that the bank was to have a security interest, securing the aforesaid loan, on the respondent's checking account. The promissory note further provided that at any time the bank should feel insecure for any reason whatsoever, the bank could, without demand or notice, declare the debt due and exercise its rights and remedies under its contract and the Uniform Commercial Code in effect in Georgia. Under Georgia Code §§ 109A-9-201, 203, 204 and 302, the bank had a perfected security interest in the respondent's checking account in favor of the bank. Under Georgia Code § 109A-1-208, the provision for acceleration of the debt, in the event that the bank should feel insecure for any reason whatsoever, is lawful and enforceable provided the bank acts in good faith, and the burden of establishing lack of good faith is on the party against whom the power has been exercised. Reference to the respondent's records of its checking account shows that, from May 14, 1976 until December 31, 1976, the bank was secured at all times and at times the bank was 100% secured and at other times the bank was secured in excess of 100%.

(d) Mr. D. Douglas Barnard was employed at the Georgia Railroad Bank & Trust Company as an Executive Vice President at the time the loan was made.

(e) The loan was negotiated and executed on behalf of respondent by its Chairman, Mr. D. Hugh Connolly.

(f) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of the Georgia Railroad Bank & Trust Company.

(g) Prior to May 14, 1976 D. Hugh Connolly had made a number of loans for himself personally from the said bank, which loans carried interest at rates of 7%, 7½% and 7½% per annum.

(h) On May 14, 1976 there were no regulations of the Federal Election Commission defining "ordinary course of business."

(i) On April 3, 1978 the Federal Election Commission submitted its request, set forth in the Federal Register of April 7, 1978, for comments for the purpose of proposing certain new regulations, including a specific proposal defining "ordinary course of business" under 2 U.S.C. 431(e)(5)(G) and 2 U.S.C. 431(f)(4)(K). The proposed definition of "ordinary course of business" contains seven standards.

(j) The respondent has submitted evidence that on May 14, 1976 the bank took into consideration, in making the loan, the impeccable character and reputation of D. Hugh Connolly and the other members of the Committee and that it is standard bank practice to consider the character of the borrower as among the most important things taken into consideration. The respondent further furnished evidence that since the loan was made, there have been two bank examinations by state and federal regulatory authorities and that the bank's loan portfolio is examined annually by the bank's independent auditors; neither the state and federal bank examiners nor the bank's independent auditors have ever criticized or taken exception to this loan. The respondent further submitted evidence that the Georgia Department of Banking & Finance, by letter dated May 5, 1978, gave its opinion that this loan was made in conformity with the Financial Institutions Code of Georgia (codified as Title 41A of the Code of Georgia) and appears to have been made in the ordinary course of business.

4. The Federal Election Commission takes the position that this loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G) and therefore it constituted a contribution to respondent in violation of 2 U.S.C. §441(b)(a).

The respondent takes the position that the loan was made in the ordinary course of business as set forth in 2 U.S.C. §431(e) (5)(G) and therefore did not constitute a contribution to respondent in violation of 2 U.S.C. §441b(a). The Federal Election Commission and the respondent have a sharp disagreement regarding the definition of the term "in the ordinary course of business" as used in the aforesaid Code Sections as applied to the facts in this case.

5. It appears that at worst the respondent may have committed an inadvertent, accidental, unknowing technical error in making this loan in an obscure and ambiguous situation, created in part by the absence of any regulations of the Federal Election Commission defining the term "in the ordinary course of business."

6. The negotiation and execution of the aforesaid loan by respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. By the execution of this Conciliation Agreement, the respondent does not admit any violation of 2 U.S.C. §431 et seq., and expressly denies any violation, and states that it had no knowledge of or intent to commit any violation or offense under 2 U.S.C. §431 et seq., and enters into this Conciliation Agreement for the sole purpose of resolving this dispute pursuant to the provisions of 2 U.S.C. §437g.

7. Hereafter the respondent will not make any loan except in compliance with the regulations of the Federal Election Commission set forth in its proposed regulation dated April 3, 1978, set forth in the Federal Register of April 7, 1978, or as thereafter adopted.

8. The Federal Election Commission on request of anyone filing a complaint under 2 U.S.C. §431g(a)(1) concerning the matter at issue herein or on its own motion may review

compliance with this agreement. If the Federal Election 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 Southern District of Georgia in accordance with 2 U.S.C. §437g(a)(7).

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

ATTEST:

BARNARD FOR CONGRESS COMMITTEE

Boyle V. Dennis

Notary Public
for the State of Georgia

D. Hugh Connolly

By D. Hugh Connolly

Its Chairman

Date 6-14-78

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker

General Counsel

Date _____



FEDERAL ELECTION COMMISSION

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

July 7, 1978

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS *MUE*

SUBJECT: MUR 218 - Interim Report dated 7-5-78
Received in Office of Commission
Secretary 7-5-78, 2:28

The above-mentioned document was circulated on a 24
hour no-objection basis at 9:00 a.m., July 6, 1978.

As of 9:00 a.m., this date, no objections have been
received in the Office of Commission Secretary to the Interim
Report.

79010105237

July 5, 1978

MEMORANDUM TO: Marge Emons
FROM: Eliass T. Carr
SUBJECT: MUR 218

Please have the attached Interim Report on MUR 218 distributed to the Commission.

Thank you.

79040105238

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
Doug Barnard for Congress)
Committee) MUR 218
)
)
Georgia Railroad Bank & Trust)
Company)

INTERIM REPORT

On October 19, 1977, the Commission found reasonable cause to believe that the Georgia Railroad Bank and Trust Company ("the Bank") violated 2 U.S.C. §441b in making a \$10,000 loan to the Doug Barnard for Congress Committee ("the Committee"). On March 15, 1978, the Commission found reasonable cause to believe that the Committee violated 2 U.S.C. §441b in accepting the loan from the Bank.

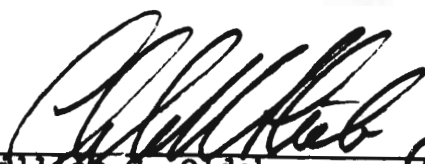
The Office of General Counsel has been in communication with counsel for respondents regarding conciliation of this matter. Counsel for respondents have submitted supplemental materials, which have been reviewed by members of this Office and which have not altered this Office's perception of the case.

Finally, the Office of General Counsel has requested that counsel for respondents propose conciliation agreements which would be acceptable to their clients. To date, a proposed agreement has been received only from counsel for the Committee, a copy of which is attached. As part of our report recommending that the Commission find probable cause to believe that the transaction violated 2 U.S.C. §441b, we will advise the

79710105232

Commission to reject this proposed agreement. We anticipate having the report to the Commission for the July 19, 1978 meeting.

5 July 1978
Date



William C. Oldaker
General Counsel

R- weo

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TELEPHONE 722-6653

Lovejoy

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 JUN 20 PM 1:15

June 16, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

803775

Re: MUR 218(76)

Dear Mr. Myerson:

Per our conference, and my previous correspondence, enclosed, in duplicate, is a Conciliation Agreement which I have prepared on behalf of the Barnard for Congress Committee. It has already been signed by Mr. D. Hugh Connolly, its Chairman.

This Conciliation Agreement is acceptable to my client. In addition, it has the added advantage of being truthful.

If it meets with the approval of the Federal Election Commission, please have Mr. Oldaker sign and date one copy, having it attested, and return it to me. If anything else needs to be done to bring this matter to a conclusion, then please do so.

In drawing the Conciliation Agreement, I used as a form the Conciliation Agreement enclosed in the original letter to Mr. D. Hugh Connolly, dated March 21, 1978. In fact, a substantial portion of the enclosed Conciliation Agreement is copied from that proposed Conciliation Agreement.

The enclosed Conciliation Agreement is forwarded to you by the Barnard for Congress Committee by way of an offer in compromise of a disputed and possibly litigated matter.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. Samuel C. Waller
~~Mrs. Nancy McJunkin~~
Mr. Paul Lovejoy

cc: Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

70040103241

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
The Barnard for Congress) MUR 218(76)
Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reason to believe having been found that the Barnard for Congress Committee (hereinafter "Respondent") violated 2 U.S.C. §441b(a).

Now, therefore, the respective parties have in the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter pursuant to 2 U.S.C. § 437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) On May 14, 1976 respondent borrowed from the Georgia Railroad Bank & Trust Company the sum of \$10,000.00 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. This loan was secured, by the express terms of the promissory note of the respondent to said bank, by the respondent's checking account in said bank. On May 14, 1976, the respondent had

on deposit with that bank, exclusive of the aforesaid loan, \$7,396.78, securing the loan, leaving \$2,603.22 unsecured.

(c) The promissory note expressly provided that the bank was to have a security interest, securing the aforesaid loan, on the respondent's checking account. The promissory note further provided that at any time the bank should feel insecure for any reason whatsoever, the bank could, without demand or notice, declare the debt due and exercise its rights and remedies under its contract and the Uniform Commercial Code in effect in Georgia. Under Georgia Code §§ 109A-9-201, 203, 204 and 302, the bank had a perfected security interest in the respondent's checking account in favor of the bank. Under Georgia Code § 109A-1-208, the provision for acceleration of the debt, in the event that the bank should feel insecure for any reason whatsoever, is lawful and enforceable provided the bank acts in good faith, and the burden of establishing lack of good faith is on the party against whom the power has been exercised. Reference to the respondent's records of its checking account shows that, from May 14, 1976 until December 31, 1976, the bank was secured at all times and at times the bank was 100% secured and at other times the bank was secured in excess of 100%.

(d) Mr. D. Douglas Barnard was employed at the Georgia Railroad Bank & Trust Company as an Executive Vice President at the time the loan was made.

(e) The loan was negotiated and executed on behalf of respondent by its Chairman, Mr. D. Hugh Connolly.

(f) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of the Georgia Railroad Bank & Trust Company.

(g) Prior to May 14, 1976 D. Hugh Connolly had made a number of loans for himself personally from the said bank, which loans carried interest at rates of 7%, 7½% and 7½% per annum.

(h) On May 14, 1976 there were no regulations of the Federal Election Commission defining "ordinary course of business."

(i) On April 3, 1978 the Federal Election Commission submitted its request, set forth in the Federal Register of April 7, 1978, for comments for the purpose of proposing certain new regulations, including a specific proposal defining "ordinary course of business" under 2 U.S.C. 431(e)(5)(G) and 2 U.S.C. 431(f)(4)(K). The proposed definition of "ordinary course of business" contains seven standards.

(j) The respondent has submitted evidence that on May 14, 1976 the bank took into consideration, in making the loan, the impeccable character and reputation of D. Hugh Connolly and the other members of the Committee and that it is standard bank practice to consider the character of the borrower as among the most important things taken into consideration. The respondent further furnished evidence that since the loan was made, there have been two bank examinations by state and federal regulatory authorities and that the bank's loan portfolio is examined annually by the bank's independent auditors; neither the state and federal bank examiners nor the bank's independent auditors have ever criticized or taken exception to this loan. The respondent further submitted evidence that the Georgia Department of Banking & Finance, by letter dated May 5, 1978, gave its opinion that this loan was made in conformity with the Financial Institutions Code of Georgia (codified as Title 41A of the Code of Georgia) and appears to have been made in the ordinary course of business.

4. The Federal Election Commission takes the position that this loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G) and therefore it constituted a contribution to respondent in violation of 2 U.S.C. §441(b)(a).

The respondent takes the position that the loan was made in the ordinary course of business as set forth in 2 U.S.C. §431(e) (5)(G) and therefore did not constitute a contribution to respondent in violation of 2 U.S.C. §441b(a). The Federal Election Commission and the respondent have a sharp disagreement regarding the definition of the term "in the ordinary course of business" as used in the aforesaid Code Sections as applied to the facts in this case.

5. It appears that at worst the respondent may have committed an inadvertent, accidental, unknowing technical error in making this loan in an obscure and ambiguous situation, created in part by the absence of any regulations of the Federal Election Commission defining the term "in the ordinary course of business."

6. The negotiation and execution of the aforesaid loan by respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. By the execution of this Conciliation Agreement, the respondent does not admit any violation of 2 U.S.C. §431 et seq., and expressly denies any violation, and states that it had no knowledge of or intent to commit any violation or offense under 2 U.S.C. §431 et seq., and enters into this Conciliation Agreement for the sole purpose of resolving this dispute pursuant to the provisions of 2 U.S.C. §437g.

7. Hereafter the respondent will not make any loan except in compliance with the regulations of the Federal Election Commission set forth in its proposed regulation dated April 3, 1978, set forth in the Federal Register of April 7, 1978, or as thereafter adopted.

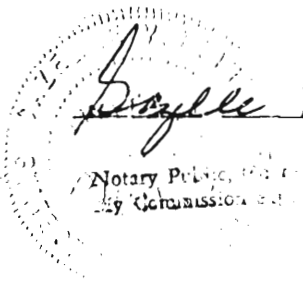
8. The Federal Election Commission on request of anyone filing a complaint under 2 U.S.C. §431g(a)(1) concerning the matter at issue herein or on its own motion may review

compliance with this agreement. If the Federal Election 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 Southern District of Georgia in accordance with 2 U.S.C. §437g(a)(7).

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

ATTEST:

BARNARD FOR CONGRESS COMMITTEE

 Boyle V. Dennis
Notary Public, State of Georgia
By Commission # 123456

D. Hugh Connolly
By D. Hugh Connolly
Its Chairman
Date 6-14-78

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker
General Counsel
Date _____

TELEPHONE 722-6653

7003862
RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

'78 JUN 20 PM 12:31

June 16, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: MUR 218(76)

Dear Mr. Myerson:

Per our conference, and my previous correspondence, enclosed, in duplicate, is a Conciliation Agreement which I have prepared on behalf of the Barnard for Congress Committee. It has already been signed by Mr. D. Hugh Connolly, its Chairman.

This Conciliation Agreement is acceptable to my client. In addition, it has the added advantage of being truthful.

If it meets with the approval of the Federal Election Commission, please have Mr. Oldaker sign and date one copy, having it attested, and return it to me. If anything else needs to be done to bring this matter to a conclusion, then please do so.

In drawing the Conciliation Agreement, I used as a form the Conciliation Agreement enclosed in the original letter to Mr. D. Hugh Connolly, dated March 21, 1978. In fact, a substantial portion of the enclosed Conciliation Agreement is copied from that proposed Conciliation Agreement.

The enclosed Conciliation Agreement is forwarded to you by the Barnard for Congress Committee by way of an offer in compromise of a disputed and possibly litigated matter.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY: 
Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. Samuel C. Waller
Mrs. Nancy McJunkin
Mr. Paul Lovejoy

cc: Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

70040105247

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	
The Barnard for Congress)	MUR 218(76)
)	
Committee)	

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reason to believe having been found that the Barnard for Congress Committee (hereinafter "Respondent") violated 2 U.S.C. §441b(a).

Now, therefore, the respective parties have in the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter pursuant to 2 U.S.C. § 437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) On May 14, 1976 respondent borrowed from the Georgia Railroad Bank & Trust Company the sum of \$10,000.00 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. This loan was secured, by the express terms of the promissory note of the respondent to said bank, by the respondent's checking account in said bank. On May 14, 1976, the respondent had

on deposit with that bank, exclusive of the aforesaid loan, \$7,396.78, securing the loan, leaving \$2,603.22 unsecured.

(c) The promissory note expressly provided that the bank was to have a security interest, securing the aforesaid loan, on the respondent's checking account. The promissory note further provided that at any time the bank should feel insecure for any reason whatsoever, the bank could, without demand or notice, declare the debt due and exercise its rights and remedies under its contract and the Uniform Commercial Code in effect in Georgia. Under Georgia Code §§ 109A-9-201, 203, 204 and 302, the bank had a perfected security interest in the respondent's checking account in favor of the bank. Under Georgia Code § 109A-1-208, the provision for acceleration of the debt, in the event that the bank should feel insecure for any reason whatsoever, is lawful and enforceable provided the bank acts in good faith, and the burden of establishing lack of good faith is on the party against whom the power has been exercised. Reference to the respondent's records of its checking account shows that, from May 14, 1976 until December 31, 1976, the bank was secured at all times and at times the bank was 100% secured and at other times the bank was secured in excess of 100%.

(d) Mr. D. Douglas Barnard was employed at the Georgia Railroad Bank & Trust Company as an Executive Vice President at the time the loan was made.

(e) The loan was negotiated and executed on behalf of respondent by its Chairman, Mr. D. Hugh Connolly.

(f) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of the Georgia Railroad Bank & Trust Company.

(g) Prior to May 14, 1976 D. Hugh Connolly had made a number of loans for himself personally from the said bank, which loans carried interest at rates of 7%, 7½% and 7¾% per annum.

(h) On May 14, 1976 there were no regulations of the Federal Election Commission defining "ordinary course of business."

(i) On April 3, 1978 the Federal Election Commission submitted its request, set forth in the Federal Register of April 7, 1978, for comments for the purpose of proposing certain new regulations, including a specific proposal defining "ordinary course of business" under 2 U.S.C. 431(e)(5)(G) and 2 U.S.C. 431(f)(4)(K). The proposed definition of "ordinary course of business" contains seven standards.

(j) The respondent has submitted evidence that on May 14, 1976 the bank took into consideration, in making the loan, the impeccable character and reputation of D. Hugh Connolly and the other members of the Committee and that it is standard bank practice to consider the character of the borrower as among the most important things taken into consideration. The respondent further furnished evidence that since the loan was made, there have been two bank examinations by state and federal regulatory authorities and that the bank's loan portfolio is examined annually by the bank's independent auditors; neither the state and federal bank examiners nor the bank's independent auditors have ever criticized or taken exception to this loan. The respondent further submitted evidence that the Georgia Department of Banking & Finance, by letter dated May 5, 1978, gave its opinion that this loan was made in conformity with the Financial Institutions Code of Georgia (codified as Title 41A of the Code of Georgia) and appears to have been made in the ordinary course of business.

4. The Federal Election Commission takes the position that this loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G) and therefore it constituted a contribution to respondent in violation of 2 U.S.C. §441(b)(a).

The respondent takes the position that the loan was made in the ordinary course of business as set forth in 2 U.S.C. §431(e) (5)(G) and therefore did not constitute a contribution to respondent in violation of 2 U.S.C. §441b(a). The Federal Election Commission and the respondent have a sharp disagreement regarding the definition of the term "in the ordinary course of business" as used in the aforesaid Code Sections as applied to the facts in this case.

5. It appears that at worst the respondent may have committed an inadvertent, accidental, unknowing technical error in making this loan in an obscure and ambiguous situation, created in part by the absence of any regulations of the Federal Election Commission defining the term "in the ordinary course of business."

6. The negotiation and execution of the aforesaid loan by respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. By the execution of this Conciliation Agreement, the respondent does not admit any violation of 2 U.S.C. §431 et seq., and expressly denies any violation, and states that it had no knowledge of or intent to commit any violation or offense under 2 U.S.C. §431 et seq., and enters into this Conciliation Agreement for the sole purpose of resolving this dispute pursuant to the provisions of 2 U.S.C. §437g.

7. Hereafter the respondent will not make any loan except in compliance with the regulations of the Federal Election Commission set forth in its proposed regulation dated April 3, 1978, set forth in the Federal Register of April 7, 1978, or as thereafter adopted.

8. The Federal Election Commission on request of anyone filing a complaint under 2 U.S.C. §431g(a)(1) concerning the matter at issue herein or on its own motion may review

compliance with this agreement. If the Federal Election 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 Southern District of Georgia in accordance with 2 U.S.C. §437g(a)(7).

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

ATTEST:

BARNARD FOR CONGRESS COMMITTEE

Bryelle D. Dennis

Notary Public, Georgia State of Letters
My Commission Expires May 20, 1981

D. Hugh Connolly
By D. Hugh Connolly

Its Chairman

Date 6-14-78

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker

General Counsel

Date _____

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



78 JUN 20 PM 1:15

FEDERAL ELECTION COMMISSION

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

720105253

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

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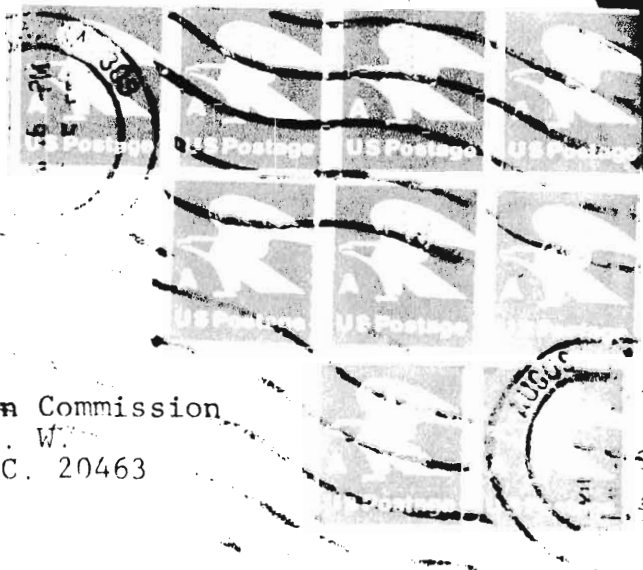
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No. 875445
MAIL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIVED
FEDERAL ELECTION
COMMISSION

'78 JUN 20 PM 12:31

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



2003813

TELEPHONE 722-6853

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 JUN 15 AM 11:56

June 12, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: MUR 218 (76)

803635

Dear Mr. Oldaker:

On Friday, June 9, 1978, your Mr. Jay Myerson informed me that you, Mr. Lovejoy and Mr. Myerson could meet with the lawyers for the Bank and the Committee at 11:00 A. M. on June 19, 1978 at the offices of the Federal Election Commission in Washington, D. C. Mr. Myerson on that date, and on Monday, June 12, 1978, informed me that the sole purpose of that meeting would be to discuss the terms of the conciliation agreement. He further informed me that if we wanted to discuss anything else, such as the innocence of the Bank and the Committee, it would not be worth our while to meet with you and your staff.

The position of the Federal Election Commission is that it will confer with us about this matter only if we first concede that our clients committed a violation of the law. I will not go to a conference on such terms. Mr. Waller, who is now out of town, can speak for his own client.

I believe the position, stated above, of the Federal Election Commission is a violation of my client's rights under 2 USCA 437(g). The law specifically gives us "a reasonable opportunity to demonstrate that no action should be taken against such person by the Commission under this Act" and requires that "the Commission shall make every endeavor ... to correct or prevent such violation by informal methods of conference, conciliation, and persuasion ..."

That has not been done in this case. It cannot be done if the Commission takes the position that prior to any conference my client must be prepared to admit a violation of the law so that

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Mr. William C. Oldaker
June 12, 1978
Page 2

the only purpose of the conference is to discuss the terms of a conciliation agreement. The least that fair play and due process would require is that the Federal Election Commission discuss this matter fully with us, and if my client has committed a violation, SHOW US HOW AND WHEREIN AND IN WHAT MANNER SUCH VIOLATION WAS COMMITTED.

We have submitted copious evidence that this loan was made in the ordinary course of business. The Federal Election Commission insists that the loan was not made in the ordinary course of business. Yet they have not explained HOW.

What witnesses do you have who will testify that this loan was made out of the ordinary course of business? What authorities do you rely upon to refute or rebut the opinion of the Georgia Department of Banking & Finance? I do not refer to argument of counsel. Just what evidence do you have which would create jury issues or which would prevent the court from rendering a summary judgment or directed verdict in favor of the Bank and the Committee?

My client and I are unaware that it has done anything wrong. We are not prepared to admit that it has done anything wrong unless it is shown that it has. In this connection, I must point out that it was not until April 1978 that the Federal Election Commission submitted regulations to Congress regarding the making of loans. The regulations submitted this year were not in existence on May 14, 1976.

We acknowledge that the Federal Election Commission has the power to embarrass the Committee and the individual members by the filing of a complaint in the District Court here. However, to my knowledge, the Commission has neither the legal nor the moral right to do so.

Unless the Commission is prepared to discuss this matter fully with us, as required by law, and to demonstrate to us how and wherein and in what manner a violation was committed, we

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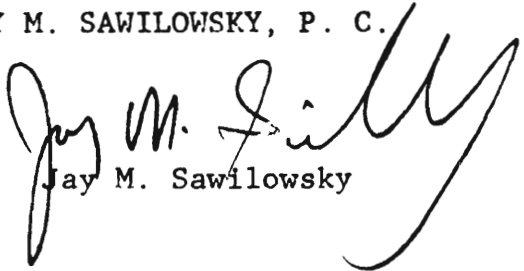
Mr. William C. Oldaker
June 12, 1978
Page 3

are not prepared to enter into a conference simply for the purpose of preparing a conciliation agreement which admits wrongdoing.

Very truly yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

cc: Mr. Samuel C. Waller
Mr. Paul Lovejoy
Mr. Jay Myerson
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet
Mrs. Nancy J. McJunkin

7 0 0 1 0 5 2 5 7

TELEPHONE 722-8853

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

'78 JUN 15 AM 9:16

June 12, 1978

803598

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

Re: MUR 218 (76)

Dear Mr. Myerson:

I appreciate your patience, and your suggestions, during our lengthy long distance telephone conference today. Enclosed is your copy of my letter today to Mr. Oldaker.

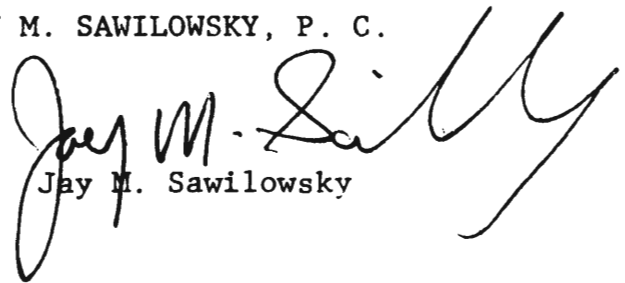
Per our discussion, I am now preparing a conciliation agreement which would be acceptable to my client. When completed, I will send it to you this week. The submission of this proposed conciliation agreement will be made by my client as an offer in compromise of a disputed and possibly litigated matter. Mr. Waller will inform you as to what he intends, on behalf of the bank, to do.

Again, thank you for your patience and cooperation.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. Samuel C. Waller
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet
Mrs. Nancy J. McJunkin
Mr. Paul Lovejoy

70010103250

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

June 12, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: MUR 218 (76)

Dear Mr. Oldaker:

On Friday, June 9, 1978, your Mr. Jay Myerson informed me that you, Mr. Lovejoy and Mr. Myerson could meet with the lawyers for the Bank and the Committee at 11:00 A. M. on June 19, 1978 at the offices of the Federal Election Commission in Washington, D. C. Mr. Myerson on that date, and on Monday, June 12, 1978, informed me that the sole purpose of that meeting would be to discuss the terms of the conciliation agreement. He further informed me that if we wanted to discuss anything else, such as the innocence of the Bank and the Committee, it would not be worth our while to meet with you and your staff.

The position of the Federal Election Commission is that it will confer with us about this matter only if we first concede that our clients committed a violation of the law. I will not go to a conference on such terms. Mr. Waller, who is now out of town, can speak for his own client.

I believe the position, stated above, of the Federal Election Commission is a violation of my client's rights under 2 USCA 437(g). The law specifically gives us "a reasonable opportunity to demonstrate that no action should be taken against such person by the Commission under this Act" and requires that "the Commission shall make every endeavor ... to correct or prevent such violation by informal methods of conference, conciliation, and persuasion ..."

That has not been done in this case. It cannot be done if the Commission takes the position that prior to any conference my client must be prepared to admit a violation of the law so that

79040105250

Mr. William C. Oldaker
June 12, 1978
Page 2

the only purpose of the conference is to discuss the terms of a conciliation agreement. The least that fair play and due process would require is that the Federal Election Commission discuss this matter fully with us, and if my client has committed a violation, SHOW US HOW AND WHEREIN AND IN WHAT MANNER SUCH VIOLATION WAS COMMITTED.

We have submitted copious evidence that this loan was made in the ordinary course of business. The Federal Election Commission insists that the loan was not made in the ordinary course of business. Yet they have not explained HOW.

What witnesses do you have who will testify that this loan was made out of the ordinary course of business? What authorities do you rely upon to refute or rebut the opinion of the Georgia Department of Banking & Finance? I do not refer to argument of counsel. Just what evidence do you have which would create jury issues or which would prevent the court from rendering a summary judgment or directed verdict in favor of the Bank and the Committee?

My client and I are unaware that it has done anything wrong. We are not prepared to admit that it has done anything wrong unless it is shown that it has. In this connection, I must point out that it was not until April 1978 that the Federal Election Commission submitted regulations to Congress regarding the making of loans. The regulations submitted this year were not in existence on May 14, 1976.

We acknowledge that the Federal Election Commission has the power to embarrass the Committee and the individual members by the filing of a complaint in the District Court here. However, to my knowledge, the Commission has neither the legal nor the moral right to do so.

Unless the Commission is prepared to discuss this matter fully with us, as required by law, and to demonstrate to us how and wherein and in what manner a violation was committed, we

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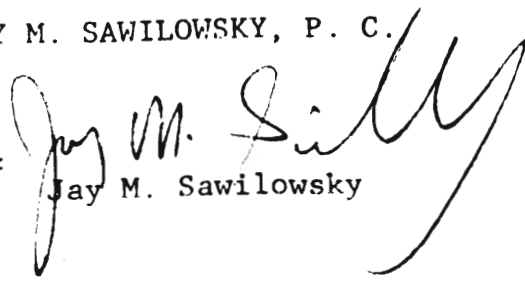
Mr. William C. Oldaker
June 12, 1978
Page 3

are not prepared to enter into a conference simply for the purpose of preparing a conciliation agreement which admits wrongdoing.

Very truly yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

cc: Mr. Samuel C. Waller
Mr. Paul Lovejoy
✓ Mr. Jay Myerson
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet
Mrs. Nancy J. McJunkin

79040105261

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902



15 JUN 15 AM 9.16

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

TELEPHONE 722-8853

CC 3681
RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 MAY 31 AM 1:25

803187

May 26, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

803186

Re: MUR 218(76)

Dear Mr. Lovejoy:

Enclosed is the affidavit of Mr. Charles B. Presley,
complete with attachments.

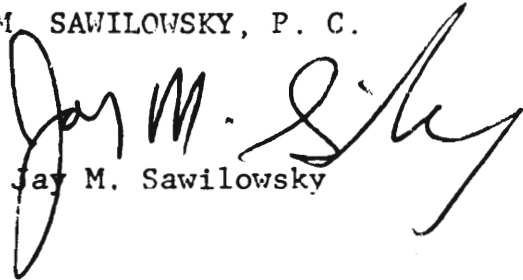
After reviewing all of the material sent the Federal
Election Commission by Mr. Waller and me, please call me in
order that arrangements can be made for a conference between
Mr. Oldaker and you and Mr. Waller and me and our clients.

I appreciate your patience and cooperation in this
matter and thank you for it.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. Samuel C. Waller
Mr. D. Hugh Connolly
Mrs. Nancy J. McJunkin
Mr. J. Carlisle Overstreet

7904010526

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FEDERAL ELECTION COMMISSION

In Re: Doug Barnard for Congress

Election Committee, MUR 218(76)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, CHARLES B. PRESLEY, who being first duly sworn deposes and says on oath as follows:

1. That he is Chairman of the Board of the Georgia Railroad Bank & Trust Company.

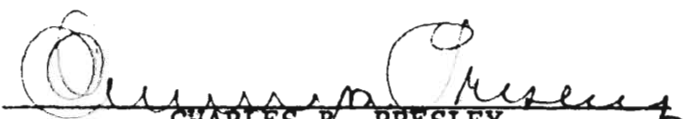
2. That in authorizing the loan to the above Committee on May 14, 1976, the deponent took into consideration the impeccable character and reputation of D. Hugh Connolly, Chairman of the Doug Barnard for Congress Committee, and the other members of the Committee; and further that D. Douglas Barnard, Jr. was well known and enjoyed an impeccable reputation and was worthy of the support of Mr. Connolly and the other members of that Committee.

3. In making loans, many things are taken into consideration. The character of the borrower is among the most important. Please refer to the attached reference material.


4. That the interest on the loan was set at $7\frac{1}{2}\%$ per annum because Mr. D. Hugh Connolly, Chairman of the Committee, who was making arrangements about the loan, had been making personal loans with the bank with interest at $7\frac{1}{2}\%$ per annum or less.

5. Since this loan was made, there have been two bank examinations by State and Federal regulatory authorities. In addition, the bank's loan portfolio is examined annually by the bank's independent auditors, Touche Ross & Company. Neither the State and Federal bank examiners nor the bank's independent auditors have ever classified (criticized or taken exception to)

this loan. In this connection, both the State and Federal bank examiners and the independent auditors search for loans in violation of State or Federal banking laws or which represent more than the average credit risk, and report such loans in a special section of their reports reserved for that purpose. Again, this loan has never been classified (criticized or exception taken thereto) by the bank examiners or the independent auditors. Attached is the letter of the Georgia Department of Banking & Finance, dated May 5, 1978, which shows that this loan was made in conformity with the Financial Institutions Code of Georgia (codified as Title 41A of the Code of Georgia) and appears to have been made in the ordinary course of business.


CHARLES B. PRESLEY

Sworn to and subscribed before me
this 26 day of May, 1978.


Notary Public, Richmond County, Ga.
Notary Public, Richmond County, Georgia
My Commission Expires July 6, 1981

7

1

Banker's Guide to Financial Statements, by Thomas J. O'Malia

The Role of Statements

Before the actual discussion of financial statements can begin, a number of preliminaries must be reviewed. Items listed here are generally known, but are briefly repeated as a refresher.

The financial strength of a company is but one of many aspects to be considered when making a loan decision. Consideration must be given to the time tested "C's" of credit. **The analysis of the *character* of the applicant can overshadow his financial strength or make up for its weakness.** The *capital* of the prospect is the first point of financial review. Banks seek to share in opportunities. By definition, that means some reasonable relationship between what the banks and the creditors will invest and what the ownership will risk. The third of the historical "C's" of credit is *capacity* of the company to perform. To consider a loan which triples the company's volume raises serious non-financial questions regarding the company's capability to produce at that level.

In today's world, the historical three have been expanded to five. The newcomers are self-explanatory. They are *conditions* and *collateral*. If you listen to our marketing professionals, the sixth "C" is *checking account* -- can we get it?

Organizations

A rose is a rose is a rose, but a statement is not a statement is not a statement. Not only is each statement unique unto itself, but each *type* of organization is by its nature different from others. A partnership, a proprietorship, and a corporation are different forms of organization in many ways. A review of their structure is not needed here, but it is appropriate to remember that their reasons for being in business are different. Proprietors are in business for personal salary. They can not be compared with a public corporation which bears the responsibility to pay dividends. Nor can such a corporation be confused with a privately-held corporation which seeks the same goal as a proprietorship while using a different tax vehicle. A partnership can be a simple combination of two proprietors or it can be more formal than a large corporation.

Credit Investigation

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The extension of credit is based on the creditor's confidence in the debtor's willingness and ability to discharge his obligation in accordance with the terms of his agreement. **The honest intention of the debtor to pay is equally important.** Unless the creditor is certain that the prospective debtor is willing to discharge his obligation, further investigation is desirable. Assuming that the prospective debtor desires to pay his debts, the next question, which should be answered affirmatively if the loan is to be granted, is whether he is able to pay. Willingness to pay may be placed under the heading of character, while ability to pay may be listed under capacity and capital.

To state it another way, in alliterative but expressive terminology. The primary bases of credit granting are the three C's of credit—*character*, *capacity*, and *capital*. Another important factor, a fourth C, has to do with *conditions*—general business conditions and conditions in the particular industry in which the company is engaged. Sometimes a fifth C, *collateral*, is added.

CHARACTER

Character is a basic element in the extension of credit, whether the amount involved is small or large and whether the advance is to be made with or without security. Character refers to determination to pay.

Character applies to groups of men collectively as well as to individuals. Thus, in extending credit, not only must the credit analyst consider the character of the individual risk, but in some cases he must also consider the integrity of the group to which the individual belongs.

While character does not of itself determine the amount of credit to be granted, it is a basic factor in both large and small loan situations. The credit analyst, in his examination of this factor, should investigate the past record of the applicant. He should find out all he can regarding the applicant's background, his habits, his associates, his style of living, **his record for**

honest dealings, his family's social ambitions—in fact, everything that has a bearing on the applicant's willingness to discharge his obligations according to agreement.

It should always be borne in mind that anyone can be honest when things are moving along in a satisfactory manner. When profits are rolling in, when business is good, and when ample money is available to discharge one's obligations, there is no need for sacrifices. **Character is tested by hard times, by poor business, by shortages of cash and a lack of adequate credit; then, many sacrifices often must be made.** The analyst should investigate every angle of the character factor and should convince himself that, despite adverse conditions, the applicant will still be anxious to pay and will make every effort to discharge his debt in accordance with the terms of his agreement. **In other words, the credit analyst should be convinced that the applicant will still adhere strictly to the rules of the game even though the score may be hopelessly against him.**

CAPACITY

A man may be honest in every sense of the word, but if his ability or capacity is below standard, his desire to pay may not be sufficient to insure ultimate repayment of a loan. The credit analyst should raise a number of questions concerning the applicant's business ability. How old is he? What has been his business experience? What has been his general education? Is he inclined toward speculation or toward conservatism? What training has he had for his particular line of business? Has he been successful in this business? Has he demonstrated capacity in some other line which should assist him in this undertaking? What about his general shrewdness and common sense? Is he above or below the average in general ability? Has he been tested by adverse conditions? Is he adaptable to changing business conditions that are influenced by government controls or technological advances? Does he have the ability to bargain with labor successfully? Can he make advantageous use of the credit he is requesting? All these questions should be answered satisfactorily.

Some years ago, the ability of the applicant was not as important as it is today. At the present time our economic system is extremely complicated, competition is keen, and changes occur rapidly. To be successful, a man must have above average ability; otherwise he will be crowded out.

CAPITAL

Assuming that a man is honest and that he has sufficient ability to manage his affairs, another basic consideration is the capital factor. Has the applicant enough capital to enable him to operate effectively? Today, a businessman

must have adequate funds at his disposal to which he is subjected. He must have modern machinery, or his business will be run out of him. He must have attractive and appealing fixtures that will draw the trade. His store must be stocked with the goods to meet any reasonable credit terms. He must have adequate capital to enable him to discount his bills. These are all important factors for the credit analyst to consider.

Years ago, when competition was smaller, when transportation facilities were less highly organized than at present, it was easier for business enterprises to operate. But conditions are different today. Adequate capital are often doom to failure. From the standpoint of the credit analyst, business provides the margin of safety.

CONDITIONS

The wise credit analyst never overlooks the conditions in the particular business. The position in the business cycle, the length of the credit, the lender can afford to extend, the period of recovery that has begun. The extension of credit in a business in which competition is keen, or to a company in a new industry in which competition is

COLLATERAL

From time to time collateral is required to offset the risk, such as unprofitable business and perhaps somewhat difficult to liquidate collateral be accepted to balance the risk. If honesty is lacking, the credit can be a bank to assume.

GENERAL CONSIDERATIONS

There are, of course, many other factors to be given. Among them are the e

Management should also develop specific policies for each type of loan, after careful consideration of the many factors which will directly and indirectly influence its lending operations and also of the characteristics of various types of loans. The characteristics of specific loan types will be discussed in detail subsequently (in part two of this text), so policies covering specific types of loans need not be covered at this point; however, certain important, general considerations should be included in the development of any bank's lending policies. These considerations can be summarized under four headings: (1) creditworthiness, (2) loan liquidation, (3) commensurate balances, (4) interest rates.

CREDITWORTHINESS

In order to be "worthy" of credit, a business borrower must be able to produce evidence of his firm's ability to repay its loans and its willingness to maintain good faith in discharging its obligations to banks and other creditors. Creditworthiness is therefore a function of a business borrower's business reputation and a satisfactory financial condition. As for the individual borrower, he must evidence these same characteristics, **but in addition should possess good character to insure the intent to discharge his debts** along with the necessary *ability* to carry out this intent. In other words, the individual borrower should be judged according to his *character, capacity, and capital*—the classic three C's of credit.

From a policy point of view, it is essential that the lending officers be provided with the appropriate means of appraising credits effectively. This means, of course, that the bank should insist that all potential borrowers and borrowing customers provide, as part of their loan applications, financial statements, earnings records, and other such information as the current loan situation may call for. Further, the bank should provide sufficient administrative and clerical support to the lending officer to expedite the analysis of this information on a timely basis.

It is also important that the lending policy provide for a continuing financial check on the borrower through periodic review for outstanding loans. Early detection of unfavorable circumstances will permit the bank to take positive action that may prevent serious losses to both the bank and the borrower. The larger the loan and the greater the risk, the more intense the bank's review should be.

LOAN LIQUIDATION POLICY

A sound policy that should be established in the handling of loans is to arrange, at the inception of the loan, a systematic plan of repayment. The best time to discuss repayment plans is before the loan is made. From the

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

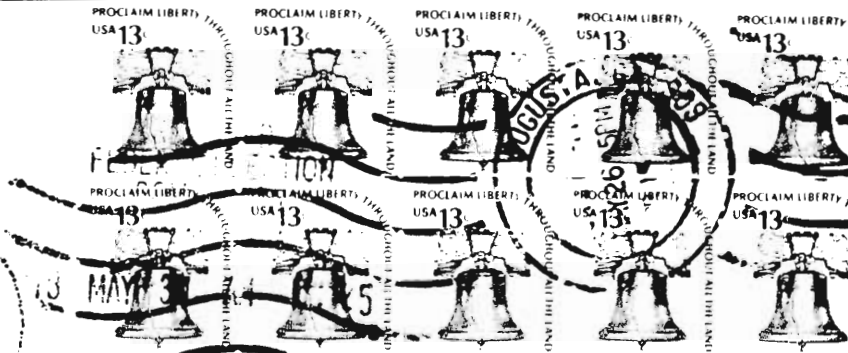
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No. 875440

MAIL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463



TELEPHONE 722-8853

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RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
802 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

MAY 30 PM 9:39

May 25, 1978

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218(76)

Dear Mr. Lovejoy:

I enjoyed talking with you last Tuesday morning. Mr. Presley's affidavit was redrawn, but he's out of town until this coming Friday, May 26, 1978.

His affidavit will be signed on May 26, 1978 and on that date mailed to you. As I told you, his affidavit will deal with the importance, in making loans, of the character of the borrower, the interest set for this loan, the opinion of the Georgia Department of Banking & Finance, expressed in its letter of May 5, 1978, and the fact that no bank examiner has ever criticized the loan.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky

JMS:sf

cc: Mr. Samuel C. Waller
Mr. D. Hugh Connolly
Mrs. Nancy J. McJunkin
Mr. J. Carlisle Overstreet

70040105271

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

FEDERAL ELECTION COMMISSION
COMMUNICATIONS SECTION



'78 MAY 30 PM 9:33

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

TELEPHONE 722-8883

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JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30602

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May 22, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

803032

Re: MUR 218(76)

Dear Mr. Lovejoy:

Enclosed are the following:

1. Affidavit of Sarah B. DeLoache.
2. Affidavit of Nancy J. McJunkin.
3. My brief showing that the loan was secured under Georgia law.

In view of the importance of this material, it is being sent by certified mail. I appreciate your extension of time granted last Friday and thank you for it.

As Mr. Waller and I, and our respective clients, desire to confer with you and Mr. Oldaker about this matter, I will call you to arrange a mutually convenient time.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky
Jay M. Sawilowsky

JMS:sf

Enclosures

cc: Mr. Samuel C. Waller
Mrs. Nancy J. McJunkin
Mr. D. Hugh Connolly
Mr. J. Carlisle Overstreet

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IN ACCOUNT WITH



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DDUG BARNARD FOR CONGRESS
% NANCY MCJUNKIN
*** D O N O T M A I L ***

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RS

NUMBER ENCLOSURE	PAGES	ACCOUNT NUMBER
4	1	012-399-6

SPECIAL REQUEST - ANY CURRENT SERVICE CHARGES NOT INCLUDED

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
8-31-76	2,403.26	9-20-76	1,371.72

NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
0	.00	4	1,030.84	.70		

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
71699				901	168627
9800				902	158827
70SC				909	158757
1585	20000			920	137172

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO MF - HANDLING FEE R - RETURN REVERSAL (E) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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DDUG BARNARD FOR CONGRESS 13L
X NANCY MCJUNKIN
*** D O N O T M A I L ***

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
5	1	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
9-20-76	1,371.72	9-30-76	2,045.32

DEPOSITS	CHECKS	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT	
2	1,275.00	5	601.40	.00

CHECKS AND OTHER DEBITS			DEPOSITS		DATE	BALANCE
10000				95000	924	127172
140	15000				927	182032
10000		25000			928	172032
				32500	930	204532

CB CHARGE BACK CK CREDIT REVERSAL DM DEBIT MEMO HI HANDLING FEE B REF PA REVERSAL LPT OVERPAID

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& NANCY MCJUNKIN
*** D O N O T M A I L ***

ENCLOSURE PAGE ACCOUNT NUMBER
4 1 012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
9-30-76	2,045.32	10-29-76	7,469.96

DEPOSITS		CHECKS		CHARGES		SPACE USED FOR	
NUMBER	AMOUNT	NUMBER	AMOUNT	NUMBER	AMOUNT	NUMBER	AMOUNT
7	8,449.76	3	3,025.12		.00		

CHECKS AND OTHER DEBITS		DEPOSITS		DATE	BALANCE
202512		81712	1004		2020
		70CM1006	1006		83802
50000		195000	1012		278802
		85000	1014		313802
		23194	1022		
		60000	1022		396996
50000		400000	1026		796996
			1029		746996

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& NANCY MCJUNKIN
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7 1 012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
11-30-76	4,552.06	12-31-76	2,045.16

ADDITIONAL DEBITS	CHECKS	DEBITS	ADVANCED FOR SERVICES CHARGE
0	.00	7	2,506.90

CHECKS AND OTHER DEBITS		DEPOSITS	DATE	BALANCE
13190	150000		1201	292016
3111			1213	288905
60278			1214	228627
6500			1215	222127
5851	11760		1216	204516

CE CHARGE BACK CA CREDIT REVERSAL DM DEBIT MEMO HT HOLDING FEE K RETURN REVERSAL LND OVERDRAFT
 CM CREDIT MEMO CT COUNTER TRANSFER DR DEBIT REVERSAL PD PENDING DEPOSIT SO SERVICE CHARGE
 EW ELECTRONIC WITHDRAWAL TRANSFER DE DEPOSIT SLIP ED ELECTRONIC DEPOSIT TRANSFER

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17,387.00
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AUGUSTA, GEORGIA

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DOUG BARNARD FOR CONGRESS
RUN OFF ACCOUNT
*** D O N O T M A I L ***

24L

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
19	1	006-448-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
7-30-76	00	8-31-76	10,894.68

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT			
13	N 17,387.00	19	6,492.32	00		

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
209000			100000	819	100000
			119000	823	
			181500	823	191500
			60000	824	
			250000	824	501500
58695	76823		130000	825	495982
206	5753	71955	100000	826	518068
12500	10000	18522		827	
30000	73043			827	374003
10000	5000	14023	20000	830	
15000			94500	830	
			108000	830	
			302000	830	854480
10000	2600	12000	16500	831	
14112			257200	831	1089468

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 AUGUSTA, GEORGIA

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DOUG BARNARD FOR CONGRESS 13L
 RUN OFF ACCOUNT
 *** D O N O T M A I L ***

9 1 006-448-6

PREVIOUS STATEMENT
 DATE 9-20-76 BALANCE 5,902.29

CURRENT STATEMENT
 DATE 9-30-76 BALANCE 5,303.59

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE
NUMBER	AMOUNT	NUMBER	AMOUNT		
1	25.00	9	623.70	.00	.

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
460	10000	14000		921	
26027				921	5397.42
10000				924	5297.42
196				927	5295.46
262	505	920		928	5278.59
			2500	930	5303.59

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL O - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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General Railroad Bank & Trust Co. Member FDIC
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DOUG BARNARD FOR CONGRESS

135

RUN OFF ACCOUNT

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17 1 006-448-6

PREVIOUS STATEMENT
9-30-76 5,303.59

CURRENT STATEMENT
10-29-76 1,267.53

DEPOSITS: NUMBER 1 AMOUNT 7.22 CHECKS: NUMBER 16 AMOUNT 4,043.28 SERVICE CHARGE .00

CHECKS AND OTHER DEBITS		DEPOSITS	DATE	BALANCE
1600	2500	24400	1004	501859
4684	5928		1005	491247
13800			722CM 1006	478169
3347	5340		1007	469482
2500	300000		1008	166982
458	460		1011	166064
196			1022	165868
5000			1026	160868
7500	26615		1028	126753

CH CHARGE BACK CR CREDIT MEMO DE DEBIT MEMO EW ELECTRONIC WITHDRAWAL TRANSFER

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 AUGUSTA, GEORGIA

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 for more good reasons



DOUG BARNARD FOR CONGRESS 135
 RUN OFF ACCOUNT
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ENCLOSURE	PAGE	ACCOUNT NUMBER
7	1	006-448-6

PREVIOUS STATEMENT	
DATE	BALANCE
11-30-76	1,828.57

CURRENT STATEMENT	
DATE	BALANCE
12-31-76	548.50

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT			
3	940.00	7	2,220.07	.00		

CHECKS AND OTHER DEBITS				DEPOSITS	DATE	BALANCE
200000				31500	1206	214357
4144				12500	1214	14357
2144					1222	26857
4500					1223	22713
				50000	1228	72713
		2219	4500		1231	
		4500			1231	54850

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FEDERAL ELECTION COMMISSION

In Re: Doug Barnard for Congress
 Election Committee, MUR 218(76)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, SARAH B. DeLOACHE, who being first duly sworn deposes and says on oath as follows:

1. She is a Vice-President of the Georgia Railroad Bank & Trust Company and is Manager of the Credit Department of said bank.

2. That attached hereto as Exhibit A, and incorporated herein by reference thereto, is a copy of a report prepared from said bank's records showing new and renewed loans for May 1976. The total number of new loans during that period was 307 and the total number of loans renewed was 502. The total number of all such loans which were made with interest at the rate of 7½% or under was 73, of which 36 were made on a secured basis and 37 on an unsecured basis.

3. That the records of the bank show that D. Hugh Connolly had the following personal loans with the Georgia Railroad Bank & Trust Company, open on the following dates, for the following amounts, with the following interest, and due on the dates indicated:

<u>DATE OF LOAN</u>	<u>AMOUNT OF LOAN</u>	<u>INTEREST RATE</u>	<u>DUE DATE</u>
3/21/74	\$17,000.00	8%	3/21/75
As of May 1976	Renewed for \$12,000.00	At 7½%	12/16/76
12/23/74	\$ 4,950.00	8%	3/24/75
As of May 1976	Renewed for \$ 4,950.00	At 7½%	3/22/76
3/25/76	\$ 4,950.00	7%	6/21/76
6/23/76	\$ 4,950.00	7½%	9/20/76
3/10/75	\$ 3,750.00	7½%	3/8/76
3/8/76	\$ 3,650.00	7%	6/7/76
6/7/76	\$ 3,650.00	7%	9/7/76
3/5/76	\$ 4,000.00	7%	9/1/76

6/3/76	\$ 4,000.00	7%	9/1/76
Loan of Hugh Connolly and O. P. Hollis:			
5/3/74	\$ 993.75	8%	Monthly at \$65.65 per mo.

Sarah B. DeLoache

 SARAH B. DeLOACHE

Sworn to and subscribed before me
 this 22 day of May, 1978

Jay M. Smith

 Notary Public, Richmond County, Ga.

NEW & RENEWED LOANS - MAY, 1976

DAY	NEW	RENEW	NO. OF LOANS AT 1/2% & UNDER			7.5%		7.25%		7%		6.75%		6%		5%		4.875%	
			TOTAL	SEC	UNSEC	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW	HIGH	LOW
			3	24	33	12	4	8	2,800	2,800	200,000	200,000	50,000	300	1,000,000	100,000	--	--	--
4	15	31	3	0	0	--	--	--	--	--	--	--	--	--	--	--	--	--	--
5	18	25	2	4	2	80,000	80,000	--	--	24,000	480	--	--	--	--	--	--	--	--
6	22	17	6	4	2	200,000	15,000	--	--	6,870	4,500	--	--	--	--	--	--	--	--
7	11	12	2	1	1	100,000	10,000	--	--	--	--	--	--	--	--	--	--	--	--
8	32	51	7	3	4	65,000	1,500	--	--	82,717	1,900	1,366,310	1,366,310	--	--	--	--	--	--
9	13	25	4	1	3	--	--	--	--	211,250	1,800	--	--	--	--	500,000	500,000	--	--
10	10	20	2	2	0	66,000	66,000	--	--	7,000	7,000	--	--	--	--	--	--	--	--
11	17	18	5	4	1	42,000	2,000	--	--	9,398	2,500	--	--	--	--	--	--	--	--
12	13	18	1	0	1	7,500	7,500	--	--	--	--	--	--	--	--	--	--	--	--
13	14	17	1	1	1	--	--	--	--	3,800	1,000	--	--	10,000	10,000	--	--	--	--
14	12	15	1	1	2	10,000	10,000	--	--	14,000	2,000	--	--	--	--	--	--	--	--
15	15	30	2	0	2	--	--	--	--	130,000	1,500	--	--	--	--	--	--	--	--
16	6	17	2	1	1	--	--	--	--	3,500	2,000	--	--	--	--	--	--	--	--
17	9	10	0	0	0	--	--	--	--	--	--	--	--	--	--	--	--	--	--
18	22	51	5	3	2	--	--	--	--	20,000	500	--	--	--	--	--	--	550,000	550,000
19	13	22	3	2	1	--	--	--	--	243,343	500	--	--	--	--	--	--	--	--
20	12	17	1	0	1	--	--	--	--	1,000	1,000	--	--	--	--	--	--	--	--
21	11	11	1	2	1	100,000	100,000	--	--	10,004	900	--	--	--	--	--	--	--	--
22	19	24	4	1	3	12,000	1,700	--	--	8,071	8,071	--	--	--	--	508,088	508,088	--	--
	307	502	73	36	37														

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Exhibit A

7 9 9 4 0 1 0 5 2 3 3

FEDERAL ELECTION COMMISSION

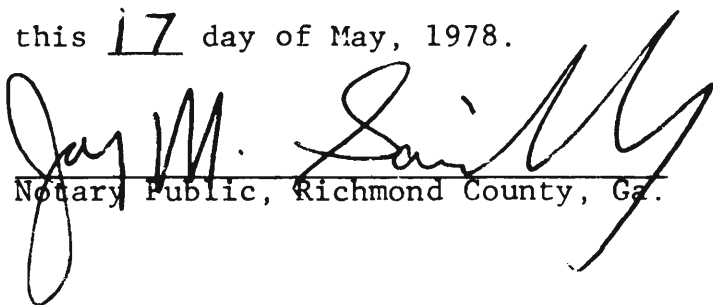
In re: Doug Barnard for Congress
Election Committee, MUR 218(76)

Personally appeared before me, the undersigned officer authorized by law to administer oaths, NANCY J. McJUNKIN, who being first duly sworn deposes and says on oath as follows:

1. That she was and is Treasurer of the Doug Barnard for Congress Election Committee.
2. That attached hereto are true and correct copies of the bank statements of the checking accounts of said Committee at the Georgia Railroad Bank and Trust Company for 1976.
3. That on May 14, 1976, the date of the note in question, the said Committee had a balance in its checking account of \$7,396.78. That the loan proceeds of \$10,000.00 were not deposited into said checking account until May 17, 1976, three days after the date of the note.


NANCY J. McJUNKIN

Sworn to and subscribed before me
this 17 day of May, 1978.


Notary Public, Richmond County, Ga.

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Georgia Railroad Bank & Trust
ATLANTA, GEORGIA

When more deposits than
for more good checks



DOUG BARNARD FOR CONGRESS
& NANCY MCJUNKIN
*** D O N O T M A I L

13L

2 1 012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
0-00-00	.00	2-27-76	4,070.50

DEPOSITS		CHECKS	
DATE	AMOUNT	DATE	AMOUNT
7	4,090.00	2	19.50
			.00

DATE	DESCRIPTION	AMOUNT	DATE	DESCRIPTION	AMOUNT
		100000	209		100000
		100000	212		200000
		10000	213		210000
		102500	217		312500
		50000	219		362500
		45000	224		407500
200	1750	1500	227		407050

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER CO - CHECK ORDER ED - ELECTRONIC DEPOSIT TRANSFER

7 0 0 1 0 1 0 5 2 9 0



Georgia Railroad Bank & Trust
ALBANY, GEORGIA

White Plains Association Bank
for more good reasons



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& NANCY MCJUNKIN
*** DO NOT MAIL

13L

1 1 012-399-6

2-27-76		4,070.50		3-31-76		5,480.50	
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9	2,410.00	1	1,000.00	.00
---	----------	---	----------	-----

DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT
			1000	302	408050
			5000	305	413050
			30000	311	443050
			10000	315	
			25000	315	478050
			10000	316	
			50000	316	538050
100000				319	438050
			57500	322	495550
			52500	324	548050

CB - CHANGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DA - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER CO - CHECK ORDER ED - ELECTRONIC DEPOSIT TRANSFER

7 0 0 1 0 1 0 5 2 9 1

MEMORANDUM



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24L

10 1 012-399-6

PREVIOUS STATEMENT	
DATE	BALANCE
3-31-76	5,480.50

CURRENT STATEMENT	
DATE	BALANCE
4-30-76	4,068.75

DEPOSIT NUMBER	AMOUNT	DEBIT NUMBER	AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE
5	3,350.00	10	4,761.75	.00	

CHECKS AND OTHER DEBITS			DEPOSITS		DATE	BALANCE
130000					408	418050
17425					409	400825
3264	5286				414	392075
50000	250000		10000		422	102075
			52500		422	154575
			40500		428	195075
200	2500	7500	176000		429	360875
10000			56000		430	406875

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COUNTER TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT/TRANSFER

7 0 0 1 0 1 0 5 2 0 0



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AUGUSTA, GEORGIA

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DOUG BARNARD FOR CONGRESS 35L
NANCY MCJUNKIN
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28 1 012-399-6

PREVIOUS STATEMENT DATE: 4-30-76 BALANCE: 4,068.75
CURRENT STATEMENT DATE: 5-28-76 BALANCE: 5,128.66

DEPOSITS: 18 21,025.00 28 19,965.09 SERVICE CHARGE: .00

CHECKS AND OTHER DEBIT	AMOUNT	NUMBER	AMOUNT	DATE	BALANCE
				503	434375
7500	7500	2630	27500	504	
			61500	504	648275
			170000	505	664275
6000	6500	164750	16000	506	512025
2642	10869		25000	507	
			10000	507	618514
3573	1862	15030	110000	511	598074
5000	100	5320	120000	512	
16640				512	691014
125	1211	40000	30000	513	
			30000	513	709678
			30000	514	739678
8500	685600		1000000	517	1739678
2912	2912		60000	518	1105578
			100000	519	1099754
				520	1199754

CB CHARGE BACK CP CREDIT MEMO DM DEBIT REVERSAL HF HANDLING FEE R RETURN REVERSAL I-O OVERDRAFT
CM CREDIT MEMO CT COUNTESSY TRANSFER DN DEBIT REVERSAL HP PAYROLL DEPOSIT SC SERVICE CHARGE
EW ELECTRONIC WITHDRAWAL TRANSFER ED ELECTRONIC DEPOSIT TRANSFER

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2 012-399-6

PREVIOUS STATEMENT DATE: 5-28-76 BALANCE: 5,128.66

DEPOSITS: 7500 22183 200000 12500 524 363676

CHECKS AND OTHER DEBIT	AMOUNT	NUMBER	AMOUNT	DATE	BALANCE
7500	22183	200000	12500	524	363676
633895			15000	524	508676
			145000	526	512866
2010	133800		140000	528	

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*** D O N O T M A I L ***

NUMBER	PAGE	ACCOUNT NUMBER
42	1	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
5-28-76	5,128.66	6-30-76	5,479.15

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE
NUMBER	AMOUNT	NUMBER	AMOUNT		
18	15,574.00	42	15,223.51	.00	

CHECKS AND OTHER DEBITS			DEPOSITS		DATE	BALANCE
450	2544	2600	50000	601	557272	
			30000	602		
			60000	602	647272	
284	525	35000		603	611463	
80				608	611383	
			117500	609		
			122400	609	851283	
416	1737			610	849130	
2912	55640		30000	611	820578	
375	1560	6673	72500	614		
30000	55718	71436	85000	614		
140000	200000		117500	614	589816	
400	3256		95000	615	681160	
14197	20280	137215	85000	616	594468	
242337			110000	617	462131	
618	30000	46222	133000	618	518291	
300	515			621	517476	

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 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
	2	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		6-30-76	

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT			

CHECKS AND OTHER DEBITS			DEPOSITS		DATE	BALANCE
			70500	622	587976	
5828	22600		41500	623	629476	
5000	21082	115900		624	601048	
6550	10089	58523	75000	625	534066	
100000			170000	628		
5000				628	528904	
43489	25000		92500	629	616404	
				630	547915	

CB - CHANGE BACK CP - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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NUMBER ENCLASING	PAGE	ACCOUNT NUMBER
56	1	012-399-6

SPECIAL REQUEST - ANY CURRENT SERVICE CHARGES NOT INCLUDED

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
6-30-76	5,479.15	7-26-76	8,443.02

NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
22	27,058.46	56	24,094.59	.00		

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
			48500	701	596415
13728	25000		16331	702	
			68500	702	642518
2840			1745	706	
			28255	706	669678
5000	20000		144500	707	789178
1000	10640		55000	708	
			87500	708	920038
18312	55718	55718	184500	709	
			942500	709	1917290
20000	275	2912	304000	712	
4500	54215	72473		712	2066915
11040			127500	713	2183375
3250	5000	6111	245500	714	
8050	12480	12500		714	
20280	24341			714	2336863
10200	1929	2600	111000	715	

CB - CHANGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (O) - OVERDRAFT
 CC - CREDIT MEMO CT - COUNTER TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EB - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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NUMBER ENCLASING	PAGE	ACCOUNT NUMBER
	2	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		7-26-76	

NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
				715	
9299	100000	619084		715	923835
780916				716	939676
6909	2250	20000	45000	719	936431
3245				720	
1000	5000	8547	24500	720	1032534
350	2000		88500	721	
2441	5000	9360	25000	721	
10688	57718	63262	30000	721	839065
100000				721	818927
10000	25000	55153	70015	722	
			26000	723	
			31500	723	876427
5000	13860	2160		726	
2600	8505			726	844302

CB - CHANGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (O) - OVERDRAFT
 CC - CREDIT MEMO CT - COUNTER TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EB - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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*** D O N O T M A I L ***

24L

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
10	1	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT			
DATE	BALANCE	DATE	BALANCE		
7-26-76	8,443.02	7-30-76	15,167.58		
DEPOSITS		CHECKS	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT		
3	11,070.00	10	4,345.44	.00	

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
5000	2250			727	837052
5041	1800	37297	N 114500	728	
362703				728	544711
5000	9236		N 800000	729	1330475
5000	1217		N 192500	730	1516758

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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RUN OFF ACCOUNT
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13L

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
0	1	006-448-6

PREVIOUS STATEMENT		CURRENT STATEMENT			
DATE	BALANCE	DATE	BALANCE		
0-00-00	.00	7-30-76	.00		
DEPOSITS		CHECKS	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT		
0	.00	0	.00	.00	

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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ENCLOSURE	PAGE	ACCOUNT NUMBER
94	1	012-399-6

SPECIAL REQUEST - ANY CURRENT SERVICE CHARGES NOT INCLUDED

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
7-30-76	15,167.58	8-30-76	2,503.26

NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
23	23,748.00	94	36,412.32	.00		

CHECKS AND OTHER DEBITS			DEPOSITS		DATE	BALANCE
10000CB	14250	2000	45000	802		
2400	2800	4500	84400	802		
7500	12500	56736		802		
309960	810747			802	412765	
10000	3000	10000	10000	803		
15000			40000	803	424765	
798	800	25958	77500	804		
			122500	804	597209	
7500	1200	3000	37500	805		
6623	8474	12890	57500	805		
19050	28046	31005		805	574421	
5000	25002	34815	91000	806		
48106				806	552498	
2664	6450	8000	57500	809		
16088	20000	20000	60000	809		
			75000	809		
			151500	809	823296	

CB CHARGE BACK CR CREDIT REVERSAL DM DEBIT MEMO MF HANDLING FEE R RETURN REVERSAL (E) OVERDRAFT
 CM CREDIT MEMO CT COURTESY TRANSFER DR DEBIT REVERSAL PD PAYROLL DEPOSIT SC SERVICE CHARGE

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ENCLOSURE	PAGE	ACCOUNT NUMBER
	2	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		8-30-76	

NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY

CHECKS AND OTHER DEBITS			DEPOSITS		DATE	BALANCE
1500	4350	71741	102500	810		
97539				810	750666	
10000	1500	10259		811		
18110	29200			811	681597	
1500	2912	3286		812		
4500	16640			812	652759	
2000	2000	5000		813	643759	
887	2836	5898	114000	816		
14023	22192	45023		816		
47676				816	619224	
1500	1750	2000		817		
2500	4000	6864		817	600610	
1438	2000	7914	44000	818		
10868				818	622390	
1000	5000	15000	49900	819	651290	
1022	3000	18608		820		
100000				820	528660	

CB CHARGE BACK CR CREDIT REVERSAL DM DEBIT MEMO MF HANDLING FEE R RETURN REVERSAL (E) OVERDRAFT
 CM CREDIT MEMO CT COURTESY TRANSFER DR DEBIT REVERSAL PD PAYROLL DEPOSIT SC SERVICE CHARGE
 EW ELECTRONIC WITHDRAWAL TRANSFER

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NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
	3	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		8-30-76	

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT			

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
10000	1500	71741	25000	823	
1268441			35000	823	
			142500	823	
			150000	823	
			800000	823	329478
206	206	9888		824	
10000	10000	10000		824	289178
7021			2500	825	284657
3905	10000			826	270752
2500	7926			827	260326
10000				830	250326

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO NF - HANDLING FEE R - RETURN/REVERSAL (O) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT/TRANSFER

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& NANCY MCJUNKIN
*** D O N O T M A I L ***

ENCLOSURES	PAGE	ACCOUNT NUMBER
	3	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		8-31-76	

DEPOSITS		CHECKS		SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT			

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
10000	1500	71741	25000	823	
1268441			35000	823	
			142500	823	
			150000	823	
			800000	823	329478
206	206	9888		824	
10000	10000	10000		824	289178
7021			2500	825	284657
3905	10000			826	270752
2500	7926			827	260326
10000				830	250326
10000				831	240326

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL HP - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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DOUG BARNARD FOR CONGRESS XX
& NANCY MCJUNKIN
*** D O N O T M A I L ***

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
95	1	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
7-30-76	15,167.58	8-31-76	2,403.26

DEPOSITS	CHECKS	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT	
23	23,748.00	95	36,512.32	.00

CHECKS AND OTHER DEBITS		DEPOSITS		DATE	BALANCE
10000 CB	14250	2000	45000	802	
2400	2800	4500	84400	802	
7500	12500	56736		802	
309960	810747			802	412765
10000	3000	10000	10000	803	
15000			40000	803	424765
798	800	25958	77500	804	
			122500	804	597209
7500	1200	3000	37500	805	
6623	8474	12890	57500	805	
19050	28046	31005		805	574421
5000	25002	34815	91000	806	
48106				806	552498
2664	6450	8000	57500	809	
16088	20000	20000	60000	809	
			75000	809	
			151500	809	823296

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (I) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT TRANSFER

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& NANCY MCJUNKIN
*** D O N O T M A I L ***

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
	2	012-399-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		8-31-76	

DEPOSITS	CHECKS	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
NUMBER	AMOUNT	NUMBER	AMOUNT	

CHECKS AND OTHER DEBITS		DEPOSITS		DATE	BALANCE
1500	4350	71741	102500	810	
97539				810	750666
10000	1500	10259		811	
18110	29200			811	681597
1500	2912	3286		812	
4500	16640			812	652759
2000	2000	5000		813	643759
887	2836	5898	114000	816	
14023	22192	45023		816	
47676				816	619224
1500	1750	2000		817	
2500	4000	6864		817	600610
1438	2000	7914	44000	818	
10868				818	622390
1000	5000	15000	49900	819	651290
1022	3000	18608		820	
100000				820	528660

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO HF - HANDLING FEE R - RETURN REVERSAL (I) - OVERDRAFT

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6

Georgia Railroad Fund & Trust

Write more suggestions than
we have good reasons



DOUG BARNARD FOR CONGRESS
& NANCY MCJUNKIN
*** D O N O T M A I L ***

135

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
11	1	012-399-6

PREVIOUS STATEMENT DATE	PREVIOUS STATEMENT BALANCE	CURRENT STATEMENT DATE	CURRENT STATEMENT BALANCE
10-29-76	7,469.96	11-30-76	4,552.06

CHECKS	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE
6 10,393.97 11 13,311.87	.00	

DEBITS			POSITS	DATE	BALANCE
			✓ 400000	1102	1146996
			✓ 130000	1103	1276996
125651				1104	1151345
114500				1105	1036845
100000			✓ 107500	1109	
			✓ 350000	1109	1394345
113167	137500			1110	1143678
100000	100000	100000		1112	
100000				1112	743678
300000				1118	443678
40369			✓ 1897	1122	
			✓ 50000	1122	455206

CP CHARGE BACK OF CREDIT REVERSAL IN DEBIT MEMO BY HANDLING FEE R RETURN REVERSAL (-) OVERDRAFT
 CM CREDIT MEMO ST COUNTERY TRANSFER DEBIT MEMO PL PAYROLL DEPOSIT SC SERVICE CHARGE
 EW ELECTRONIC WITHDRAWAL TRANSFER DEBIT MEMO EE ELECTRONIC DEPOSIT TRANSFER

7 0 0 1 0 1 0 3 3 0 1

IN ACCOUNT WITH



Georgia Railroad Bank & Trust

AUGUSTA, GEORGIA

Where more Augustans bank for more good reasons



DOUG BARNARD FOR CONGRESS
RUN OFF ACCOUNT

XX
RS

*** D O N O T M A I L ***

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
50	1	006-448-6

SPECIAL REQUEST - ANY CURRENT SERVICE CHARGES NOT INCLUDED

PREVIOUS STATEMENT		CURRENT STATEMENT				
DATE	BALANCE	DATE	BALANCE			
8-31-76	10,094.68	9-20-76	5,902.29			
NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY
6	4,761.95	49	9,747.12	7.22		

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
196	6000	50000		901	1033272
10500	6400	27542		902	988830
400	3915	7722	6000	903	
9727	10000	23097	157400	903	
			40000CM	903	1137369
196	500	1156		907	
2000	6864	9396		907	
10953	11293	12555		907	
115895				907	966561
8485	5000	5501		908	947575
7225C	20000		238500	909	1165353
9000	9000			910	1147353
196	1288	1715	1795	913	
59609	63406	71741		913	951193
2912	4914	7236		914	
18849	21182	123316		914	772784
1897	10000	10080	32500	915	

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO MF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT/TRANSFER

IN ACCOUNT WITH



Georgia Railroad Bank & Trust

AUGUSTA, GEORGIA

Where more Augustans bank for more good reasons



DOUG BARNARD FOR CONGRESS
RUN OFF ACCOUNT

*** D O N O T M A I L ***

NUMBER ENCLOSURE	PAGE	ACCOUNT NUMBER
	2	006-448-6

PREVIOUS STATEMENT		CURRENT STATEMENT	
DATE	BALANCE	DATE	BALANCE
		9-20-76	

NUMBER	DEPOSITS AMOUNT	NUMBER	CHECKS AMOUNT	SERVICE CHARGE	BALANCE USED FOR SERVICE CHARGE	DAY

CHECKS AND OTHER DEBITS			DEPOSITS	DATE	BALANCE
7367				915	685940
1505				916	684435
1032	1537	78272		917	603594
13365				920	590229

CB - CHARGE BACK CR - CREDIT REVERSAL DM - DEBIT MEMO MF - HANDLING FEE R - RETURN REVERSAL (-) - OVERDRAFT
 CM - CREDIT MEMO CT - COURTESY TRANSFER DR - DEBIT REVERSAL PD - PAYROLL DEPOSIT SC - SERVICE CHARGE
 EW - ELECTRONIC WITHDRAWAL/TRANSFER ED - ELECTRONIC DEPOSIT/TRANSFER

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Georgia Railroad Bank & Trust

Where more Augustans bank for more good reasons



DOUG BARNARD FOR CONGRESS
RUN OFF ACCOUNT
*** D O N O T M A I L ***

245

29 1 006-448-6

10-29-76

1,267.53

11-30-76

1,828.57

2

4,925.00

29

4,363.96

.00

DEBITS			DEPOSITS	DATE	BALANCE
10368			342500	1101	458885
			150000	1102	608885
500				1104	608385
2288	6864	38837		1105	
57624				1105	502772
961	1787	6675		1109	493349
5824	6767			1110	480758
2219				1111	478539
2711	3225	3225		1112	
3225				1112	466153
88164				1115	377989
1530				1116	376459
58989				1119	317470
108	196	12693		1122	304473
761				1123	303712
131	6722			1124	296859
2219	2219			1126	292421

CE CHECKS BACK CF CREDIT FEDERAL DN DEBIT MEMO NF BANKING FEE R RETURN REVERSAL TO OVERDRAFT
 CM CHECK M/M/C CT COURTNEY TRANSFER DR DEBIT RECEIPT PD PAYROLL DEPOSIT SC SERVICE CHARGE
 EW ELECTRONIC WITHDRAWAL TRANSFER DT DRAFT EE ELECTRONIC DEPOSIT TRANSFER

IN ACCOUNT WITH



Georgia Railroad Bank & Trust

ATLANTA, GEORGIA

Where more Augustans bank for more good reasons



DOUG BARNARD FOR CONGRESS
RUN OFF ACCOUNT
*** D O N O T M A I L ***

2 006-448-6

PREVIOUS STATEMENT CURRENT STATEMENT

11-30-76

DEPOSITS CHECKS DEBITS SERVICE CHARGE BALANCE USED FOR SERVICE CHARGE

CHECKS AND OTHER DEBITS	DEPOSITS	DATE	BALANCE
14214	95350	1129	182857

CE CHECKS BACK CF CREDIT FEDERAL DN DEBIT MEMO NF BANKING FEE R RETURN REVERSAL TO OVERDRAFT
 CM CHECK M/M/C CT COURTNEY TRANSFER DR DEBIT RECEIPT PD PAYROLL DEPOSIT SC SERVICE CHARGE
 EW ELECTRONIC WITHDRAWAL TRANSFER DT DRAFT EE ELECTRONIC DEPOSIT TRANSFER

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FEDERAL ELECTION COMMISSION

In Re: Doug Barnard for Congress
Election Committee, MUR 218(76)

THE LOAN WAS SECURED

By the express terms of the Promissory Note of May 14, 1976, the borrower, the Committee, granted to the bank "a security interest in all property of the borrower left with the bank or which is now in, or may hereafter come into, possession of the bank, and in any and all balances, credits, deposits and accounts of the borrower with the bank whether any of them be general, special, individual, joint, or held as a tenant in common, and in any and all drafts, checks, or other items deposited with the bank by the borrower for collection, with full authority to charge at any time without notice or demand any and all credits due borrower represented by or resulting from any of the above against any obligations secured hereby, whether matured or not." Under Georgia Law, this created a perfected security interest in that property in favor of the bank. Georgia Code §§ 109A - 9-201, 203, 204, 302.

The Promissory Note, under that part entitled ADDITIONAL PROVISIONS expressly provides: "If at any time ... if the bank shall feel insecure for any reason whatsoever, (1) any and all of the obligations made, at the option of the bank, and without demand or notice of any kind, be declared, and thereupon immediately shall become, due and payable and (2) the bank may exercise at such time, and from time to time, any rights and remedies available to the bank under the Uniform Commercial Code in effect at that time in Georgia, or otherwise available to the bank, including those available under any written instrument (in addition to this note) relating to any of the obligations of any security therefor."

Under the Uniform Commercial Code in effect in Georgia in 1976, and since, such a provision is lawful and enforceable if the bank acts in good faith. Georgia Code § 109A-1-208. The burden of establishing lack of good faith is on the party against whom the power has been exercised. Georgia Code § 109A-1-208.

A photostat of the Promissory Note of May 14, 1976 is attached hereto as Exhibit A. On that date, EXCLUSIVE OF LOAN PROCEEDS, the Committee had on deposit with the bank, securing the loan, \$7,396.78. The affidavit of Mrs. Nancy J. McJunkin has attached to it photostats of the bank statements of the Committee for the entire year 1976. Reference to that affidavit will show that, from May 14, 1976 until December 31, 1976, at no time was the bank unsecured. In fact, at times the bank was 100% secured and at other times the bank was secured in excess of 100%.

10,000.00

CONSUMER NOTE

Augusta, Georgia, May 14, 1976

FOR VALUE RECEIVED, THE UNDERSIGNED (hereinafter called "Borrower") PROMISES TO PAY TO THE ORDER OF GEORGIA RAILROAD BANK & TRUST COMPANY (hereinafter called "the Bank") the principal sum of

Ten thousand and no/100 ----- DOLLARS.

(hereinafter shown in the "Statement of Transaction" set forth immediately preceding the attestation clause as "Amount Financed") at any banking house of the Bank, Augusta, Georgia, or at such other place as the Bank may designate and notify Borrower thereof, together with the FINANCE CHARGE (hereinafter shown in the said "Statement of Transaction"), payable in accordance with the method checked below

180 days after date. (11/10/76)

In ----- consecutive (monthly) ----- payments, each in the amount of \$ ----- the first payment to be due ----- and the remaining payments to be due on the same day of each consecutive ----- month(s) thereafter with the final payment being the unpaid balance, except for: (BALLOON) (irregular) payment(s) of \$ ----- due on ----- and -----

In ----- consecutive (monthly) ----- payments, each in the amount of \$ ----- plus interest on the outstanding indebtedness at the rate of ----- % per annum, the first payment to be due ----- and the remaining payments to be due on the same day of each consecutive ----- month(s) thereafter with the final payment being the unpaid balance, except for: (BALLOON) (irregular) payment(s) of \$ ----- due on ----- and -----

Other: ----- The finance charge applies from ----- date of note

and all costs of collection, including 15% attorney's fees if collected by law or through an attorney at law. If this Note is not paid at maturity, whether said maturity shall be according to its terms or by the acceleration thereof under the powers hereinafter set forth, the unpaid balance of the indebtedness (hereinafter shown in the said "Statement of Transaction" as "Amount Financed") shall bear interest from date of such maturity at the rate of 8% per annum until paid. Whenever any payment is not paid when due, the Borrower will pay (at the option of the Bank in lieu of additional interest on such delinquent payment) a late charge of 5¢ for each dollar of the payment in default (not to exceed \$5.00) and the Bank may, at its option, declare the Note to be immediately due and payable. Borrower waives demand, presentment, notice of dishonor and protest. Should this Note be paid in full before maturity a partial refund of the FINANCE CHARGE (hereinafter shown in the said "Statement of Transaction") will be made, computed by the proportion which the total of remaining unpaid balances bears to the original total of all unpaid balances, known as the "Sum of the Digits" refund method, or if checked here based on the actuarial method of computation, as such term is used by the Bank in its normal banking procedures, after first deducting a maximum of \$15 acquisition cost from the FINANCE CHARGE. A Balloon Payment, which shall be a payment that is more than twice the amount of any otherwise regularly scheduled equal payment, may be refinanced only upon such terms and conditions as the then parties to this Note may agree as of its due date.

To secure the payment of the indebtedness evidenced by this Note, any extensions or renewals hereof, and any and all liabilities, direct or indirect, absolute or contingent, now existing or hereafter arising, of the Borrower to the Bank and all expenses and costs incidental to the collection of said indebtedness and the enforcement and protection of the security interest created hereby (all hereafter called "Obligations") the Borrower hereby pledges, assigns, conveys, transfers and deposits the following property as collateral, with the intent of granting to the Bank a security interest therein and security title thereto:

including all interest thereon, dividends and distributions on or other rights which may arise in connection with any property hereinabove referred to, all of which is hereafter called "Collateral". Borrower hereby warrants that sole and lawful ownership in fee simple of Collateral is in the Borrower with full power and authority to transfer, convey and encumber.

As additional Collateral, Borrower further grants to the Bank a security interest in all property of the Borrower left with the Bank or which now is in, or may hereafter come into, possession of the Bank, and in any and all balances, credits, deposits and accounts of the Borrower with the Bank, whether any of them be general, special, individual, joint, or held as a tenant in common, and in any and all drafts, checks or other items deposited with the Bank by the Borrower for collection, with full authority to charge at any time without notice or demand any and all credits due Borrower represented by or resulting from any of the above against any obligation secured hereby, whether matured or not.

If more than one person shall execute this Note, the term "Borrower" as used herein shall mean all persons signing this Note and each of them, who shall be jointly and severally obligated hereunder. The term "the Bank" as used herein shall include the payee or other endorsee or transferee of this Note, or any other holder in due course who is in possession of it at the time the debt secured by this Note is at the time payable to the bearer.

INSURANCE

PROPERTY INSURANCE, if written in connection with this loan, may be obtained by Borrower through any person of his choice, subject only to the Bank's right to refuse any insurer offered by the Borrower, for reasonable cause. Such insurance cannot be obtained from or through the Bank.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the Borrower signs the appropriate statement below:

- (a) The cost for Credit Life and Disability Insurance will be \$ ----- for the term of the credit.
- (b) The cost for Credit Life Insurance alone will be \$ ----- for the term of the credit.

- I desire Credit Life Insurance only
- I desire Credit Life and Disability Insurance.
- I DO NOT desire Credit Life or Disability Insurance.

(Date) ----- (Signature) -----

STATEMENT OF TRANSACTION

1. Amount of Loan	\$ 10,000.00
2. Other Charges included in the Amount of Credit Extended:	
Credit Life Insurance	\$ --
Disability Insurance	\$ --
Property Insurance	\$ --
-----	\$ --
-----	\$ --
3. AMOUNT FINANCED (1 and 2)	\$ 10,000.00
4. FINANCE CHARGE	\$ 375.00
Consisting of Interest	375.00
Loan Service Fee	\$ --
-----	\$ --
5. ANNUAL PERCENTAGE RATE	7.60%
6. TOTAL OF PAYMENTS (3 and 4)	\$ 10,375.00

FOR THE BORROWER'S USE ONLY: BORROWER ACCEPTS THE ADDITIONAL PROVISIONS SET FORTH IN PRINT ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, the Borrower has executed this Agreement and hereby acknowledges receipt of a completed copy hereof.

c/o Sherman and Hemstreet 722-8334
Home 332-933 Same Phone
739 Broad Street
(Give Location if P. O. Box or Route No.)
Augusta, Georgia

Signatures (Sign name in Ink. Do Not Print)
Doug Barnard for Congress
By: *D. Hugh Connolly* (L.S.)
D. Hugh Connolly



JAY M. SAWILOWSKY, P.C.
 ATTORNEY AT LAW
 302 GEORGIA RAILROAD BANK BUILDING
 AUGUSTA, GEORGIA 30902

TO
 Mr. Paul Loyloy
 Office of General Counsel
 Federal Election Commission
 1325 K Street N.W.
 Washington, D. C. 20463

FIRST CLASS MAIL

CERTIFIED
 No. 875439
MAIL

CERTIFIED MAIL
 RETURN RECEIPT REQUESTED

19 MAY 25 AM 12: 43

RECEIVED
 FEDERAL ELECTION
 COMMISSION

Doc 3612

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1800 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION
JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
'78 MAY 22 AM 11:09
TELEPHONE
(404) 722-7541

802904

May 16, 1978

Paul Lovejoy, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, DC 20463

Re: MUR 218 (76)

Dear Mr. Lovejoy:

I refer you to my letters to Mr. Oldaker of April 3, 1978 and of April 20, 1978 in connection with the above matter, and enclose herewith a letter from the Deputy Commissioner of Banking & Finance of the State of Georgia. He sets forth therein the opinion of the Department of Banking & Finance that the loan in question, which is the subject matter of your investigation, was made in conformity with the Financial Institutions Code of Georgia and further that it was made in the ordinary course of business.

The sole issue to be resolved in this matter, according to our understanding, which is confirmed in Mr. Oldaker's letter to me of March 28, 1978, is whether or not the said loan was made in "the ordinary course of business" as set forth in 2 U.S.C. §431(e)(5)(G). This subsection and one set forth thereafter [§431(f)(4)(K)] exclude from the definitions of "contribution" and "expenditure" "a loan of money by a national or state bank made in accordance with applicable banking laws and regulations and in the ordinary course of business..."

In §441(b) the Act provides that it is unlawful for certain entities, including "any corporation whatever" to make a contribution or expenditure in connection with any election at which a Representative in Congress is to be voted for, etc. Although the terms "contribution" and "expenditure" had been

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Paul Lovejoy, Esq.
May 16, 1978
Page Two

previously defined in the Act as excluding a loan made by a bank in the ordinary course of business, this section emphasizes that fact by restating the exclusion.

In resolving the issue in contention, it is first necessary to construe the language defining the type loan which is not prohibited under the Act. The loan must meet two tests: (1) that it is made in accordance with applicable banking laws and regulations, and (2) that it is made in the ordinary course of business.

Since the test is in the conjunctive, a question arises as to what is meant by a loan not made in "the ordinary course of business" if such loan is in compliance with applicable banking laws and regulations.

Apparently, the Commission is not contending that the loan in question was made in violation of applicable banking laws and regulations. In any event, the opinion of the Georgia Department of Banking & Finance in this regard would constitute substantial evidence that the loan was not violative of the Georgia banking laws and regulations. In order, therefore, for the loan in question to constitute a violation of the Federal Election Campaign Act, it must, in our opinion, meet a narrower test. That is, it must be a loan which, although in compliance with applicable (state) laws, was one not made in the ordinary course of business.

The Federal Election Campaign Act does not define "ordinary course of business" or set guidelines for that purpose, although proposed regulations would attempt to do so. The Georgia Financial Institutions Code does not use or define this terminology. Nor is there any readily available treatise which provides a pertinent definition thereof. However, there are reported cases which deal with this language, but only rarely in banking contexts. The question is one of fact and ultimately depends for resolution on many factors.

It can be said generally that a transaction not made in the ordinary course of business results in some kind of penalty. Here, however, there would be no penalty under the Georgia banking laws. In most cases where transactions are analyzed as to whether they were made in the ordinary course of business, the purpose of the statute involved and the evil to be remedied are considered. In the matter under investigation, the purpose of the Act is to prevent contributions by corporations to certain political candidates, and not to prevent unwise or unusual loans from being made.

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Paul Lovejoy, Esq.
May 16, 1978
Page Three

It is submitted that any alleged irregularity in the making of the loan in question should, in determining culpability, bear directly on the donative intent of the corporation.

What guidelines should a bank follow in making loans? Different guidelines exist for different type loans. Loans should be commercially reasonable. They should generally be made in the geographical area of the bank's operation. They should be made to credit-worthy borrowers. The character of the borrower should be considered, as should the borrower's capacity to repay the loan.

All of these factors were presumably taken into account by the Georgia Department of Banking & Financing, when, in retrospect, it deemed the loan in question to have been made in the ordinary course of business.

Whether the interest rate on the loan should have been the same as that applicable to loans made to Mr. Connolly generally is a matter of permitted Bank discretion which, it is submitted, should not be subject to criticism by the Federal Election Commission. Mr. Connolly's character and credit worthiness were no different when he signed the note in behalf of the Barnard Committee than they were when he made a personal loan. The Bank's expectation of repayment, whether Mr. Connolly was personally liable or not (which has never been determined as a matter of law) was undoubtedly the same.

In summary, Georgia Railroad Bank & Trust Company maintains that it has not violated the Federal Election Campaign law. Further, it contends that any attempt on the part of a non-bank regulatory Commission, distantly removed from the site of the transaction, to determine whether the transaction, conceded to be legal, was made in the ordinary course of business or not, is beyond the Commission's area of expertise and its capacity to make a proper judgment thereof.

After considering the above, if you still intend to recommend to the Commission that it find probable cause to believe that Georgia Railroad Bank & Trust Company violated the Act, I ask that the Commission afford me the opportunity of conferring with you and the General Counsel in Washington with a view towards working out some satisfactory phraseology of a conciliation agreement. I realize that the General Counsel has provided me with a

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Paul Lovejoy, Esq.
May 16, 1978
Page Four

form for such an agreement but, as I have pointed out in the past, the terms thereof are inaccurate to some extent and, in my opinion, too harsh for the alleged violation which has taken place in this matter.

I look forward to hearing from you in the near future.

Very sincerely yours,


Samuel C. Waller

SCW:jc

CC: Mr. Charles B. Presley
President
Georgia Railroad Bank &
Trust Company

Mr. Jay Sawilowsky

70040105311



Department of Banking and Finance

148 International Bldg., N.E.

Suite 648

Atlanta, Georgia 30303

E. D. "JACK" DUNN
COMMISSIONER

ROBERT M. MOLER
DEPUTY COMMISSIONER

May 5, 1978

Mr. Samuel C. Waller
Attorney
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

As per your request the Department has caused to be performed a review of a certain loan originating May 14, 1976 in the original amount of \$10,000 to the Doug Barnard for Congress Committee. The loan was made to the committee by the Georgia Railroad Bank & Trust Company, Augusta, Georgia. After reviewing the loan and all supporting documents it is the opinion of the examiner that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business. Further, all terms in conditions of the loan were met by the borrower as contracted.

Yours very truly,

A handwritten signature in cursive script, reading "Robert M. Moler", is written over the typed name.

Robert M. Moler, CFE
Deputy Commissioner

RMM:kcd

70040105312

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION

78 MAY 22 AM 11:03

Paul Lovejoy, Esq.
Office of General Counsel
Federal Election Commission
1325 K. Street N.W.
Washington, DC 20463

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TELEPHONE 722-8853

REC'D
FEDERAL ELECTION
COMMISSION

DC 3605

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 MAY 22 AM 9:57

May 17, 1978

802928

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

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Gentlemen:

Enclosed in the letter to each of you is a copy of that letter of the Georgia Department of Banking and Finance to Mr. Samuel C. Waller dated May 5, 1978 stating the opinion of that department "that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business." I believe that Mr. Waller also enclosed a copy to Mr. Lovejoy in Mr. Waller's letter of May 16, 1978.

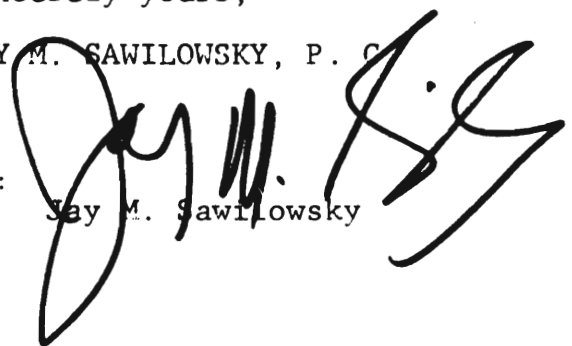
I have almost completed assembling the rest of my material. When it is assembled, in the next few days, I would like to call you and make an appointment for Mr. Waller and me, and our clients, to meet with you, in Washington, D. C., to discuss this matter.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky



JMS:sf

Enclosure

cc: Mr. D. Hugh Connolly
Mrs. Nancy McJunkin
Mr. J. Carlisle Overstreet

700105311



Department of Banking and Finance

148 International Bld., N.E.

Suite 640

Atlanta, Georgia 30303

E. D. "JACK" DUNN
COMMISSIONER

ROBERT M. MOLER
DEPUTY COMMISSIONER

May 5, 1978

Mr. Samuel C. Waller
Attorney
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

As per your request the Department has caused to be performed a review of a certain loan originating May 14, 1976 in the original amount of \$10,000 to the Doug Barnard for Congress Committee. The loan was made to the committee by the Georgia Railroad Bank & Trust Company, Augusta, Georgia. After reviewing the loan and all supporting documents it is the opinion of the examiner that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business. Further, all terms in conditions of the loan were met by the borrower as contracted.

Yours very truly,

Robert M. Moler, CFE
Deputy Commissioner

RMM:kcd

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JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

FEDERAL ELECTION COMMISSION

10 MAY 20 AM 8:37

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

PROCLAIM LIBERTY THROUGH
USA 13



POSTAGE AND FEES PAID

TELEPHONE 722-8883

JAC
3897
RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
602 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 MAY 19 PM 12:27

May 17, 1978

802881

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

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Gentlemen:

Enclosed in the letter to each of you is a copy of that letter of the Georgia Department of Banking and Finance to Mr. Samuel C. Waller dated May 5, 1978 stating the opinion of that department "that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business." I believe that Mr. Waller also enclosed a copy to Mr. Lovejoy in Mr. Waller's letter of May 16, 1978.

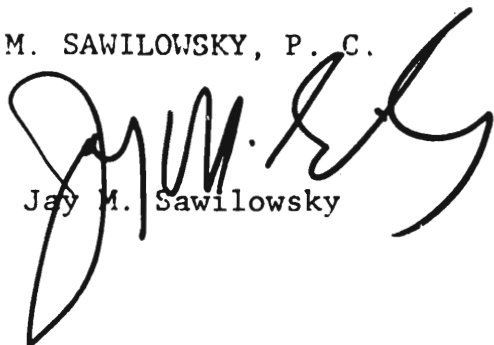
I have almost completed assembling the rest of my material. When it is assembled, in the next few days, I would like to call you and make an appointment for Mr. Waller and me, and our clients, to meet with you, in Washington, D. C., to discuss this matter.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky



JMS:sf

Enclosure

cc: Mr. D. Hugh Connolly
Mrs. Nancy McJunkin
Mr. J. Carlisle Overstreet

790103317



Department of Banking and Finance

148 International Bldg., N.E.

Suite 640

Atlanta, Georgia 30303

E. D. "JACK" DUNN
COMMISSIONER

ROBERT M. MOLER
DEPUTY COMMISSIONER

May 5, 1978

Mr. Samuel C. Waller
Attorney
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

As per your request the Department has caused to be performed a review of a certain loan originating May 14, 1976 in the original amount of \$10,000 to the Doug Barnard for Congress Committee. The loan was made to the committee by the Georgia Railroad Bank & Trust Company, Augusta, Georgia. After reviewing the loan and all supporting documents it is the opinion of the examiner that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business. Further, all terms in conditions of the loan were met by the borrower as contracted.

Yours very truly,

Robert M. Moler, CFE
Deputy Commissioner

RMM:kcd

79040105313

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.



MAY 19 PM 12:27

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

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FEDERAL ELECTION COMMISSION

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

May 15, 1978

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS *MWE*

SUBJECT: MUR 218 (76) - Interim Report dated 5-10-78
Received in OCS: 5-12-78, 11:46

The above-mentioned document was circulated on a 24 hour no-objection basis at 4:30 p.m., May 12, 1978.

As of 5:30 p.m., this date, no objections have been received in the Office of Commission Secretary to the Interim Report.



7 9 0 1 0 1 0 5 3 2 2

May 12, 1978

MEMORANDUM TO: Marge Emmons
FROM: Elissa T. Carr
SUBJECT: MUR 218

Please have the attached Interim Report on MUR 218 distributed to the Commission.

Thank you.

79040105321

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Doug Barnard for Congress) MUR 218
Committee and,)
Georgia Railroad Bank and)
Trust Company)

INTERIM REPORT

On October 19, 1977, the Commission found reasonable cause to believe that the Georgia Railroad Bank and Trust Company ("the Bank") violated 2 U.S.C. 441b in making a \$10,000 unsecured loan to the Doug Barnard for Congress Committee ("the Committee"). On March 15, 1978, the Commission found reasonable cause to believe that the Committee violated 2 U.S.C. 441b in accepting the loan from the Bank.

The General Counsel's Office has been in communication with Samuel C. Waller, counsel for the Bank and Jay m. Sawilowsky, counsel for the Committee, regarding the conciliation of this matter. Both attorneys have requested that they be permitted to submit a report prepared by the Department of Banking and Finance of the State of Georgia regarding the loan in question. In a May 3, 1978, telephone conversation with a member of the staff Mr. Waller stated that this report should be received by May 5, 1978.

In a letter dated April 13, 1978, Mr. Sawilowsky gave the Commission notice of the fact that he is now representing the Committee and requested that the Commission allow him 60 days to present additional factual and legal material relating to the "ordinary course of business" question at issue (Attachment I).

70010105322

On May 1, 1978, the General Counsel's Office replied to Mr. Sawilowsky's letter requesting that he present any additional material pertaining to this matter within 20 days, as the Committee was first notified of its opportunity to do so in October of 1977 (Attachment II).

The General Counsel's Office is continuing its conciliation efforts with the Bank and the Committee. Upon expiration of the 20 day period we will submit to the Commission an analysis of any additional material which may have been received from respondents and recommendations as to the disposition of this matter.

5/10/78
Date


William C. Oldaker
General Counsel

7 9 9 4 0 1 0 5 3 2 3

TELEPHONE 722-6653

FEDERAL ELECTION COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

APR 17 PM 1:06

April 13, 1978

801863

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Lovejoy

Re: MUR 218

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. While I have not yet had the opportunity to confer with Mr. Samuel C. Waller, attorney for the Georgia Railroad Bank & Trust Company, nor to study all pertinent material, the information at hand indicates that the sole issue is:

Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

The material presently available to me, including the proposed conciliation agreement, indicates that the determination of the Federal Election Commission that there is reasonable cause to believe that the committee violated 2 U.S.C. 441b, as set forth in the letter to Mr. Connolly of March 21, 1978 and the proposed conciliation agreement, is based upon insufficient information and is not an informed judgment. Accordingly, I propose, in cooperation with Mr. Waller, to present to you the following:

A. Additional material showing this loan to have been made in accordance with the applicable banking laws and regulations and in the ordinary course of business.

7901010533

Mr. William C. Oldaker
Mr. Randall Johnson
April 13, 1978
Page 2

B. Brief of applicable law.

Please inform me:

A. May the Committee have until 5:00 P. M. on June 15, 1978 to present the above?

B. Which of you am I to communicate with?

C. Are my letters to you required to be by certified mail?

D. With whom does the Committee confer about this matter and how are such conferences arranged?

Your prompt response to the above will be greatly appreciated. In the meantime, I will confer with Mr. Waller about the additional material to be furnished you, as set forth above.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

Jay M. Sawilowsky

JMS:sf

cc: Mr. D. Hugh Connolly
Mr. Samuel C. Waller

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FEDERAL ELECTION COMMISSION

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

May 1, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jay M. Sawilowsky, P.C.
902 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Sawilowsky:

This letter is in response to your letter of April 13, 1978. As we have communicated to Mr. Waller and Mr. Connolly, we welcome any additional factual or legal material you should care to submit regarding the appropriateness of the loan made to the Doug Barnard for Congress Committee ("the Committee") by the Georgia Railroad Bank and Trust Company ("the Bank"). However, we are under statutory mandate to deal with all compliance matters as expeditiously as possible, and as the Committee, through Mr. Waller, was first notified of its opportunity to present information to the Commission in October of 1977, we request that you submit such information as soon as possible.

Regarding the specific questions posed in your letter:

A. Please submit any legal or factual material pertaining to the loan made to the Committee by the Bank within twenty (20) days of your receipt of this letter.

B. Any questions or suggestions regarding the conciliation of this matter should be directed to Mr. Paul Lovejoy, the staff member assigned to this matter, at 202-523-4175, as Mr. Johnson is no longer with the Commission.



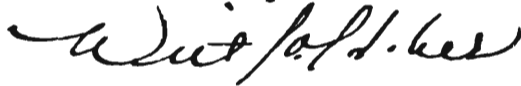
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C. Written communications are not required to be sent by certified mail.

D. If you should desire to meet here with the staff member handling this matter for the purpose of further explaining the Committee's position and attempting to conciliate, please call Mr. Lovejoy and arrange a mutually convenient date and time.

I trust that this letter answers your questions. We await to hear from you about specific changes or additions you propose to conciliate this matter.

Sincerely,



William C. Oldaker
General Counsel

7.29.4101.05327

TELEPHONE 733-8853

LOC 3483

RECEIVED
FEDERAL ELECTION
COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

'78 MAY 8 PM 1:24

May 5, 1978

802507

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218(76)

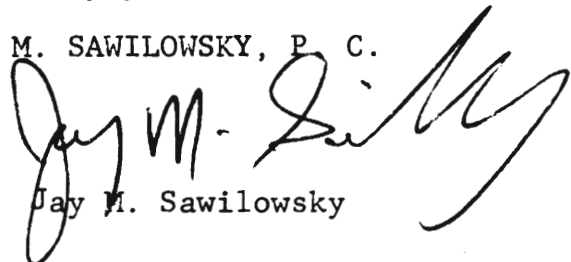
Dear Mr. Lovejoy:

Per our telephone conference this morning, enclosed is a photostat of my letter of April 17, 1978 to Mr. Oldaker and Mr. Johnson. As the Federal Election Commission feels that this loan was out of the ordinary course of business of the interest rate and because it is apparently unsecured, Mr. Waller and I will present to you materials to show that the interest rate was proper and that the note was in fact secured. Further, we expect to present to you materials showing that, as far as the Georgia state bank examiners were concerned, this loan was made within the ordinary course of business.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

Enclosure

cc: Mr. Samuel Waller
Mr. D. Hugh Connolly
Mrs. Nancy McJunkin
Mr. Carlisle Overstreet

70040103300

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
802 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

April 17, 1978

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. Inadvertently, my letter to you of April 13, 1978 contained the wrong reference number. For your ready reference, a photostat of my letter of April 13, 1978 is enclosed.

I now know more about this matter than I did on April 13, 1978. While I don't have all the pertinent material, the information now at hand indicates that the sole issues are:

(a) Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

(b) If this loan was not in accordance with the applicable banking laws and regulations and not in the ordinary course of business, did the Committee know that?

Mr. Waller informs me that you feel this loan to have been out of the ordinary course of business of the bank for two reasons:

- (a) The interest rate, and
- (b) It is apparently unsecured.

79040105329

April 17, 1978
Page Two

Mr. Waller and I are developing material to show you that the interest rate was proper and that the note was in fact secured.

Since we do not know any other reasons why you might think this note was not in the ordinary course of business, we do not know what other charges to meet. If there are any others reasons, please inform me:

(a) Exactly what those reasons are.

(b) If the reasons involve applicable banking laws and regulations, please let me know which particular laws and regulations you have in mind.

(c) What other matters you think bring this note out of the ordinary course of banking business.

The Barnard for Congress Committee cannot enter into the conciliation agreement enclosed in your letter of March 21, 1978 to Mr. Connolly because:

(a) The Committee has not had a reasonable opportunity to demonstrate that no action should be taken in this matter.

(b) All of the pertinent facts and laws are not set forth in paragraph three of conciliation agreement and some of the statements made therein are not correct. For example, this loan was made with security which, on the date of the note, amounted to \$7,396.78.

(c) This loan was made within the ordinary course of business.

(d) Even if the loan was made outside the ordinary course of business, the Committee did not know that and any violation would have been inadvertent, without knowledge and unintentional.

In connection with the above, it is clear that the determination, on March 15, 1978, of the Federal Election Commission, that there is reasonable cause to believe that my client violated 2 U. S. C. 441b, was an uninformed judgment. Reference to your file will indicate that my client has not had the opportunity to present its case to the Federal Election Commission.

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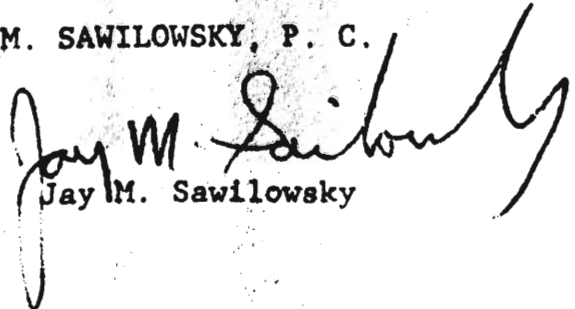
April 17, 1978
Page Three

I would appreciate your response, to the questions to you in my letter of April 13, 1978, and this letter as soon as possible. Mr. Waller and I, in representing our respective clients, want to submit additional information and then confer with the Federal Election Commission, or its representatives.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

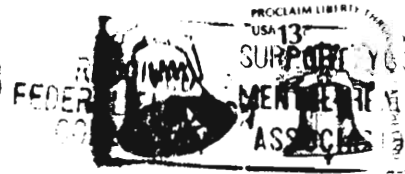
BY:


Jay M. Sawilowsky

JMS:cw
Enclosure

79010105331

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



'78 MAY 5 PM 1:24

Mr. Paul Lovejoy
Office of General Counsel
Federal Election Commission
1325 M Street N. W.
Washington, D. C. 20463

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Department of Banking and Finance

148 International Blvd., N.E.

Suite 640

Atlanta, Georgia 30303

E. D. "JACK" DUNN
COMMISSIONER

ROBERT M. MOLER
DEPUTY COMMISSIONER

May 5, 1978

Mr. Samuel C. Waller
Attorney
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

As per your request the Department has caused to be performed a review of a certain loan originating May 14, 1976 in the original amount of \$10,000 to the Doug Barnard for Congress Committee. The loan was made to the committee by the Georgia Railroad Bank & Trust Company, Augusta, Georgia. After reviewing the loan and all supporting documents it is the opinion of the examiner that the loan was made in conformity with the Financial Institutions Code of Georgia and appears to have been made in the ordinary course of business. Further, all terms in conditions of the loan were met by the borrower as contracted.

Yours very truly,

Robert M. Moler, CFE
Deputy Commissioner

RMM:kcd

7904010533



FEDERAL ELECTION COMMISSION

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

May 1, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jay M. Sawilowsky, P.C.
902 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Sawilowsky:

This letter is in response to your letter of April 13, 1978. As we have communicated to Mr. Waller and Mr. Connolly, we welcome any additional factual or legal material you should care to submit regarding the appropriateness of the loan made to the Doug Barnard for Congress Committee ("the Committee") by the Georgia Railroad Bank and Trust Company ("the Bank"). However, we are under statutory mandate to deal with all compliance matters as expeditiously as possible, and as the Committee, through Mr. Waller, was first notified of its opportunity to present information to the Commission in October of 1977, we request that you submit such information as soon as possible.

Regarding the specific questions posed in your letter:

A. Please submit any legal or factual material pertaining to the loan made to the Committee by the Bank within twenty (20) days of your receipt of this letter.

B. Any questions or suggestions regarding the conciliation of this matter should be directed to Mr. Paul Lovejoy, the staff member assigned to this matter, at 202-523-4175, as Mr. Johnson is no longer with the Commission.



79040105331

C. Written communications are not required to be sent by certified mail.

D. If you should desire to meet here with the staff member handling this matter for the purpose of further explaining the Committee's position and attempting to conciliate, please call Mr. Lovejoy and arrange a mutually convenient date and time.

I trust that this letter answers your questions. We await to hear from you about specific changes or additions you propose to conciliate this matter.

Sincerely,

William C. Oldaker

William C. Oldaker
General Counsel

79040105333

Plaza 218

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered.....
 Show to whom, date, and address of delivery.....
 RESTRICTED DELIVERY
 Show to whom and date delivered.....
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Jay M. Sawilowsky, P.C.
 902 Georgia Railroad Bank Bldg
 Augusta, GA 30902

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 943929

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
X Shirley Faircloth

4. DATE OF DELIVERY: MAY 4 1978
 POSTMARK: AUGUSTA MAY 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO : 1977-O-234-337

ACC 35

802044

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

FEDERAL ELECTION COMMISSION
78 APR 24 AM 9:54

JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1968)
TELEPHONE
(404) 722-7541

April 20, 1978

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

Re: MUR 218 (76)

Dear Mr. Oldaker:

In my letter to you of April 3, 1978 in connection with the above matter, I stated that the evidence which was discussed in that letter would be submitted to the Commission within approximately two weeks from that date. Representatives of the Georgia Department of Banking and Finance are currently conducting an examination of Georgia Railroad Bank & Trust Company's condition and I have been advised that the report with reference to the Barnard for Congress Committee transaction will be submitted to the Commissioner of Banking and Finance within approximately five days. He will then advise us what the Department's view is with respect to that transaction.

Very sincerely yours,

Samuel C. Waller
Samuel C. Waller

SCW:jc

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LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

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

TELEPHONE 722-8853

JCC 3304

JAY M. SAWILOWSKY, P.C.

801948

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

April 17, 1978

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. Inadvertently, my letter to you of April 13, 1978 contained the wrong reference number. For your ready reference, a photostat of my letter of April 13, 1978 is enclosed.

I now know more about this matter than I did on April 13, 1978. While I don't have all the pertinent material, the information now at hand indicates that the sole issues are:

(a) Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

(b) If this loan was not in accordance with the applicable banking laws and regulations and not in the ordinary course of business, did the Committee know that?

Mr. Waller informs me that you feel this loan to have been out of the ordinary course of business of the bank for two reasons:

(a) The interest rate, and

(b) It is apparently unsecured.

700401

TELEPHONE 722-8863

FEDERAL ELECTION COMMISSION

ACC 3304

JAY M. SAWILOWSKY, P.C.

801948

ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

April 17, 1978

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. Inadvertently, my letter to you of April 13, 1978 contained the wrong reference number. For your ready reference, a photostat of my letter of April 13, 1978 is enclosed.

I now know more about this matter than I did on April 13, 1978. While I don't have all the pertinent material, the information now at hand indicates that the sole issues are:

(a) Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

(b) If this loan was not in accordance with the applicable banking laws and regulations and not in the ordinary course of business, did the Committee know that?

Mr. Waller informs me that you feel this loan to have been out of the ordinary course of business of the bank for two reasons:

(a) The interest rate, and

(b) It is apparently unsecured.

700401

April 17, 1978
Page Two

Mr. Waller and I are developing material to show you that the interest rate was proper and that the note was in fact secured.

Since we do not know any other reasons why you might think this note was not in the ordinary course of business, we do not know what other charges to meet. If there are any others reasons, please inform me:

(a) Exactly what those reasons are.

(b) If the reasons involve applicable banking laws and regulations, please let me know which particular laws and regulations you have in mind.

(c) What other matters you think bring this note out of the ordinary course of banking business.

The Barnard for Congress Committee cannot enter into the conciliation agreement enclosed in your letter of March 21, 1978 to Mr. Connolly because:

(a) The Committee has not had a reasonable opportunity to demonstrate that no action should be taken in this matter.

(b) All of the pertinent facts and laws are not set forth in paragraph three of conciliation agreement and some of the statements made therein are not correct. For example, this loan was made with security which, on the date of the note, amounted to \$7,396.78.

(c) This loan was made within the ordinary course of business.

(d) Even if the loan was made outside the ordinary course of business, the Committee did not know that and any violation would have been inadvertent, without knowledge and unintentional.

In connection with the above, it is clear that the determination, on March 15, 1978, of the Federal Election Commission, that there is reasonable cause to believe that my client violated 2 U. S. C. 441b, was an uninformed judgment. Reference to your file will indicate that my client has not had the opportunity to present its case to the Federal Election Commission.

79040105339

April 17, 1978
Page Three

I would appreciate your response, to the questions to you in my letter of April 13, 1978, and this letter as soon as possible. Mr. Waller and I, in representing our respective clients, want to submit additional information and then confer with the Federal Election Commission, or its representatives.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:cw
Enclosure

7 2 0 4 0 1 0 5 3 4 0

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

April 13, 1978

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 213

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. While I have not yet had the opportunity to confer with Mr. Samuel C. Waller, attorney for the Georgia Railroad Bank & Trust Company, nor to study all pertinent material, the information at hand indicates that the sole issue is:

Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

The material presently available to me, including the proposed conciliation agreement, indicates that the determination of the Federal Election Commission that there is reasonable cause to believe that the committee violated 2 U.S.C. 441b, as set forth in the letter to Mr. Connolly of March 21, 1978 and the proposed conciliation agreement, is based upon insufficient information and is not an informed judgment. Accordingly, I propose, in cooperation with Mr. Waller, to present to you the following:

A. Additional material showing this loan to have been made in accordance with the applicable banking laws and regulations and in the ordinary course of business.

79010105341

Mr. William C. Oldaker
Mr. Randall Johnson
April 13, 1978
Page 2

B. Brief of applicable law.

Please inform me:

A. May the Committee have until 5:00 P. M. on June 15, 1978 to present the above?

B. Which of you am I to communicate with?

C. Are my letters to you required to be by certified mail?

D. With whom does the Committee confer about this matter and how are such conferences arranged?

Your prompt response to the above will be greatly appreciated. In the meantime, I will confer with Mr. Waller about the additional material to be furnished you, as set forth above.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:

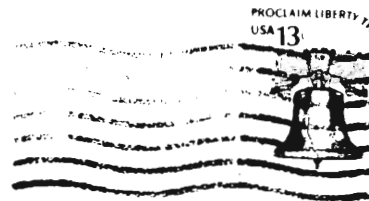

Jay M. Sawilowsky

JMS:sf

cc: Mr. D. Hugh Connolly
Mr. Samuel C. Waller

7904010534

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street
Washington, D. C. 20463

7 9 9 1 0 1 0 3 1 1



FEDERAL ELECTION COMMISSION

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

April 19, 1978

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS *MWE*
SUBJECT: MUR 218 (76) - Interim Report dtd 4-14-78
Received in Office of Commission
Secretary: 4-14-78, 2:13

The above-mentioned document was circulated to the Commissioners at 10:00 a.m., April 18, 1978, on a 24 hour no-objection basis.

As of 10:00 a.m., this date, no objections have been received in the Office of Commission Secretary to the Interim Report.

79040105311

April 14, 1978

MEMORANDUM TO: Marge Emmons
FROM: Elissa T. Carr
SUBJECT: MUR 218

Please have the attached Intake Report on MUR 218 distributed to the Commission on a 24 hour no-objection basis.

Thank you.

79040105345

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Doug Barnard for Congress) MUR 218 (76)
Committee)
)
and)
)
Georgia Railroad Bank)
and Trust Company)

Interim Report

This matter concerns a \$10,000 unsecured loan made to the Doug Barnard for Congress Committee ("the Committee"), at an interest rate of 7.6% per annum, by the Georgia Railroad Bank and Trust Company ("the Bank").

On October 19, 1977, the Commission found reasonable cause to believe that the Bank violated 2 U.S.C. 441b as the loan made to the Committee was not within the ordinary course of business standard set forth in 2 U.S.C. 431(e)(5)(G). On March 15, 1978, the Commission found reasonable cause to believe that the Committee violated 2 U.S.C. 441b in accepting the loan from the Bank.

The General Counsel's Office has been in communication with Samual C. Waller, counsel for the Bank and D. Hugh Connolly, Chairman of the Committee in attempting to conciliate this matter. Mr. Waller has requested that the Bank be permitted to submit a statement by the Department of Banking and Finance of the State of Georgia regarding the appropriateness of the loan made to the Committee by the Bank. In a letter dated April 3, 1978, (Attachment I) Mr. Waller stated that such information should be received at the Commission by


79010105345

April 19, 1978.

In a letter dated April 4, 1978, (Attachment II) Mr. Connolly stated that the Committee was in the process of retaining counsel and such counsel would be in contact with the Commission regarding the proposed conciliation agreement sent to the Committee by the Commission on March 21, 1978. Mr. Connolly also requested that the information being submitted by Mr. Waller be considered with regard to the Committee's position as well as the Bank's.

The General Counsel's Office is continuing its conciliation efforts with the Bank and the Committee and will submit to the Commission an analysis of the materials to be submitted by respondents upon receipt of such information.

14 April 1978
Date


William C. Oldaker
General Counsel *F-WCJ*

79010105347

MCC 3165

FEDERAL ELECTION COMMISSION

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
Wm. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1968)
TELEPHONE
(404) 722-7541

78 APR 6 AM 8:29

801563

April 3, 1978

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

Re: MUR 218(76)

Dear Mr. Oldaker:

In my letter to you of March 7, 1978 in connection with the above matter, I stated that it was our plan to submit additional evidence to you that the Georgia Railroad Bank and Trust Company loan in question would be deemed to have been made in the ordinary course of business, in view of the circumstances involved.

The Department of Banking and Finance of the State of Georgia will make an examination of Georgia Railroad Bank and Trust Company's records in this connection and will submit an opinion as to whether or not the transaction in question was one which, under the banking laws and regulations of Georgia, was, in the judgment of the Department, made in the ordinary course of business and would not be deemed to have been irregularly made.

I have just finished a telephone conversation with Mr. Johnson and he has informed me that the Commission would be willing to take into consideration such an opinion, although it would not necessarily be influenced thereby.

We intend to have this evidence submitted to the Commission within approximately two weeks.

Very sincerely yours,

Samuel C. Waller
Samuel C. Waller

SCW:jc

79010105348

RESIDENTIAL AND
COMMERCIAL SALES
INSURANCE
APPRAISALS

62068

HOME BUILDING
LEASING
PROPERTY MANAGEMENT
LAND DEVELOPMENT

SHERMAN
AND
HEMSTREET
INC
Realtors

RECEIVED
FEDERAL ELECTION
COMMISSION

2003213

'78 APR 10 PM 1:55

MARION BUILDING - 739 BROAD STREET
PHONE 722-8334
AUGUSTA, GEORGIA 30902

April 4, 1978

Honorable Randall Johnson
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

RE: Your reference MUR 218

Dear Mr. Johnson:

This will acknowledge receipt of the letter of Mr. William C. Oldaker, General Counsel, to me as Chairman of the Doug Barnard for Congress election committee, dated March 21, 1978, as well as our telephone conversation of this past Monday, April 3.

This is to reiterate that the Committee does wish to employ legal counsel to represent it. That attorney in all likelihood will be Mr. Jay M. Sawilowsky, who practices in Augusta and who is a member of the State Bar of Georgia. The Committee also requests reasonable time in which to permit Mr. Sawilowsky to familiarize himself with the matter at hand, as well as to permit development of the information, being procured by attorney Samuel C. Waller on behalf of Georgia Railroad Bank & Trust Company, relating to the issue of whether the bank loan in question was made outside the ordinary course of business. As I mentioned to you, even if the Committee were agreeable to entering into a conciliation agreement of the substance proposed in Mr. Oldaker's letter and enclosure, which the Committee is not, it is our opinion that the Committee's doing so could well operate to prejudice the position taken on behalf of the bank by Mr. Waller. While probably sixty days would be sufficient time for pertinent information to be developed, it may be that Mr. Sawilowsky may request some modification of the time period, either more or less, after he has had an opportunity to become familiar with the Committee's situation.

Let me repeat my appreciation for your having taken the trouble to telephone me on Monday.

Sincerely yours,


D. Hugh Connolly
President

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

April 17, 1978

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 218 (76)

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. Inadvertently, my letter to you of April 13, 1978 contained the wrong reference number. For your ready reference, a photostat of my letter of April 13, 1978 is enclosed.

I now know more about this matter than I did on April 13, 1978. While I don't have all the pertinent material, the information now at hand indicates that the sole issues are:

(a) Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

(b) If this loan was not in accordance with the applicable banking laws and regulations and not in the ordinary course of business, did the Committee know that?

Mr. Waller informs me that you feel this loan to have been out of the ordinary course of business of the bank for two reasons:

- (a) The interest rate, and
- (b) It is apparently unsecured.

70010103350

April 17, 1978
Page Two

Mr. Waller and I are developing material to show you that the interest rate was proper and that the note was in fact secured.

Since we do not know any other reasons why you might think this note was not in the ordinary course of business, we do not know what other charges to meet. If there are any others reasons, please inform me:

- (a) Exactly what those reasons are.
- (b) If the reasons involve applicable banking laws and regulations, please let me know which particular laws and regulations you have in mind.
- (c) What other matters you think bring this note out of the ordinary course of banking business.

The Barnard for Congress Committee cannot enter into the conciliation agreement enclosed in your letter of March 21, 1978 to Mr. Connolly because:

- (a) The Committee has not had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- (b) All of the pertinent facts and laws are not set forth in paragraph three of conciliation agreement and some of the statements made therein are not correct. For example, this loan was made with security which, on the date of the note, amounted to \$7,396.78.
- (c) This loan was made within the ordinary course of business.
- (d) Even if the loan was made outside the ordinary course of business, the Committee did not know that and any violation would have been inadvertent, without knowledge and unintentional.

In connection with the above, it is clear that the determination, on March 15, 1978, of the Federal Election Commission, that there is reasonable cause to believe that my client violated 2 U. S. C. 441b, was an uninformed judgment. Reference to your file will indicate that my client has not had the opportunity to present its case to the Federal Election Commission.

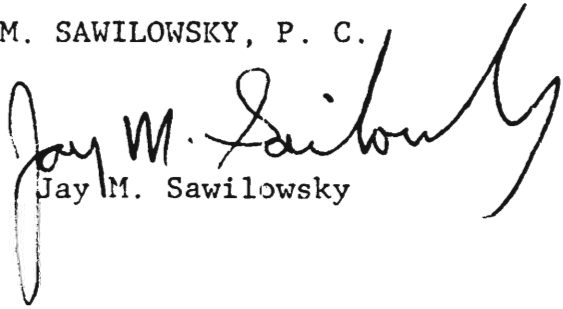
April 17, 1978
Page Three

I would appreciate your response, to the questions to you in my letter of April 13, 1978, and this letter as soon as possible. Mr. Waller and I, in representing our respective clients, want to submit additional information and then confer with the Federal Election Commission, or its representatives.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:cw
Enclosure

7 9 0 1 0 1 0 3 3 5 1

Mc3286

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

FEDERAL ELECTION COMMISSION

APR 19 AM 11:51

April 13, 1978

881923

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 213

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. While I have not yet had the opportunity to confer with Mr. Samuel C. Waller, attorney for the Georgia Railroad Bank & Trust Company, nor to study all pertinent material, the information at hand indicates that the sole issue is:

Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

The material presently available to me, including the proposed conciliation agreement, indicates that the determination of the Federal Election Commission that there is reasonable cause to believe that the committee violated 2 U.S.C. 441b, as set forth in the letter to Mr. Connolly of March 21, 1978 and the proposed conciliation agreement, is based upon insufficient information and is not an informed judgment. Accordingly, I propose, in cooperation with Mr. Waller, to present to you the following:

A. Additional material showing this loan to have been made in accordance with the applicable banking laws and regulations and in the ordinary course of business.

79010105353

Mr. William C. Oldaker
Mr. Randall Johnson
April 13, 1978
Page 2

B. Brief of applicable law.

Please inform me:

A. May the Committee have until 5:00 P. M. on June 15, 1978 to present the above?

B. Which of you am I to communicate with?

C. Are my letters to you required to be by certified mail?

D. With whom does the Committee confer about this matter and how are such conferences arranged?

Your prompt response to the above will be greatly appreciated. In the meantime, I will confer with Mr. Waller about the additional material to be furnished you, as set forth above.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

cc: Mr. D. Hugh Connolly
Mr. Samuel C. Waller

179040105351

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



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

TELEPHONE 722-8853

FEDERAL ELECTION COMMISSION

ACC 3275

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

APR 17 PM 1:06

April 13, 1978

801863

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 213

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. While I have not yet had the opportunity to confer with Mr. Samuel C. Waller, attorney for the Georgia Railroad Bank & Trust Company, nor to study all pertinent material, the information at hand indicates that the sole issue is:

Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

The material presently available to me, including the proposed conciliation agreement, indicates that the determination of the Federal Election Commission that there is reasonable cause to believe that the committee violated 2 U.S.C. 441b, as set forth in the letter to Mr. Connolly of March 21, 1978 and the proposed conciliation agreement, is based upon insufficient information and is not an informed judgment. Accordingly, I propose, in cooperation with Mr. Waller, to present to you the following:

A. Additional material showing this loan to have been made in accordance with the applicable banking laws and regulations and in the ordinary course of business.

79040105356

Mr. William C. Oldaker
Mr. Randall Johnson
April 13, 1978
Page 2

B. Brief of applicable law.

Please inform me:

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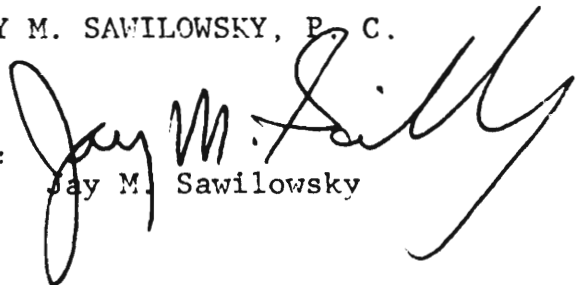
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Your prompt response to the above will be greatly appreciated. In the meantime, I will confer with Mr. Waller about the additional material to be furnished you, as set forth above.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:



Jay M. Sawilowsky

JMS:sf

cc: Mr. D. Hugh Connolly
Mr. Samuel C. Waller

70010103317

JAY M. SAWILOWSKY, P.C.

ATTORNEY AT LAW

902 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902



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

MCC3266

FEDERAL ELECTION COMMISSION

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

APR 17 AM 9:15

April 13, 1978

801840

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

Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 213 *218*

Gentlemen:

I represent the Doug Barnard for Congress Election Committee in this matter. While I have not yet had the opportunity to confer with Mr. Samuel C. Waller, attorney for the Georgia Railroad Bank & Trust Company, nor to study all pertinent material, the information at hand indicates that the sole issue is:

Was this loan in accordance with the applicable banking laws and regulations and in the ordinary course of business?

The material presently available to me, including the proposed conciliation agreement, indicates that the determination of the Federal Election Commission that there is reasonable cause to believe that the committee violated 2 U.S.C. 441b, as set forth in the letter to Mr. Connolly of March 21, 1978 and the proposed conciliation agreement, is based upon insufficient information and is not an informed judgment. Accordingly, I propose, in cooperation with Mr. Waller, to present to you the following:

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Mr. William C. Oldaker
Mr. Randall Johnson
April 13, 1978
Page 2

B. Brief of applicable law.

Please inform me:

A. May the Committee have until 5:00 P. M. on June 15, 1978 to present the above?

B. Which of you am I to communicate with?

C. Are my letters to you required to be by certified mail?

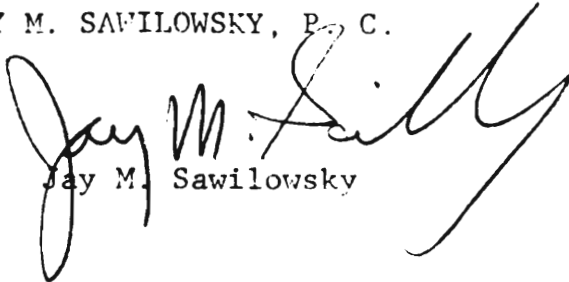
D. With whom does the Committee confer about this matter and how are such conferences arranged?

Your prompt response to the above will be greatly appreciated. In the meantime, I will confer with Mr. Waller about the additional material to be furnished you, as set forth above.

Sincerely yours,

JAY M. SAWILOWSKY, P. C.

BY:


Jay M. Sawilowsky

JMS:sf

cc: Mr. D. Hugh Connolly
Mr. Samuel C. Waller

79040105360

JAY M. SAWILOWSKY, P.C.
ATTORNEY AT LAW
902 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



Mr. Randall Johnson
Attorney at Law
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

7 9 0 1 0 1 0 5 3 6

APR 13 1978 8:15

RESIDENTIAL AND
COMMERCIAL SALES
INSURANCE
APPRAISALS

2068

HOME BUILDING
LEASING
PROPERTY MANAGEMENT
LAND DEVELOPMENT

SHERMAN
AND
HEMSTREET
Realtors^{INC}

FEDERAL ELECTION
COMMISSION

ACC 3213

'78 APR 10 PM 1:55

MARION BUILDING - 739 BROAD STREET
PHONE 722-8334
AUGUSTA, GEORGIA 30902

April 4, 1978

Honorable Randall Johnson
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

RE: Your reference MUR 218


Dear Mr. Johnson:

This will acknowledge receipt of the letter of Mr. William C. Oldaker, General Counsel, to me as Chairman of the Doug Barnard for Congress election committee, dated March 21, 1978, as well as our telephone conversation of this past Monday, April 3.

This is to reiterate that the Committee does wish to employ legal counsel to represent it. That attorney in all likelihood will be Mr. Jay M. Sawilowsky, who practices in Augusta and who is a member of the State Bar of Georgia. The Committee also requests reasonable time in which to permit Mr. Sawilowsky to familiarize himself with the matter at hand, as well as to permit development of the information, being procured by attorney Samuel C. Waller on behalf of Georgia Railroad Bank & Trust Company, relating to the issue of whether the bank loan in question was made outside the ordinary course of business. As I mentioned to you, even if the Committee were agreeable to entering into a conciliation agreement of the substance proposed in Mr. Oldaker's letter and enclosure, which the Committee is not, it is our opinion that the Committee's doing so could well operate to prejudice the position taken on behalf of the bank by Mr. Waller. While probably sixty days would be sufficient time for pertinent information to be developed, it may be that Mr. Sawilowsky may request some modification of the time period, either more or less, after he has had an opportunity to become familiar with the Committee's situation.

Let me repeat my appreciation for your having taken the trouble to telephone me on Monday.

Sincerely yours,


D. Hugh Connolly
President

7 2 0 4 0 1 0 5 3 6 2

SHERMAN
AND
HEMSTREET
INC
Realtors

Augusta, Ga. 30902



Honorable Randall Johnson
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

5-1 11-11

ACC 3165

FEDERAL ELECTION COMMISSION

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

JOSEPH B. CUMMING
OF COUNSEL

HENRY P. EVE
(1917-1989)

TELEPHONE
(404) 722-7541

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

78 APR 6 AM 8:29

801563

April 3, 1978

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

Re: MUR 218(76)

Dear Mr. Oldaker:

In my letter to you of March 7, 1978 in connection with the above matter, I stated that it was our plan to submit additional evidence to you that the Georgia Railroad Bank and Trust Company loan in question would be deemed to have been made in the ordinary course of business, in view of the circumstances involved.

The Department of Banking and Finance of the State of Georgia will make an examination of Georgia Railroad Bank and Trust Company's records in this connection and will submit an opinion as to whether or not the transaction in question was one which, under the banking laws and regulations of Georgia, was, in the judgment of the Department, made in the ordinary course of business and would not be deemed to have been irregularly made.

I have just finished a telephone conversation with Mr. Johnson and he has informed me that the Commission would be willing to take into consideration such an opinion, although it would not necessarily be influenced thereby.

We intend to have this evidence submitted to the Commission within approximately two weeks.

Very sincerely yours,

Samuel C. Waller
Samuel C. Waller

SCW:jc

7 9 9 0 1 0 1 0 1 0 0 0 1

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

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



FEDERAL ELECTION COMMISSION

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

March 29, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John D. Hemenway
4816 Rodman Street, N.W.
Washington, D.C. 20016

Re: MUR 218 (76)

Dear Mr. Hemenway:

This letter is in response to your letter of March 13, 1978, following your telephone conversation with Randy Johnson of this office. As Mr. Johnson explained to you, investigations undertaken by this office must remain confidential in accordance with 2 U.S.C. §437g(a)(3)(B). However, you will be notified at such time as the Commission either dismisses MUR 218 or, upon a finding of probable cause to believe that a violation has occurred, files suit in the United States District Court.

We appreciate your interest in this matter and assure you that the Commission is attempting to resolve the issues in MUR 218 as expeditiously as possible.

Sincerely yours,

William C. Oldaker
General Counsel

7 9 0 1 0 1 0 3 3 6 5



218-PL

● SENDER: Complete items 1., 2., and 3. Add your address in the "RETURN TO" space on reverse.	
1. The following service is requested (check one): <input type="checkbox"/> Show to whom and date delivered. <input checked="" type="checkbox"/> Show to whom, date, and address of delivery. RESTRICTED DELIVERY <input type="checkbox"/> Show to whom and date delivered. <input type="checkbox"/> RESTRICTED DELIVERY. <input type="checkbox"/> Show to whom, date, and address of delivery. \$ _____ (CONSULT POSTMASTER FOR FEES)	
2. ARTICLE ADDRESSED TO: John D. Hemenway 4816 Rodman St. N.W. Washington, D.C. 20016	
3. ARTICLE DESCRIPTION: REGISTERED NO. 443380	INSURED NO.
(Always obtain signature of addressee or agent) I have received the article described above. SIGNATURE <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent 	
4. ADDRESS (Complete only if requested) MAR 31 1978 POSTMARK	
5. UNABLE TO DELIVER BECAUSE	





FEDERAL ELECTION COMMISSION

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

March 28, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218

Dear Mr. Waller:

We are in receipt of your letter of March 7, 1978. Regarding the copies of the two conciliation agreements sent to you by this office on February 16, 1978, these agreements were sent at your request in response to your questions about the Commission's jurisdiction and the precedent for including a civil penalty in a conciliation agreement entered into by the Commission and a national bank. The agreements were not intended to serve as a comparison to the facts surrounding the loan made by the Georgia Railroad Bank and Trust Company ("the Bank").

We fail to see the applicability of the hypothetical situation posed in your letter to the loan made to the Doug Barnard for Congress Committee ("the Committee") by the Bank. The issue addressed in MUR 218 is whether the Bank's \$10,000 unsecured loan to the Committee at 7.6% interest per annum was within the "ordinary course of business" as set forth in 2 U.S.C. §431(e)(5)(G).

You state in your letter that it is your intent to submit additional evidence to show that the loan in question was made within the ordinary course of business. Again, we welcome any additional information you should care to submit and, again, invite you to meet with Mr. Johnson, the attorney handling this matter. However, the Bank was first notified of its opportunity to present such evidence



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on October 19, 1977, and the Commission is under a statutory requirement to conduct its investigations expeditiously. Therefore, if we do not receive the additional information you refer to or you do not arrange to meet with Mr. Johnson within five days from your receipt of this letter, this office intends to recommend that the Commission find probable cause to believe the Bank violated the Act and file a civil suit in United States District Court seeking a civil penalty.

Mr. Johnson can be reached at 202-523-4061.

Sincerely,

William C. Oldaker
General Counsel

79010105353

PS Form 3811, Apr. 1977

218 Longway

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one)

Show to whom and date delivered

Show to whom, date, and address of delivery

RESTRICTED DELIVERY
Show to whom and date delivered

RESTRICTED DELIVERY
Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Samuel C. Walker

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943330	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

By Mary McIlhenny

4. DATE OF DELIVERY
APR 1 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK
APR 1 1978
U.S. CLERK'S OFFICE

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

ACC 2975

800982

John D. Hemenway
4816 Rodman St., NW
Washington, D.C. 20016

13 March 1978

'78 MAR 15 AM 11:50

FEDERAL ELECTION
COMMISSION

Mr. Randy Johnson, Asst. Gen. Coun.
Federal Election Commission
1325 K St. NW
Washington, D.C. 20463

Dear Mr. Johnson,

This letter is written to confirm my interest, expressed during our telephone conversation today, in FEC case MUR 218(76), concerning alleged improprieties of Mr. Doug Barnard during the 1976 Congressional Campaign.

You will have on file my request and complaint made during the summer of 1976 during the campaign.

You will have on file my follow-up letter, one year later, requesting information on the status of the complaint.

The purpose of this letter, as I told you on the phone, is to request the status of the case at the present time, so as to judge what action would be appropriate on my behalf.

Sincerely yours,

John D. Hemenway
John D. Hemenway

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John D. Hemenway
4816 Rodman St., NW
Washington, D.C. 20016



RECEIVED
1973 MAR 14 11:58

Mr. Randy Johnson,
Asst. Gen. Counsel
Federal Election Commission
1325 K St., NW
Washington, D.C. 20463

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GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNARD MAXWELL, JR.
WM. BYRD WARLICK
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RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER
CHARLES C. STEBBINS, III (ALSO ALA.)

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 37802 MAR 13 AM 9:57

March 7, 1978

FEDERAL ELECTION COMMISSION

JOSEPH B. CUMMING
OF COUNSEL

HENRY P. EVE
(1917-1999)

TELEPHONE
(404) 722-7541

800901

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

RE: MUR 218(76)

Dear Mr. Oldaker:

Thank you for your letter of February 16, 1978. I did receive copies of the two recent conciliation agreements which you sent me. They arrived shortly after I had mailed my letter dated January 24, 1978 to Mr. Johnson. With regard to the numbered paragraphs in your letter, I have been giving considerable thought to them and will respond to them shortly.

However with respect to the two conciliation agreements it is my opinion, based on the limited knowledge I have of the facts as revealed in the agreements, that the transaction in each case which presumably was in violation of the Federal Election Campaign Act was a clear violation of the Act. In the Kearny case, the checks were issued by the bank directly to a political party. There were extenuating circumstances concerning this transaction apparently, but the violation appeared to be somewhat incontestable. In the Valparaiso case, the check was made payable to a political committee. There was no indication what the extenuating circumstances were in that case. The violation appears to be incontestable.

In the case involving Georgia Railroad Bank & Trust Company (the "Georgia Bank") it is a question of fact whether or not the loan was made in the "ordinary course of business". If the characterization of the occurrence cannot be agreed upon, then there can be no determination that a violation of the Act has taken place.

In each of the cases which you have brought to my attention the bank was required to agree and did agree that it used

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Hon. William C. Oldaker
March 7, 1978
Page Two

"bank funds for political purposes" - in violation of 2 U.S.C. §441b(a). In the Georgia Bank case, you have suggested that the Bank admit that it "made a contribution to the Barnard for Congress Committee". The facts are that it did not make such a contribution. It entered into an arrangement which it is contended was a violation of the law, not that a contribution was thereby made to the Committee as a result thereof.

It is our present plan to submit additional evidence to you that the loan in question in fact would be deemed to have been made in the ordinary course of business, in view of the circumstances involved.

I would appreciate a letter from either you or Mr. Johnson explaining to me the status of a person in a hypothetical case who endorses a note which has been executed by a political committee for the purpose of raising funds for a political campaign, where the endorsement is limited to \$1,000.00, but where the loan is not paid from funds of the endorser and where the endorser made no monetary contribution to the committee. In such a case the endorser pledges his credit for the benefit of the committee but does not in fact make a contribution. I assume that the status of such an endorser is not determined as of the time the note is executed, since when the loan is paid off (without any of his funds) he can then endorse another note in the same manner, without being in violation of the Act. If that note is in turn paid off without his using his funds he can then make a contribution of \$1,000.00 which would thereby exhaust his contribution rights under the Act.

Applying your contention in the Georgia Bank matter as to when the Act is violated, in the example cited above whether the Act was violated or not should depend on what the consequences were at the time he endorsed the first note and not what happened thereafter. However this is not true in the case of the endorser since he can, if my analysis is correct, go through the procedure which I have outlined above and not be in violation of the Act until he has made an actual contribution in money.

If the same reasoning is applied in the Georgia Bank case, the Bank did not in fact make a "contribution" when the note was made, any more than the endorser made a "contribution"

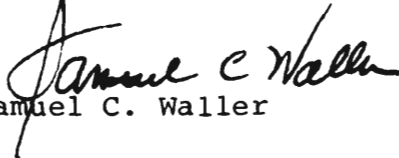
7004010537

Hon. William C. Oldaker
March 7, 1978
Page Three

in the example given above when he endorsed a note which was later paid.

Your comments on this would be appreciated.

Very sincerely yours,


Samuel C. Waller

SCW/hbr

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LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902



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



FEDERAL ELECTION COMMISSION

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

February 16, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank
Building
Augusta, GA 30902

Re: MUR 218(76)

Dear Mr. Waller:

We received your letter of January 24, 1978, on January 31, 1978, and will attempt to address your concerns in the same order you raised them.

Our records indicate that copies of two recent conciliation agreements involving national banks were sent to you on January 20, 1978. In the event that these have not reached you, I am enclosing additional copies of the same agreements.

Based on his telephone conversations with you, it was the impression of attorney David Stein of this office that you were representing the Barnard for Congress Committee in this matter. We will forward all previous and future communications pertaining to the Committee to Mr. D. Hugh Connolly in accordance with the information in your letter.

With reference to the specific questions you raised in your letter:



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1. We believe that express recognition of the Federal Election Commission's jurisdiction is necessary for enforcement of the conciliation agreement. Though you believe that the issue may be moot because the loan has been repaid, we believe that such a statement is central to the validity of this type of agreement.

2. This office remains open to any specific additional language you think should be inserted into the agreement. Your suggestions will be submitted to the Commissioners for consideration, though acceptance will not necessarily be recommended by the General Counsel.

3. Again, any specific additional language you submit will be considered.

4. The Commission found reasonable cause to believe that the loan in question was outside the ordinary course of business as set forth in 2 U.S.C. §441b(b)(2) and §431(e)(5)(G) on the basis of the facts before it and it is precisely for this reason that the conciliation agreement contains that admission.

5. There is a distinction between a "knowing and willful" violation and a "knowing" violation under the Federal Election Campaign Act of 1971, as amended. A "knowing and willful" violation gives rise to criminal sanctions under 2 U.S.C. §437g(a)(5)(D); a violation which is only "knowing" does not require such referral. On the basis of information before the Commission, it concluded that the Committee knowingly accepted the loan and violated the Act.

As to the appropriateness of including a civil penalty in a conciliation agreement, in the Commission's view the Act sets forth a three stage procedure the Commission shall follow in enforcement matters. First, if the Commission determines that there is "reason to believe" that a violation has occurred, an investigation is conducted. Second, if the Commission determines that there is "reasonable cause to believe" a violation has occurred, it enters into a period of conciliation (usually thirty days) as set forth in 2 U.S.C. §437g(a)(5)(A); 2 U.S.C. §437g(a)(6)(B) authorizes the

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Commission to include a penalty of up to \$5,000 (or the amount in violation) as part of that conciliation agreement. Third, the Commission may find "probable cause to believe" a violation has occurred and file a lawsuit in the appropriate United States District Court. The Commission thus disagrees with your statement that it must make a separate "finding" of "belief" before a civil penalty can be included in a conciliation agreement.

Regarding the Commission's pursuit of informal "conference, conciliation and persuasion" in this matter, we again invite any specific revisions of the proposed conciliation agreement you care to submit. We view the thirty day period of 2 U.S.C. §437g(a)(5)(A) as the minimum time in which the Commission must make an effort to conciliate a matter. Generally, we try to continue conciliation efforts with respondents so long as it appears to us that such efforts will be successful within a reasonable time. However, we are also mindful of Congress' concern that complaints filed under the Act be handled expeditiously.

The Act and the Commission's regulations (11 CFR §1.1 et seq.) do not provide for appearances by respondents before the Commission, though we will submit to the Commission your request. However, if you would desire to meet here with the attorney in this office handling this matter for the purpose of further explaining the Bank's position and attempting to conciliate, please call Mr. Johnson (202-523-4061) and arrange a mutually convenient date and time.

I trust that this letter answers your questions and further clarifies the Commission's position in this matter. We await to hear from you about specific changes or additions you propose to conciliate this matter.

Sincerely,



William C. Oldaker
General Counsel

Enclosures

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MUR 218 *Lovejoy*

PS Form 3811, Apr. 1977

● SENDER Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered¢
 Show to whom, date, and address of delivery¢
 RESTRICTED DELIVERY
 Show to whom and date delivered¢
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery: \$
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Samuel C. Waller Esquire
1500 Georgia Railroad Bank Bldg
Augusta, Georgia 3902

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 438109

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
Ray May McAllister

4. DATE OF DELIVERY POSTMARK
FEB 21 1978 *FEB 21 1978*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WH. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION

JOSEPH B. CUMMING
OF COUNSEL

HENRY P. EVE
(1118 0000)

TELEPHONE
(404) 722-7541

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January 24, 1978

80095

Randall Johnson, Esq.
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 218 (76)

Dear Mr. Johnson:

Following the receipt of Mr. Oldaker's letter to me of January 5, 1978 in connection with the above matter I discussed its contents with you by telephone and advised you that I would give you my reply thereto shortly. Meanwhile it was my understanding that you were going to mail me a copy of a Conciliation Agreement which had been entered into recently, involving a bank, which Agreement was now available to the public. Perhaps I misunderstood you in that regard and therefore I make this request of you, that you do furnish me with such a copy.

In Mr. Oldaker's letter to me dated October 26, 1977, in which he gave me notice of the Commission's finding with reference to Georgia Railroad Bank & Trust Company, he also gave me notice that the Commission had found "Reason to Believe" that the Doug Barnard for Congress Committee had violated 2 USC §41b. He referred to both the Bank and the Committee as my clients. I had no occasion to represent the Committee up until that time, and had no knowledge that it was under investigation. I have discussed this matter with Mr. D. Hugh Connolly, the General Chairman of the Committee, and have advised him that the Committee should obtain counsel to represent it in this matter. As of this date I have not been employed by the Committee to represent it. I suggest you address further communications concerning the Committee's involvement with the Commission to Mr. Connolly, whose address is c/o Sherman & Hemstreet, Inc., Marion, Building, Augusta, Georgia 30902, to whom a copy of this letter and copies of Mr. Oldaker's correspondence referred to above are being forwarded.

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Randall Johnson, Esq.
January 24, 1978
Page Two

As I advised you over the telephone, I was taken aback when I read certain provisions of the proposed Conciliation Agreement. It was my understanding in previous telephone conferences with counsel for the Commission that in the proposed Conciliation Agreement, there would not have to be any admission of wrongdoing on the part of the Bank and that the "correction" of the alleged violation would be palatable to the Bank.

With reference to the proposed provisions of the Conciliation Agreement, I have the following comments and questions, to which I would appreciate your response before proceeding further.

1. Although it is my understanding that the Federal Election Commission has jurisdiction over the Bank and the subject matter of this proceeding, I am hesitant to agree to the same without knowing what implications are involved therein. Frankly I do not see that it is necessary to admit jurisdiction if a settlement agreement is to be the result.

2. With respect to Paragraph 3(b) there is no reference therein to the Bank's contention that the members of the Commission were well known responsible citizens of Augusta and that the loan was made to the Committee on the representation by the members of the Committee that they would see that the loan was paid through funds raised by the Committee for Mr. Barnard. This fact is important to the Bank and serves to counterbalance the rather terse statement (to which the Bank is being called upon to agree) that the loan was made "without security, endorsers, or guarantors".

3. There is no recital in the list of "pertinent facts" in Paragraph 3 that the loan has in fact been paid in full. I realize that it is the Commission's position that this is irrelevant to the question of whether a violation of the Act took place or not, but in our opinion it is pertinent in a settlement proceeding to explain why no further "corrective" action can or need be taken.

4. With reference to Paragraph 5, I have maintained all along and have so advised counsel for the Commission that the Bank was not willing to admit that the loan was made outside the ordinary course of business and it "therefore make a contribution to

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Randall Johnson, Esq.
January 24, 1978
Page Three

the Barnard for Congress Committee in violation of the law". It is the Bank's contention that the loan was one which could be justified under the law as not being made outside the ordinary course of business for loans of this type.

5. With reference to Paragraph 6, it is inconceivable to me that a civil penalty could be applied against the Bank in this case. No mention was ever made of such a possibility in my prior discussions with counsel for the Commission. In fact I was told that the action of the Commission would not be unpleasant to the Bank and I was led to believe that I need not be concerned further about the eventual resolution of the matter. The fact that the Commission is willing to admit that the loan "was not made in a knowing and willful attempt to violate any provision of the" Act, illuminates very clearly our position in the matter, namely that the infraction, if any, was unintentional and therefore the penalty should be at worst a reprimand by the Commission. In my opinion an agreement on the part of the Bank to pay a penalty, which cannot be explained to the public as anything but a fine, would be tantamount to admitting guilt. The public will not be discerning enough to know the difference between a civil penalty and a criminal penalty, if in fact such a difference exists.

The Act provides [§437g(5)] that "The Commission shall make every endeavor for a period of not less than thirty days to correct or prevent such violation by informal methods of conference, conciliation and persuasion, and to enter into a conciliation agreement with the person involved,...". Let us see whether the Commission has complied with its obligation in this regard to date. Although I readily admit that my relationship with counsel for the Commission has been a cordial one, I cannot say, following the determination by the Commission that "there is reasonable cause to believe" that the Bank violated the Act, that the Commission has made "every endeavor" to correct such violation (realizing that it is impossible to prevent an act which has already occurred) by informal methods of conference, conciliation and persuasion. A telephone conference is the extent of the conferring to date. In the past I have asked for permission to appear before the Commission to explain the Bank's position in this matter. This permission has been denied me. I would appreciate your advising me what in your opinion the Commission

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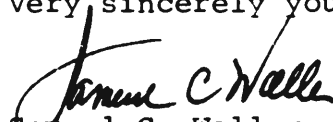
Randall Johnson, Esq.
January 24, 1978
Page Four

must do in order to meet the requirement of the Act that it confer, conciliate and persuade the Bank to correct the violation in question.

I now move on to the question of the appropriateness of §437g(a)6(B) (to which you referred me) to the Conciliation Agreement. This Section authorizes a Conciliation Agreement to include a requirement that the person involved pay a civil penalty, provided that the "Commission believes that a violation of this Act...has been committed...". It not "belief" that a violation has occurred tantamount to a finding that a violation has occurred? It is my understanding that the Commission has not so found, but has found only that there is "reasonable cause to believe" that the Act has been violated. Belief is a further step in the process of resolving the issue.

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Although as I have stated I do not represent the Barnard for Congress Committee, it would appear to me that it would be difficult for the Commission to proceed further with its investigation unless it first finds that there was "reasonable cause to believe" that the Committee had violated the Act. As I read §441(b), for any political committee to be in violation of that Section, it must knowingly accept or receive a contribution prohibited by said Section. A provision of the proposed Conciliation Agreement states, in effect, that the contrary is true. Clearly it is a more difficult task to find a political committee guilty of a violation of the Act than it is to find a corporation guilty of a violation thereof, since scienter is a requirement for finding a committee guilty.

Very sincerely yours,


Samuel C. Waller

SCW/hbr

LAW OFFICES OF

DR. YOW, WALLER & CAPERS

GEORGIA RAILROAD BANK BUILDING

ATLANTA, GEORGIA 30902



Randall Johnson, Esq.
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

MAR 21 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

D. Hugh Connolly
Chairman, Doug Barnard for Congress
c/o Sherman & Hanstreet
Marion Building
Augusta, Georgia

Re: MUR 218

Dear Mr. Connolly:

On March , 1978, the Federal Election Commission determined that there is reasonable cause to believe that Doug Barnard for Congress Committee ("the Committee") violated 2 U.S.C. 441b in accepting a \$10,000 loan from the Georgia Railroad Bank and Trust Company ("the Bank") in that the loan was not made in the "ordinary course of business" as set forth in 2 U.S.C. 431(a)(5)(G).

The Commission has a duty to attempt to correct such violations for a period of not less than 30 days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement, as set forth in 2 U.S.C. 437g(a)(5)(B). If we are unable to reach an agreement during that period, the Commission may, upon finding probable cause to believe that a violation has occurred, institute civil suit in United States District Court and seek payment of a civil penalty not in excess of \$5000.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If the Committee agrees with the provisions of the enclosed conciliation 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. This conciliation agreement was originally sent to Mr. Samuel C. Waller,

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Esquire, on January 5, 1978, because Mr. Waller's actions and telephone conversations with attorneys of this office had led us to believe that he was serving as counsel for both the Bank and the Committee. Mr. Waller has now informed us that he has not been retained as counsel for the Committee and represents only the Bank.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Randall Johnson, the attorney assigned to this matter, at 202-523-4061.

Sincerely,

William C. Oldaker
General Counsel

PK 3/17/78

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218(76)
The Barnard for Congress)
Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reason to believe having been found that the Barnard for Congress Committee (hereinafter "Respondent") violated 2 U.S.C. §441b(a).

Now, therefore, the respective parties have in the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter pursuant to 2 U.S.C. §437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

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a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) On May 14, 1977, the Barnard for Congress Committee borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. This loan was made without security, endorsers or guarantors.

(c) Mr. D. Douglas Barnard was employed by Respondent as an Executive Vice President at the time the loan was made.

(d) The loan was negotiated and executed on behalf of the Barnard for Congress Committee by its Finance Chairman, Mr. D. Hugh Connolly.

(e) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of Respondent.

4. The loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G), and respondent therefore made a contribution to the Barnard for Congress Committee in violation of 2 U.S.C. §441b(a).

5. Respondent will pay a civil penalty in the amount of One Thousand Dollars (\$1,000) pursuant to 2 U.S.C. §437g(a)(5)(B).

6. The negotiation and execution of the loan by Respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq.

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concerning the matters at issue herein or on its own motion may review compliance with this agreement. If the Federal Election 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 in accordance with 2 U.S.C. §437g(a)(7).

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

9. Respondent shall pay the civil penalty provided for herein within ten (10) days from the date this agreement becomes effective.

ATTEST:

BARNARD FOR CONGRESS COMMITTEE

By _____

Its _____

Date _____

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker
General Counsel

Date _____

79010105333

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
Doug Barnard For Congress)
Committee)
)
and)
)
Georgia Railroad Bank and)
Trust Company)

MUR 218(76)

CERTIFICATION

I, Wendy McGhee Graham, Recording Secretary of the Meeting, do hereby certify that on March 15, 1978, the Commission approved by a vote of 5-0 the recommendation made by the General Counsel to find reasonable cause to believe that the Doug Barnard for Congress Committee violated 2 U.S.C. § 441b in its acceptance of a loan of \$10,000 from the Georgia Railroad Bank and Trust Company, as contained in the General Counsel's report signed February 22, 1978.

Wendy McGhee Graham

Wendy McGhee Graham
Recording Secretary of the Meeting

Wendy McGhee Graham
for
Marjorie W. Emmons
Secretary to the Commission

Date: March 17, 1978

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
Doug Barnard For Congress)
Committee)
)
and)
)
Georgia Railroad Bank and)
Trust Company)

MUR 218(76)

CERTIFICATION

I, Wendy McGhee Graham, Recording Secretary of the Meeting, do hereby certify that on March 15, 1978, the Commission approved by a vote of 5-0 the recommendation made by the General Counsel to find reasonable cause to believe that the Doug Barnard for Congress Committee violated 2 U.S.C. § 441b in its acceptance of a loan of \$10,000 from the Georgia Railroad Bank and Trust Company, as contained in the General Counsel's report signed February 22, 1978.

Wendy McGhee Graham

Wendy McGhee Graham
Recording Secretary of the Meeting

Wendy McGhee Graham
For
Marjorie W. Emmons
Secretary to the Commission

Date: March 17, 1978

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BEFORE THE FEDERAL ELECTION COMMISSION
February 21, 1978

In the Matter of)
)
Doug Barnard for Congress)
Committee) MUR 218(76)
and)
Georgia Railroad Bank and)
Trust Company)

EXECUTIVE SESSION

March 15, 1978

GENERAL COUNSEL'S REPORT

This matter concerns the possible violation of 2 U.S.C. §441b in connection with a \$10,000 loan obtained from the Georgia Railroad Bank and Trust Company ("the Bank") by the Doug Barnard for Congress Committee ("the Committee").

On October 19, 1977, the Commission found reasonable cause to believe that the Bank violated 2 U.S.C. §441b in making the loan to the Committee; and reason to believe that the Committee violated 2 U.S.C. §441b in accepting the loan from the bank. On January 3, 1978, the Commission approved proposed conciliation agreements and they were sent to Samuel C. Waller, the attorney we had been dealing with in this matter.

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On February 1, 1978, the General Counsel's Office received a response from Mr. Waller, setting forth various questions and problems he had with the proposed conciliation agreements (Attachment I). Although his actions and telephone conversations with staff attorney David Stein indicated that Mr. Waller was representing both the Bank and the Committee, Mr. Waller stated in his letter that he has not been retained as counsel for the Committee and that he had forwarded materials pertaining to the Committee to Mr. D. Hugh Connolly, General Chairman of the Committee. The General Counsel's Office has replied to Mr. Waller's letter (Attachment II).

A proposed conciliation agreement with the Committee was sent to Mr. Waller prior to a "reasonable cause" determination against the Committee because of Mr. Waller's expressed desire to conciliate the matter and his apparent representation of both the Bank and the Committee.

We believe that the Commission should now find reasonable cause to believe that the Doug Barnard for Congress Committee violated 2 U.S.C. §441b in accepting the loan from the Bank. We believe that the loan does not meet the standard of "ordinary course of business" as set forth in 2 U.S.C. §431(e)(5)(G), as the loan carried an interest rate of 7.6% per annum as compared to the 8.75% per annum interest rate normally charged to a \$10,000 unsecured loan, according to the Bank's loan chart.

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Further, in the event of default, the Bank's only recourse would have been to the assets of the Committee, which would not have been sufficient to meet the value of the note. No party other than the Committee had any legal obligation to repay the loan.

RECOMMENDATION

Find reasonable cause to believe that the Doug Barnard for Congress Committee violated 2 U.S.C. §441b in its acceptance of a loan of \$10,000 from the Georgia Railroad Bank and Trust Company.

2/22/78

Witt / A. L. L.

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GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

FEDERAL ELECTION
COMMISSION

JOSEPH B. CUMMING
OF COUNSEL

HENRY P. EVE
(404) 722-7541

'78 JAN 31 AM 11:18

January 24, 1978

TELEPHONE
(404) 722-7541

Randall Johnson, Esq.
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 218 (76)

Dear Mr. Johnson:

Following the receipt of Mr. Oldaker's letter to me of January 5, 1978 in connection with the above matter I discussed its contents with you by telephone and advised you that I would give you my reply thereto shortly. Meanwhile it was my understanding that you were going to mail me a copy of a Conciliation Agreement which had been entered into recently, involving a bank, which Agreement was now available to the public. Perhaps I misunderstood you in that regard and therefore I make this request of you, that you do furnish me with such a copy.

In Mr. Oldaker's letter to me dated October 26, 1977, in which he gave me notice of the Commission's finding with reference to Georgia Railroad Bank & Trust Company, he also gave me notice that the Commission had found "Reason to Believe" that the Doug Barnard for Congress Committee had violated 2 USC §41b. He referred to both the Bank and the Committee as my clients. I had no occasion to represent the Committee up until that time, and had no knowledge that it was under investigation. I have discussed this matter with Mr. D. Hugh Connolly, the General Chairman of the Committee, and have advised him that the Committee should obtain counsel to represent it in this matter. As of this date I have not been employed by the Committee to represent it. I suggest you address further communications concerning the Committee's involvement with the Commission to Mr. Connolly, whose address is c/o Sherman & Hemstreet, Inc., Marion, Building, Augusta, Georgia 30902, to whom a copy of this letter and copies of Mr. Oldaker's correspondence referred to above are being forwarded.

79040105371

ATTACHMENT I

Randall Johnson, Esq.
January 24, 1978
Page Two

As I advised you over the telephone, I was taken aback when I read certain provisions of the proposed Conciliation Agreement. It was my understanding in previous telephone conferences with counsel for the Commission that in the proposed Conciliation Agreement, there would not have to be any admission of wrongdoing on the part of the Bank and that the "correction" of the alleged violation would be palatable to the Bank.

With reference to the proposed provisions of the Conciliation Agreement, I have the following comments and questions, to which I would appreciate your response before proceeding further.

1. Although it is my understanding that the Federal Election Commission has jurisdiction over the Bank and the subject matter of this proceeding, I am hesitant to agree to the same without knowing what implications are involved therein. Frankly I do not see that it is necessary to admit jurisdiction if a settlement agreement is to be the result.

2. With respect to Paragraph 3(b) there is no reference therein to the Bank's contention that the members of the Commission were well known responsible citizens of Augusta and that the loan was made to the Committee on the representation by the members of the Committee that they would see that the loan was paid through funds raised by the Committee for Mr. Barnard. This fact is important to the Bank and serves to counterbalance the rather terse statement (to which the Bank is being called upon to agree) that the loan was made "without security, endorsers, or guarantors".

3. There is no recital in the list of "pertinent facts" in Paragraph 3 that the loan has in fact been paid in full. I realize that it is the Commission's position that this is irrelevant to the question of whether a violation of the Act took place or not, but in our opinion it is pertinent in a settlement proceeding to explain why no further "corrective" action can or need be taken.

4. With reference to Paragraph 5, I have maintained all along and have so advised counsel for the Commission that the Bank was not willing to admit that the loan was made outside the ordinary course of business and it "therefore make a contribution to

79040105393

Randall Johnson, Esq.
January 24, 1978
Page Three

the Barnard for Congress Committee in violation of the law". It is the Bank's contention that the loan was one which could be justified under the law as not being made outside the ordinary course of business for loans of this type.

5. With reference to Paragraph 6, it is inconceivable to me that a civil penalty could be applied against the Bank in this case. No mention was ever made of such a possibility in my prior discussions with counsel for the Commission. In fact I was told that the action of the Commission would not be unpleasant to the Bank and I was led to believe that I need not be concerned further about the eventual resolution of the matter. The fact that the Commission is willing to admit that the loan "was not made in a knowing and willful attempt to violate any provision of the" Act, illuminates very clearly our position in the matter, namely that the infraction, if any, was unintentional and therefore the penalty should be at worst a reprimand by the Commission. In my opinion an agreement on the part of the Bank to pay a penalty, which cannot be explained to the public as anything but a fine, would be tantamount to admitting guilt. The public will not be discerning enough to know the difference between a civil penalty and a criminal penalty, if in fact such a difference exists.

The Act provides [§437g(5)] that "The Commission shall make every endeavor for a period of not less than thirty days to correct or prevent such violation by informal methods of conference, conciliation and persuasion, and to enter into a conciliation agreement with the person involved,...". Let us see whether the Commission has complied with its obligation in this regard to date. Although I readily admit that my relationship with counsel for the Commission has been a cordial one, I cannot say, following the determination by the Commission that "there is reasonable cause to believe" that the Bank violated the Act, that the Commission has made "every endeavor" to correct such violation (realizing that it is impossible to prevent an act which has already occurred) by informal methods of conference, conciliation and persuasion. A telephone conference is the extent of the conferring to date. In the past I have asked for permission to appear before the Commission to explain the Bank's position in this matter. This permission has been denied me. I would appreciate your advising me what in your opinion the Commission

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Randall Johnson, Esq.
January 24, 1978
Page Four

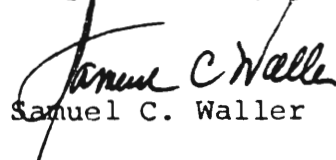
must do in order to meet the requirement of the Act that it confer, conciliate and persuade the Bank to correct the violation in question.

7 2 9 1 0 1 0 3 0 7

I now move on to the question of the appropriateness of §437g(a)6(B) (to which you referred me) to the Conciliation Agreement. This Section authorizes a Conciliation Agreement to include a requirement that the person involved pay a civil penalty, provided that the "Commission believes that a violation of this Act...has been committed...". It not "belief" that a violation has occurred tantamount to a finding that a violation has occurred? It is my understanding that the Commission has not so found, but has found only that there is "reasonable cause to believe" that the Act has been violated. Belief is a further step in the process of resolving the issue.

Although as I have stated I do not represent the Barnard for Congress Committee, it would appear to me that it would be difficult for the Commission to proceed further with its investigation unless it first finds that there was "reasonable cause to believe" that the Committee had violated the Act. As I read §441(b), for any political committee to be in violation of that Section, it must knowingly accept or receive a contribution prohibited by said Section. A provision of the proposed Conciliation Agreement states, in effect, that the contrary is true. Clearly it is a more difficult task to find a political committee guilty of a violation of the Act than it is to find a corporation guilty of a violation thereof, since scienter is a requirement for finding a committee guilty.

Very sincerely yours,


Samuel C. Waller

SCW/hbr



FEDERAL ELECTION COMMISSION

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

February 16, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank
Building
Augusta, GA 30902

Re: MUR 218(76)

Dear Mr. Waller:

We received your letter of January 24, 1978, on January 31, 1978, and will attempt to address your concerns in the same order you raised them.

Our records indicate that copies of two recent conciliation agreements involving national banks were sent to you on January 20, 1978. In the event that these have not reached you, I am enclosing additional copies of the same agreements.

Based on his telephone conversations with you, it was the impression of attorney David Stein of this office that you were representing the Barnard for Congress Committee in this matter. We will forward all previous and future communications pertaining to the Committee to Mr. D. Hugh Connolly in accordance with the information in your letter.

With reference to the specific questions you raised in your letter:



ATTACHMENT II

79040103393

1. We believe that express recognition of the Federal Election Commission's jurisdiction is necessary for enforcement of the conciliation agreement. Though you believe that the issue may be moot because the loan has been repaid, we believe that such a statement is central to the validity of this type of agreement.

2. This office remains open to any specific additional language you think should be inserted into the agreement. Your suggestions will be submitted to the Commissioners for consideration, though acceptance will not necessarily be recommended by the General Counsel.

3. Again, any specific additional language you submit will be considered.

4. The Commission found reasonable cause to believe that the loan in question was outside the ordinary course of business as set forth in 2 U.S.C. §441b(b)(2) and §431(e)(5)(G) on the basis of the facts before it and it is precisely for this reason that the conciliation agreement contains that admission.

5. There is a distinction between a "knowing and willful" violation and a "knowing" violation under the Federal Election Campaign Act of 1971, as amended. A "knowing and willful" violation gives rise to criminal sanctions under 2 U.S.C. §437g(a)(5)(D); a violation which is only "knowing" does not require such referral. On the basis of information before the Commission, it concluded that the Committee knowingly accepted the loan and violated the Act.

As to the appropriateness of including a civil penalty in a conciliation agreement, in the Commission's view the Act sets forth a three stage procedure the Commission shall follow in enforcement matters. First, if the Commission determines that there is "reason to believe" that a violation has occurred, an investigation is conducted. Second, if the Commission determines that there is "reasonable cause to believe" a violation has occurred, it enters into a period of conciliation (usually thirty days) as set forth in 2 U.S.C. §437g(a)(5)(A); 2 U.S.C. §437g(a)(6)(B) authorizes the

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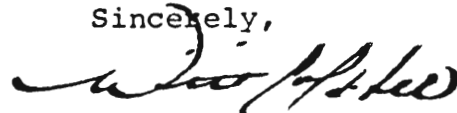
Commission to include a penalty of up to \$5,000 (or the amount in violation) as part of that conciliation agreement. Third, the Commission may find "probable cause to believe" a violation has occurred and file a lawsuit in the appropriate United States District Court. The Commission thus disagrees with your statement that it must make a separate "finding" of "belief" before a civil penalty can be included in a conciliation agreement.

Regarding the Commission's pursuit of informal "conference, conciliation and persuasion" in this matter, we again invite any specific revisions of the proposed conciliation agreement you care to submit. We view the thirty day period of 2 U.S.C. §437g(a)(5)(A) as the minimum time in which the Commission must make an effort to conciliate a matter. Generally, we try to continue conciliation efforts with respondents so long as it appears to us that such efforts will be successful within a reasonable time. However, we are also mindful of Congress' concern that complaints filed under the Act be handled expeditiously.

The Act and the Commission's regulations (11 CFR §1.1 et seq.) do not provide for appearances by respondents before the Commission, though we will submit to the Commission your request. However, if you would desire to meet here with the attorney in this office handling this matter for the purpose of further explaining the Bank's position and attempting to conciliate, please call Mr. Johnson (202-523-4061) and arrange a mutually convenient date and time.

I trust that this letter answers your questions and further clarifies the Commission's position in this matter. We await to hear from you about specific changes or additions you propose to conciliate this matter.

Sincerely,



William C. Oldaker
General Counsel

Enclosures

79040105400



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

D. Hugh Connolly
Chairman, Doug Barnard for Congress
c/o Sherman & Hemstreet
Marion Building
Augusta, Georgia

Re: MUR 218

Dear Mr. Connolly:

On March , 1978, the Federal Election Commission determined that there is reasonable cause to believe that Doug Barnard for Congress Committee ("the Committee") violated 2 U.S.C. 441b in accepting a \$10,000 loan from the Georgia Railroad Bank and Trust Company ("the Bank") in that the loan was not made in the "ordinary course of business" as set forth in 2 U.S.C. 431(e)(5)(G).

The Commission has a duty to attempt to correct such violations for a period of not less than 30 days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement, as set forth in 2 U.S.C. 437g(a)(5)(B). If we are unable to reach an agreement during that period, the Commission may, upon finding probable cause to believe that a violation has occurred, institute civil suit in United States District Court and seek payment of a civil penalty not in excess of \$5000.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If the Committee agrees with the provisions of the enclosed conciliation 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. This conciliation agreement was originally sent to Mr. Samuel C. Waller,



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Esquire, on January 5, 1978, because Mr. Waller's actions and telephone conversations with attorneys of this office had led us to believe that he was serving as counsel for both the Bank and the Committee. Mr. Waller has now informed us that he has not been retained as counsel for the Committee and represents only the Bank.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Randall Johnson, the attorney assigned to this matter, at 202-523-4061.

Sincerely,

William C. Oldaker
General Counsel

79040105402



FEDERAL ELECTION COMMISSION

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

January 5, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller, and Copeus
1500 Georgia Railroad Bank Building
Augusta, GA 30902

Re: MUR 218(76)

Dear Mr. Waller:

As per your telephone conversation with attorney David Stein of this office, enclosed are conciliation agreements that we are prepared to recommend to the Commission in settlement of MUR 218(76). If you agree with the provisions of the enclosed conciliation agreements, please sign and return them to the Commission within ten days. I will then recommend that the Commission approve the agreements.

If you have any questions or suggestions, please contact Randall Johnson, the attorney now assigned to this matter, at 202-523-4061.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William C. Oldaker".

William C. Oldaker
General Counsel

Enclosures



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Johnson MUR-218C76)

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse

1. The following service is requested (check one).
 Show to whom and date delivered¢
 Show to whom, date, and address of delivery¢
 RESTRICTED DELIVERY
 Show to whom and date delivered¢
 RESTRICTED DELIVERY
 Show to whom, date, and address of delivery \$ ____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Samuel Waller, Esquire
 1500 Georgia Railroad Bldg.
 Augusta, Ga. 30902

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ 944070 _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
Samuel Waller

4. DATE OF DELIVERY
 1-9-78

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: _____

CLERK'S INITIALS _____

POSTMARK
 1978
 JAN 5
 AUGUSTA

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218(76)
The Barnard for Congress)
Committee)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reason to believe having been found that the Barnard for Congress Committee (hereinafter "Respondent") violated 2 U.S.C. §441b(a).

Now, therefore, the respective parties have in the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter pursuant to 2 U.S.C. §437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) Respondent was the principal campaign committee authorized by D. Douglas Barnard, a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

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a candidate for Congress from the Tenth Congressional District of Georgia in the 1976 primary and general elections.

(b) On May 14, 1977, the Barnard for Congress Committee borrowed from Respondent the sum of \$10,000 payable in 180 days, together with interest thereon at the rate of 7.6% per annum. This loan was made without security, endorsers or guarantors.

(c) Mr. D. Douglas Barnard was employed by Respondent as an Executive Vice President at the time the loan was made.

(d) The loan was negotiated and executed on behalf of the Barnard for Congress Committee by its Finance Chairman, Mr. D. Hugh Connolly.

(e) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of Respondent.

4. The loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G), and respondent therefore made a contribution to the Barnard for Congress Committee in violation of 2 U.S.C. §441b(a).

5. Respondent will pay a civil penalty in the amount of One Thousand Dollars (\$1,000) pursuant to 2 U.S.C. §437g(a)(5)(B).

6. The negotiation and execution of the loan by Respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq.

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concerning the matters at issue herein or on its own motion may review compliance with this agreement. If the Federal Election 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 in accordance with 2 U.S.C. §437g(a)(7).

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

9. Respondent shall pay the civil penalty provided for herein within ten (10) days from the date this agreement becomes effective.

ATTEST:

BARNARD FOR CONGRESS COMMITTEE

By _____

Its _____

Date _____

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker
General Counsel

Date _____

7904010347

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218(76)
Georgia Railroad Bank)
and Trust Company)

CONCILIATION AGREEMENT

This matter having been initiated by a signed, sworn, and notarized complaint, an investigation having been conducted, and reasonable cause to believe having been found that the respondent, Georgia Railroad Bank and Trust Company (hereinafter "Respondent"), may have violated 2 U.S.C. §441b(a):

Now, therefore, the respective parties herein, the Federal Election Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. §437g(a)(5), do hereby agree as follows:

1. The Federal Election Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

2. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter, pursuant to 2 U.S.C. §437g(a)(4).

3. The pertinent facts and law in this matter are as follows:

(a) The Barnard for Congress Committee was the principal campaign committee authorized by D. Douglas Barnard,

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(b) On May 14, 1976, respondent borrowed from the Georgia Railroad Bank and Trust Company the sum of \$10,000, payable in 180 days, together with interest thereon at the rate of 7.6 percent per annum. This loan was made without security, endorsers or guarantors.

(c) Mr. D. Douglas Barnard was employed by the Georgia Railroad Bank and Trust Company as an Executive Vice President at the time the loan was made.

(d) The loan was negotiated and executed on behalf of Respondent by its Finance Chairman, Mr. D. Hugh Connolly.

(e) The loan was authorized by Mr. Charles B. Presley, Chairman of the Board of the Georgia Railroad Bank and Trust Company.

4. The loan was made outside the ordinary course of business as set forth in 2 U.S.C. §431(e)(5)(G), and, therefore it constituted a contribution to Respondent in violation of 2 U.S.C. §441b(a).

5. Respondent will pay a civil penalty in the amount of One Thousand Dollars (\$1,000) pursuant to 2 U.S.C. §437g(a)(5)(B).

6. The negotiation and execution of the aforesaid loan by respondent was not made in a knowing and willful attempt to violate any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et. seq.

7. The Federal Election Commission on request of anyone filing a complaint under 2 U.S.C. §437g(a)(1)

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7. 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, 2 U.S.C. §437g (a)(7).

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

9. Respondent shall pay the civil penalty provided for herein within ten (10) days from the date this agreement becomes effective.

ATTEST:

GEORGIA RAILROAD BANK AND TRUST COMPANY

By _____

Its _____

Date _____

ATTEST:

FEDERAL ELECTION COMMISSION

William C. Oldaker
General Counsel

Date _____

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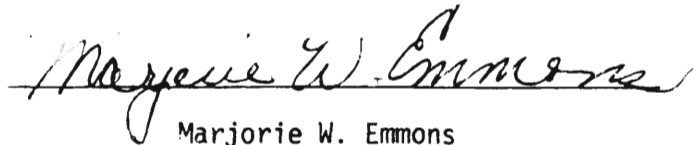
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Georgia Railroad Bank)
and Trust Company)
The Barnard for Congress)
Committee)

MUR 218 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on January 3, 1978, the Commission approved the Conciliations Agreements in the above-captioned matters.



Marjorie W. Emmons
Secretary to the Commission

77040105411

December 30, 1977

MEMORANDUM TO: Marge Hanson
FROM: Jeff Bowman
SUBJECT: MUR218(87) Team63 Staff Member-Lovejoy

Please have the attached material on MUR 218(77)
circulated to the Commission on a 24 hour no-objection
basis.

Thank-you.

79040105412



FEDERAL ELECTION COMMISSION

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

January 3, 1978

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS *mwe*
SUBJECT: MUR 218 (76) - Conciliations Agreements and Letters

The above-mentioned documents were circulated to the Commissioners on December 30, 1977 at 11:00.

As of 4:00, January 3, 1977, no objections have been received in the office of Commission Secretary.

20010105413



FEDERAL ELECTION COMMISSION

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

December 22, 1977

TO : THE COMMISSIONERS
FROM : WILLIAM C. OLDAKER *Bill*
DATE : DECEMBER 21, 1977

Re: MUR 218

Attached are the conciliation agreements and the letter we propose to send to the respondents' attorney in the above matter.

On October 19, 1977, the Commission found reasonable cause to believe that the Georgia Railroad Bank and Trust Company violated 2 U.S.C. §441b(a) in connection with a loan to the Barnard for Congress Committee and found reason to believe that the Committee violated 2 U.S.C. §441b(a) by accepting the loan from the Bank.

The respondents are being represented by the same attorney; he has told us that his clients desire to conciliate this matter. Therefore, we believe that we should proceed to conciliate with both respondents although the Commission has found only "reason to believe" against the Committee.





FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller, and Copeus
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Waller:

As per your telephone conversation with attorney David Stein of this office, enclosed are conciliation agreements that we are prepared to recommend to the Commission in settlement of MUR 218(76). If you agree with the provisions of the enclosed conciliation agreements, please sign and return them to the Commission within ten days. I will then recommend that the Commission approve the agreements.

If you have any questions or suggestions, please contact Randall Johnson, the attorney now assigned to this matter, at 202-523-4061.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosures



December 20, 1977

MEMORANDUM TO: Marge Samous
FROM: Elissa T. Carr
SUBJECT: MUR 218 Team 83 Lovejoy

Please have the attached Interim Status Report on MUR 218 distributed to the Commission and placed on the Compliance Agenda for the Commission meeting of January 4, 1978.

Thank you.

79040105416

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Barnard for Congress) MUR 218(76)
and)
The Georgia Railroad Bank)
and Trust Company)

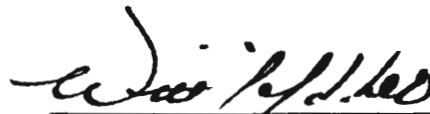
INTERIM STATUS REPORT

This matter concerns the possible violation of 2 U.S.C. §441b in connection with a \$10,000 loan obtained from the Georgia Railroad Bank and Trust Company ("the Bank") by the Doug Barnard for Congress Committee ("the Committee").

On October 19, 1977, the Commission found reasonable cause to believe that the Bank violated 2 U.S.C. §441b in that the loan to the Committee was not within "ordinary course of business" as set forth in 2 U.S.C. §431(e)(5)(g). On the same date the Commission found reason to believe that the Committee violated 2 U.S.C. §441b in accepting the loan.

Pursuant to 2 U.S.C. §437g(a)(5)(A), the General Counsel's Office has sent proposed conciliation agreements to Samuel C. Waller, Esq., attorney for both parties, and is in the process of negotiation.

12/20/77
Date



William C. Oldaker
General Counsel

79010105417



FEDERAL ELECTION COMMISSION

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

October 26, 1977

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller and Copers
1500 Georgia Railroad Bank Building
Augusta, GA 30902

Re: MUR 218 (76)

Dear Mr. Waller:

The Federal Election Commission has made the following findings regarding your clients in connection with the \$10,000 loan obtained from the Georgia Railroad Bank and Trust Company by the Doug Barnard for Congress Committee:

- (1) Reasonable Cause to Believe that the Georgia Railroad Bank and Trust Company violated 2 U.S.C. §441b.
- (2) Reason to Believe that the Doug Barnard for Congress Committee violated 2 U.S.C. §441b.

Please be advised that pursuant to U.S.C. §437g(a)(5)(A), the Commission shall make every endeavor for a period of not less than 30 days to correct this violation by the bank by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement. If the bank and the Commission are unable to enter into a conciliation agreement during this period, the Commission may, upon a finding of probable cause to believe that a violation has been committed, institute a civil action for relief in the appropriate United States District Court. 2 U.S.C. §437g(a)(5)(B).



79010105418

Please contact David Stein, (202)523-4178, at your earliest convenience so we may begin conciliation of this matter.

Sincerely yours,

William C. Oldaker
General Counsel

70010105410

MUR 218 Stein

PS Form 3811, Apr. 1977

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered. _____
 Show to whom, date, and address of delivery. _____
 RESTRICTED DELIVERY
 Show to whom and date delivered. _____
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Samuel C. Waller, Esquire

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 _____ 438278 _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY _____ POSTMARK
 OCT 21 1977

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: _____ CLERK'S INITIALS _____

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

☆ GPO : 1977-O-234-337



PC # 766
MUR 218

GEORGIA RAILROAD BANK & TRUST COMPANY

MEMBER F D I C - MEMBER FEDERAL RESERVE SYSTEM

AUGUSTA, GEORGIA 30903

CHARLES B. PRESLEY
CHAIRMAN OF THE BOARD

October 13, 1976

Mr. John G. Murphy, Jr.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Re: MUR 218(76)

Dear Mr. Murphy:

This will acknowledge receipt of your letter dated October 8, 1976 concerning a complaint filed against Drueie Douglas Barnard.

A more complete reply will be furnished you within the next several days regarding a loan that was made by this bank to the Doug Barnard for Congress Committee which we contend was made in the ordinary course of business.

Thank you for your consideration in this matter.

Yours sincerely,


Charles B. Presley
Chairman of the Board

CBP:ra

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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GEORGIA RAILROAD BANK & TRUST COMPANY

AUGUSTA, GEORGIA 30903

PAID

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Mr. John G. Murphy, Jr.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

October 1, 1977

MEMORANDUM TO: Marge Evans
FROM: Elissa V. Carr
SUBJECT: MUR 218(76)

Please have the attached General Council's Report on MUR 218 (76) distributed to the Commission and placed on the Compliance Agenda for the Commission meeting of October 13, 1977.

Thank you.

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EXECUTIVE SESSION

JUN 29 1977

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218 (76)
Druie Douglas Barnard, Jr.)

GENERAL COUNSEL'S REPORT

I. Background

This matter was generated by a complaint received by the Commission on August 11, 1976, from the husband of one of Mr. Barnard's primary opponents alleging, that a \$10,000 loan from the Georgia Railroad Bank and Trust Company ("The Bank") to the respondent's principal campaign committee constituted an illegal corporate contribution, in violation of 2 U.S.C. §431(b).

Review of the July 10 report submitted by Doug Barnard for Congress Committee verified that the loan had been negotiated, as alleged on May 14, 1976, in the amount of \$10,000.

Mr. Barnard was notified of the complaint by letter dated August 26, 1976. On September 16, 1976, his counsel submitted to the Commission the affidavits of Mr. Barnard, Charles B. Presley, Chairman of the Board of the Georgia Railroad Bank, and Nancy McJunken, treasurer of the Barnard for Congress Committee and a Vice President of the Bank. The note itself was also submitted. These affidavits confirmed the allegations that Mr. Barnard was employed by the lending bank as an Executive Vice President and held that position

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prior to and during the primary campaign. These documents also indicate that the loan was made to the Committee on an unsecured basis, payable in 180 days at an interest rate of 7.6% per annum, and that it was approved by Mr. Presley, pursuant to his authority as the bank's Board Chairman.

The Commission on, October 7, 1976, found reason to believe that a violation of §441(b) had been committed by Mr. Barnard, for receiving an illegal corporate contribution; by the Georgia Railroad Bank and Trust Co. for making the contribution; and by Mr. Presley for authorizing the transaction.

By letter dated November 6, 1976, counsel for the respondent provided further information surrounding the loan transaction and proposed a "compromise" to dispose of the matter. Counsel suggested that the Committee would repay the loan in controversy by borrowing funds from another bank to which Mr. Barnard would have no connection. The new loan would be adequately secured by the personal endorsement of Mr. Barnard and the pledging by him of whatever additional collateral may be required by the leading bank. Upon completion of this transaction, ". . . the complaints against Mr. Barnard, Mr. Presley and Georgia Railroad Bank and Trust Company will be handled without any finding of wrongdoing."

Further information relative to this transaction was requested from counsel to the respondents, by correspondence dated December 22, 1976. On January 24, 1977, we received

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counsel's response, providing additional data with respect to the necessity for the loan and the circumstances surrounding the negotiation, review, and transacting of the loan. Documents utilized by the bank in the granting of this loan were also submitted.

II. Analysis

2 U.S.C. §431(e)(5)(G) provides that loans made by a national or state bank in accordance with the applicable banking laws and regulations and in the ordinary course of business are not contributions. The issue in this case is whether or not this transaction meets the two pronged test set out in the statute.

As a member of the Federal Reserve System, the Georgia Railroad Bank and Trust Company is subject to the regulations promulgated by the Board of Governors of the Federal Reserve System. 12 C.F.R. Part 215 regulates the extension of loans by member banks to its executive officers. Part 215.3, states that, ". . . no member bank shall extend credit to any of its executive officers and no executive officer of a member bank shall borrow from or otherwise become indebted to such bank." Part 215.4 provides three exceptions to the prohibition, none of which apply to the circumstances of this transaction.

As an executive vice president in charge of the bank's marketing division, Mr. Barnard took part in the determination of major bank policy, and is an executive officer, within the meaning of 12 C.F.R. Part 215.3. The loan, however, was actually

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negotiated and executed by Mr. Hugh Connolly (the Finance Chairman of the Barnard for Congress Committee) on behalf of the Committee. Nevertheless, since the Committee acted on behalf of the candidate to procure funds for his campaign, and the Bank was aware of the purpose of the loan, we believe that the circumstances of this transaction suggest a violation of the Federal Reserve System regulation governing loans by member banks to its executive officers, 12 C.F.R. Part 215.3. As such, the loan would not have been made ". . . in accordance with applicable banking laws and regulations."

The second portion of this analysis is directed at the very broad question of whether this loan was made in the "ordinary course of business". Neither the amount of the money borrowed (\$10,000), or the length of time to repay (180 days), or the interest per annum (7.6%) are persuasive one way or the other in determining whether the loan was made in the ordinary course of business.

However, the nature of the transaction is questionable when examined in terms of the basis for the bank's expectation of repayment. This loan was obtained by a political committee, for the purpose of raising campaign funds, (due to the Committee's admitted inability to solicit adequate funds for the up coming primary), in the absence of any security. As a transitory entity, raising funds only to be expended in the campaign, the Committee's assets seem highly tenuous as security for a loan. Yet no other party had a binding legal obligation to made good on the debt.

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In his letter to the Commission, dated November 4, 1976, counsel for the respondents states the following:

"Admittedly the Bank could have foreseen that the assets in the hands of the Committee might have been insufficient to pay the note when it matured, and in such event the only legal recourse on the part of the Bank to collect the balance due would have proved fruitless."

In that letter, counsel goes on to explain that Mr. Connolly and the other members of the Committee did not endorse the note, because such an endorsement would be attributable as a contribution under 2 U.S.C. §431(e)(5)(g)(ii). In mitigating the bank's failure to provide security for the loan, counsel also contends that the bank felt confident that the loan was a good risk, in that the Committee members included outstanding citizens of the Community, who ". . . orally committed themselves to be responsible for raising the necessary funds for the purpose of seeing that the loan was paid in full." Similarly, Mr. Charles Presley, the Chairman of the Board of the bank who personally authorized this loan, stated in his affidavit to the Commission:

". . . This loan was made to the Barnard for Congress Committee with no guarantors. Knowing Mr. Barnard, I knew that he felt morally obligated to pay the note even though he was not legally obligated to."

In our opinion, these factors support the conclusion that the loan was, in fact, a contribution from the bank to Mr. Barnard's

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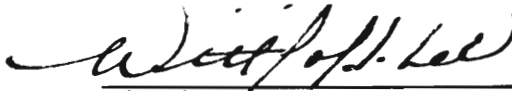
company. While a bank's knowledge of the standing of an individual in the community supported the decision to grant the loan, there was here no legal commitment from any individual to repay the loan. The only assets pledged were those of the Committee, which was, itself, borrowing this money because of its inability to raise adequate campaign funds. Under such circumstances, where the loan to the committee for Mr. Barnard's benefit also appears to violate the Federal Reserve System regulation prohibiting loans by member banks to its executive officers, we submit that the loan was impermissible under the standards of the Act.

III. Recommendation

We recommend that the Commission find reasonable cause to believe that violations of 2 U.S.C. §441(b) have been committed by the candidate, his committee, and the bank; send the attached notifications.

DATE:

6/20/77



William C. Oldaker
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

September 2, 1977

In the Matter of)	
)	
)	MUR 218(76)
)	
Druie Douglas Barnard, Jr.)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by a complaint received by the Commission on August 11, 1976, from the husband^{1/} of one of Mr. Barnard's primary opponents alleging, among other things, that a \$10,000 loan from the Georgia Railroad Bank and Trust Company (the "Bank") to the respondent's principal campaign committee constituted an illegal corporate contribution, in violation of 2 U.S.C. §441b.

Review of the July 10 report submitted by the Doug Barnard for Congress Committee verified that the loan had been made on May 14, 1976, in the amount of \$10,000.

Mr. Barnard was notified of the complaint by letter dated August 26, 1976. On September 16, 1976, his counsel submitted to the Commission the affidavits of Mr. Barnard; Charles B. Presley, Chairman of the Board of the Bank; and Nancy McJunken,

^{1/}Section 437g(a)(3)(A) requires that an investigation based on a complaint "shall include an investigation. . .of reports and statements filed by any complainant under this Title, if such complainant is a candidate." While technically the complainant does not fall within this provision, we have reviewed the reports of complainant's wife (the candidate) and found no apparent violations.

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Treasurer of the Barnard for Congress Committee and a Vice President of the Bank. A copy of the note was also submitted. These affidavits confirmed the allegations that Mr. Barnard was employed by the Bank as an Executive Vice President and held that position prior to and during the primary campaign. The documents also indicate that the loan was made to the Committee on an unsecured basis, payable in 180 days at an interest rate of 7.6% per annum, upon the approval of Mr. Presley, by virtue of his authority as the Bank's Board Chairman.

On October 7, 1976, the Commission found Reason to Believe that a violation of §441b had been committed by Mr. Barnard for receiving an illegal corporate contribution; by the Bank for making the contribution; and by Mr. Presley for authorizing the transaction.^{2/}

By letter dated November 6, 1976, counsel for the respondents provided further information surrounding the loan transaction and proposed a "compromise" to dispose of the matter. Counsel suggested that the Committee would repay the loan by borrowing funds from another bank with which Mr. Barnard would have no connection. The new loan would be adequately secured by the personal endorsement of Mr. Barnard and by his pledging

^{2/}The original complaint alleged, aside from the loan problem, that contribution arrangements made by the candidate with certain members of his finance committee were inaccurately disclosed on the pre-election report of 7/29/76 and that as the candidate's employer, the Bank had made contributions to the candidate by paying his salary and providing other benefits of employment while he was campaigning. These two allegations were dismissed upon the recommendation of the General Counsel on October 7, 1976.

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whatever additional collateral may be required by such other bank. Upon completion of this transaction, ". . . the complaints against Mr. Barnard, Mr. Presley and the Georgia Railroad Bank and Trust Company will be handled without any finding of wrongdoing."

In correspondence dated December 22, 1976, further information relative to this transaction was requested from counsel for the respondents. On January 24, 1977, we received counsel's response, providing additional data with respect to the necessity for the loan and the circumstances surrounding its negotiation and review. Certain documents utilized by the Bank in making this loan were also submitted.

A final request for further information from the Bank was made in July, 1977. This request produced data reflecting the Bank's extension of credit under terms similar to the loan in question here, and the Bank's formal written loan guidelines used by officers authorized to make loans.

II. ANALYSIS

2 U.S.C. §431(e)(5)(G) provides that loans made by a national or state bank in accordance with applicable banking laws and regulations and in the ordinary course of business are not "contributions." The issue in this case is whether or not this transaction meets the test set out in the statute.^{3/}

A. Applicable Banking Laws and Regulations

As a member of the Federal Reserve System, the Georgia

^{3/}It should be noted that, as we read the statute, both parts of this two-part test must be satisfied in order for the transaction to qualify as a bona fide loan.

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Railroad Bank and Trust Company is subject to the regulations promulgated by the Board of Governors of the Federal Reserve System. 12 C.F.R. Part 215 regulates the extension of loans by member banks to its executive officers. Part 215.3, states that ". . .no member bank shall extend credit to any of its executive officers and no executive officer of a member bank shall borrow from or otherwise become indebted to such bank." Part 215.4 provides three exceptions to the prohibition, none of which apply to the circumstances of this transaction.

As an Executive Vice President in charge of the Bank's marketing division, Mr. Barnard took part in the determination of major bank policy and he is an executive officer, within the meaning of 12 C.F.R. Part 215.3. The loan, however, was actually negotiated and executed by Mr. Hugh Connolly (the Finance Chairman of the Barnard for Congress Committee) on behalf of the Committee. Mr. Barnard did not participate in the negotiation or execution of this transaction, and is not, in any way, personally liable on that note. Under these circumstances, it cannot be said that the Bank made an extension of credit to its executive officer. As such, we must conclude that the letter of this regulation has not been violated because the loan was not made to Mr. Barnard.^{4/}

B. Ordinary Course of Business

The second portion of this analysis is directed at

^{4/}However, in light of the fact that the Committee borrowed this money for the benefit of Mr. Barnard's candidacy while he was in the employ of the lending bank, it has been suggested that the spirit of this regulation has been violated.

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the very broad question of whether this loan was made in the "ordinary course of business." Initially, the interest rate of 7.6% per annum charged by the Bank in this loan seems low and therefore questionable. The Bank's loan chart provided in response to our July 1977 request for further information indicates that the appropriate interest rate for a \$10,000 unsecured loan to an individual or association would have been 8 3/4%.

Moreover, the nature of the transaction is questionable when examined in terms of the basis for the Bank's reasonable expectation of repayment. The loan was obtained by a political committee for the purpose of purchasing television, radio and newspaper advertising because of the Committee's admitted inability to solicit adequate funds for such advertising. This does not appear to be a short term "cash flow" loan - the maturity date was scheduled for November 14, 1976, subsequent to both the primary and general election. The loan was made with the Bank requiring no security whatsoever; the Bank's only legal recourse in the event of default would have been to any committee assets remaining after the election. No party other than the committee had any legal obligation to repay the loan. For the Bank to be dependent on such assets as the only source of repayment seems to be questionable banking practice and does not seem to provide a reasonable expectation that the loan would be repaid.

In his letter to the Commission, dated November 4, 1976, counsel for the respondent states the following:

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"Admittedly the Bank could have foreseen that the assets in the hands of the Committee might have been insufficient to pay the note when it matured, and in such event the only legal recourse on the part of the Bank to collect the balance due would have proved fruitless."

In that letter, counsel goes on to explain that Mr. Connolly and the other members of the Committee did not endorse the note because such an endorsement would be attributable as a contribution under 2 U.S.C. §431(e)(5)(G)(ii). In mitigating the Bank's failure to provide security for the loan, counsel also contends that the Bank was confident that the loan was a good risk because the Committee members included outstanding citizens of the community who ". . . orally committed themselves to be responsible for raising the necessary funds for the purpose of seeing that the loan was paid in full." Similarly, Mr. Charles Presley, the Chairman of the Board of the Bank who personally authorized the loan, stated in his affidavit to the Commission:

"This loan was made to the Barnard for Congress Committee with no guarantors. Knowing Mr. Barnard, I knew he felt morally obligated to pay the note even though he was not legally obligated to."

Although the claimed "oral commitment" from certain individuals in the community may have entered into the Bank's decision to grant the loan, it seems clear that the candidate's position as an Executive Vice President of the Bank was the primary reason that the Committee received the loan without security or guarantors. The failure to require security for the loan becomes even more extraordinary in light of the fact

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that the Bank's only legal recourse, in the event of default, would be merely against any assets of the Committee remaining after the election; it was the inability of the committee to raise adequate funds for the primary which prompted the six-month loan in the first place. Under such circumstances, we submit that the loan does not satisfy the "ordinary course of business" standards set forth in 2 U.S.C. §431(e) (5) (G) and constitutes a corporate contribution in violation of 2 U.S.C. §441b.

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III. RECOMMENDATION

We recommend that the Commission find Reasonable Cause to Believe that a violation of 2 U.S.C. §441b has been committed by the Bank.

We recommend that the Commission find Reason to Believe that 2 U.S.C. §441b has been violated by the Barnard for Congress Committee. Send the attached letter.

10/6/77
Date

William C. Oldaker
William C. Oldaker
General Counsel



FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller and Copers
1500 Georgia Railroad Bank Building
Augusta, GA 30902

Re: MUR 218 (76)

Dear Mr. Waller:

The Federal Election Commission has made the following findings regarding your clients in connection with the \$10,000 loan obtained from the Georgia Railroad Bank and Trust Company by the Doug Barnard for Congress Committee:

- (1) Reasonable Cause to Believe that the Georgia Railroad Bank and Trust Company violated 2 U.S.C. §441b.
- (2) Reason to Believe that the Doug Barnard for Congress Committee violated 2 U.S.C. §441b.

Please be advised that pursuant to U.S.C. §437g(a) (5) (A), the Commission shall make every endeavor for a period of not less than 30 days to correct this violation by the bank by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement. If the bank and the Commission are unable to enter into a conciliation agreement during this period, the Commission may, upon a finding of probable cause to believe that a violation has been committed, institute a civil action for relief in the appropriate United States District Court. 2 U.S.C. §437g(a) (5) (B).



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Please contact David Stein, (202)523-4178, at your earliest convenience so we may begin conciliation of this matter.

Sincerely yours,

William C. Oldaker
General Counsel

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SEP 21 1976

Mr. Druis Douglas Barnard, Jr.
Doug Barnard for Congress
P.O. Box 10123
Augusta, Georgia 30903

Re: MUR 218 (76)

Dear Mr. Barnard:

I am enclosing copies of a letter, affidavit and attachments submitted by Mr. Hemanway, the complainant in the above case, on September 14, 1976. Since this information is submitted in support of Mr. Hemanway's complaint, there is no requirement that you respond to it.

If you choose to respond, please do so within five days after receipt of this letter. You may contact Gloria Sulton (telephone no. 202/382-4041), the attorney assigned to this matter, if you have any questions.

Sincerely yours,

William C. Oldaker
Assistant General Counsel

Enclosures

GSulton:pjg:9/20/76
MUR file 218

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PS Form 3811, Mar. 1976

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):

Show to whom and date delivered..... 15¢

Show to whom, date, & address of delivery.. 35¢

RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢

RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Mr & Mrs Douglas Bernard, Jr.

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	<i>438055</i>	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

[Signature]

4. DATE OF DELIVERY: *AUGUST 30 1976* POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: *Main office* CLERK'S INITIALS

Window 30901

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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FEDERAL ELECTION COMMISSION

DRUIE DOUGLAS BARNARD, JR.) IN RE: MUR 218 (76)

Personally appeared before me, an officer duly authorized to administer oaths, DRUIE DOUGLAS BARNARD, JR., who after having been duly sworn, on oath deposes and says:

1. This affidavit is made in response to the complaint filed against him in the above matter by John D. Heminway;

2. He is a resident of Augusta, Richmond County, Georgia, and was a candidate for the United States Congress from the 10th Georgia Congressional District in the Democratic Primary Election held on August 10, 1976, and the Run-Off Primary Election held August 31, 1976 in which he was the successful candidate;

3. In response to paragraph 2 of the Complaint, there was no organized finance committee in connection with deponent's campaign. Friends of the deponent were selected in the Augusta Area who were leaders in various organizations, professions, and businesses, and they were asked to raise money for deponent's political campaign. A goal of \$2,000 was suggested for each group from which a volunteer had been asked to raise funds. There was no requirement that this goal be reached. In some cases, more than this amount was raised, and in some cases less than this amount was raised. Those who participated and who did not raise their quota were not asked to borrow any money to make up the deficit. This is a normal practice and one used in general fund raising such as in the United Fund.

4. In response to paragraph 3, a letter was written to each County Chairman encouraging him to assist in the fund raising since a final budget had to be prepared for the remainder

of the campaign. It was a promotional letter, and had no relation to the special groups from which funds were being raised through the persons described in paragraph 3 above.

Deponent further says that loans were made to the Campaign Committee by friends of deponent, and such loans were reported pursuant to the prescribed procedures of the Federal Election Commission. These loans were reported as contributions, and footnoted as loans to the Committee, so that the loans could be repaid from future campaign contributions.

5. In response to paragraph 4, each \$1,000 contribution was made by the named contributor. Deponent has been advised that a husband and wife can each contribute \$1,000 individually if they so desire.

6. In response to paragraph 5, deponent is unaware of any influence which he could exert by virtue of his being Executive Vice President of the Georgia Railroad Bank & Trust Company and states that he did not attempt to exert any such influence on any contributor or member of his campaign committee. Thirty-one persons, who were friends of deponent, were asked to contact various groups of persons. Many of those making contributions were not customers of the Georgia Railroad Bank & Trust Company and in several instances, those making appeals for funds were not customers of the bank. One of such persons was an officer of another bank.

7. In response to paragraph 6, deponent says that his duties as Executive Vice President of Georgia Railroad Bank & Trust Company include the management of the Marketing Division of the Bank. These duties do not require deponent to work any specific number of hours a day, week or month, and his salary is based completely on his fulfilling his responsibilities and obligations in the proper management of this division.

During his campaign deponent was not relieved of this responsibility and continued to manage the Marketing Division of the Bank and was paid accordingly. All campaign activities were conducted from his campaign headquarters at 1206 Greene Street, Augusta, Georgia.

In response to the activities of the Treasurer of the Committee, Nancy McJunkin, deponent refers the Commission to the affidavit of Nancy McJunkin, being submitted to the Commission herewith.

8. In answer to Paragraph No. 7, Deponent denies that Georgia Railroad Bank & Trust Company refused to reveal the terms of the \$10,000 loan referred to, and refers the Commission to the affidavit of Charles B. Presley, which is submitted with this affidavit.

SWORN TO AND SUBSCRIBED
before me, this 15th
day of September, 1976
Samuel C. Wells
Notary Public, Richmond
County, Georgia.

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Druid Douglas Barnard, Jr.
Druid Douglas Barnard, Jr.

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FEDERAL ELECTION COMMISSION

DRUIE DOUGLAS BARNARD, JR.) IN RE: MUR 218 (76)

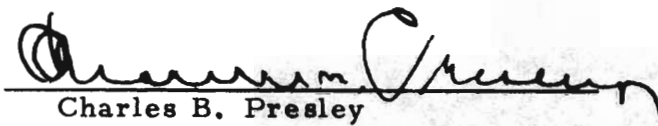
NOW COMES CHARLES B. PRESLEY, who after being duly sworn, deposes and states the following:

I make this Affidavit in response to the Complaint filed against Mr. Barnard with the Federal Election Commission in the above captioned matter. I am Chairman of the Board of the Georgia Railroad Bank and an Officer of that Bank. As officer of the Bank, I made a loan to the Barnard for Congress Committee, which is mentioned in the above matter, in the amount of Ten Thousand (\$10,000) Dollars, a copy of said Note with its terms is attached hereto and by reference herein made a part of this Affidavit. This loan was made to the Barnard for Congress Committee with no guarantors. Knowing Mr. Barnard I knew that he felt morally obligated to pay the note even though he was not legally obligated to.

In addition, Mr. Barnard and Mrs. McJunkin are officers of this Bank and at no time have they been relieved of their official duties or responsibilities in this Bank. They have continued to function in their respective capacities during Mr. Barnard's campaign and have fulfilled the duties, obligations and responsibilities required of them.

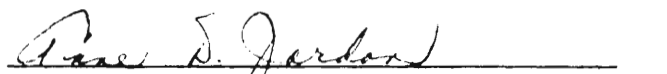
To the best of my knowledge and belief, the Georgia Railroad Bank has made no contributions to Mr. Barnard's campaign.

This the 16th day of September, 1976.


Charles B. Presley

SWORN TO AND SUBSCRIBED BEFORE

ME THIS THE 16 DAY OF
September, 1976.


NOTARY PUBLIC Notary Public, Richmond Co., Georgia
My Commission expires Oct 30, 1976

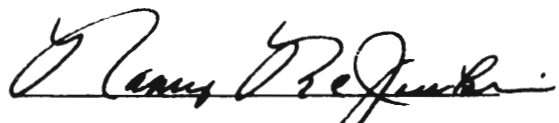
FEDERAL ELECTION COMMISSION

DRUIE DOUGLAS BARNARD, JR.) IN RE: MUR 218 (76)

NOW COMES NANCY MCJUNKIN, who after being duly sworn, deposes and states the following:

I am Vice-President of the Georgia Railroad Bank & Trust Company. I acted as Treasurer for the Barnard for Congress Committee.

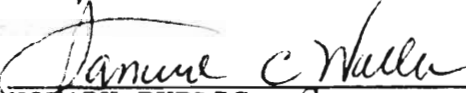
At the same time as I was Treasurer for the Barnard for Congress Committee, I continued to perform my duties and responsibilities as an Officer of the Bank and to receive the salary established for the office which I held. I am not required to work on any particular time schedule. In performing my duties as Treasurer for the Barnard Campaign Committee, I worked after Bank hours, during lunch hours, and on weekends.


(MRS.) NANCY MCJUNKIN

SWORN TO AND SUBSCRIBED BEFORE

ME THIS THE 16th DAY OF

September, 1976


NOTARY PUBLIC Redwood Co Ca

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS

7800 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

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Hon. John G. Murphy, Jr.
General Counsel
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

LOST IN THE WOODS OF GC 9-14-77

September 6, 1977

MEMORANDUM TO: Marge Emmons
FROM: Elissa T. Gurr
SUBJECT: MUR 218 (76)

Please have the Attached General Counsel's Report on MUR 218 (76) distributed to the Commission and placed on the Compliance Agenda for the Commission meeting of September 15, 1977.

Thank you.

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to and during the primary campaign. The documents also indicate that the loan was made to the Committee on an unsecured basis, payable in 180 days at an interest rate of 7.6% per annum, upon the approval of Mr. Presley, by virtue of his authority as the Bank's Board Chairman.

On October 7, 1976, the Commission found reason to believe that a violation of §441b had been committed by Mr. Barnard for receiving an illegal corporate contribution; by the Bank for making the contribution; and by Mr. Presley for authorizing the transaction.^{1/}

By letter dated November 6, 1976, counsel for the respondent provided further information surrounding the loan transaction and proposed a "compromise" to dispose of the matter. Counsel suggested that the Committee would repay the loan by borrowing funds from another bank with which Mr. Barnard would have no connection. The new loan would be adequately secured by the personal endorsement of Mr. Barnard and by his pledging whatever additional collateral may be required by such other bank. Upon completion of this

^{1/} The original complaint alleged, aside from the loan problem, that contribution arrangements made by the candidate with certain members of his finance committee were inaccurately disclosed on the pre-election report of 7/29/76 and that as the candidate's employer, the Bank had made contributions to the candidate by paying his salary and providing other benefits of employment while he was campaigning. These two allegations were dismissed upon the recommendation of the General Counsel on October 7, 1976.

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transaction, ". . . the complaints against Mr. Barnard, Mr. Presley and Georgia Railraod Bank and Trust Company will be handled without any finding of wrongdoing."

In correspondence dated December 22, 1976, further information relative to this transaction was requested from counsel for the respondents. On January 24, 1977, we received counsel's response, providing additional data with respect to the necessity for the loan and the circumstances surrounding its negotiation and review. Certain documents utilized by the Bank in making this loan were also submitted.

A final request for further information from the Bank was made in July, 1977. This request produced data reflecting the Bank's extension of credit under terms similar to the loan in question here, and the Bank's formal written loan guidelines used by officers authorized to make loans.

II. Analysis

2 U.S.C. §431(e) (5) (G) provides that loans made by a national or state bank in accordance with applicable banking laws and regulations and in the ordinary course of business are not "contributions." The issue in this

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case is whether or not this transaction meets the test set out in the statute.^{2/}

A. Applicable Banking Laws and Regulations

As a member of the Federal Reserve System, the Georgia Railroad Bank and Trust Company is subject to the regulations promulgated by the Board of Governors of the Federal Reserve System. 12 C.F.R. Part 215 regulates the extension of loans by member banks to its executive officers. Part 215.3, states that ". . . no member bank shall extend credit to any of its executive officers and no executive officer of a member bank shall borrow from or otherwise become indebted to such bank." Part 215.4 provides three exceptions to the prohibition, none of which apply to the circumstances of this transaction.

As an executive vice president in charge of the Bank's marketing division, Mr. Barnard took part in the determination of major bank policy and he is an executive officer, within the meaning of 12 C.F.R. Part 215.3. The loan, however, was actually negotiated and executed by Mr. Hugh Connolly (the Finance Chairman of the Barnard for Congress Committee) on behalf of the Committee. Mr. Barnard did not participate in the negotiation or execution of this transaction, nor is he, in any way, personally liable on that

^{2/} It should be noted that, as we read the statute, both parts of this two part test must be satisfied in order for the transaction to qualify as a bona fide loan.

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note. Under these circumstances it cannot be said that the Bank made an extension of credit to its executive officer. As such, we must conclude that the letter of this regulation has not been violated because the loan was not made to Mr. Barnard.^{3/}

B. "Ordinary Course of Business"

The second portion of this analysis is directed at the very broad question of whether this loan was made in the "ordinary course of business." Initially, the interest rate of 7.6% per annum charged by the Bank in this loan seems low and therefore questionable. The Bank's loan chart provided in response to our July 1977 request for further information indicates that the appropriate interest rate for a \$10,000 unsecured loan to an individual or association should be 8 3/4%.

Moreover, the nature of the transaction is questionable when examined in terms of the basis for the Bank's reasonable expectation of repayment. The loan was obtained by a political committee for the purpose of purchasing television, radio and newspaper advertising because of the Committee's admitted inability to solicit adequate funds for such advertising. This does not appear to be a short term

^{3/} However, in light of the fact that the Committee borrowed this money for the benefit of Mr. Barnard's candidacy while he was in the employ of the lending bank, it has been suggested that the spirit of this regulation has been violated.

79040105453

"cash flow" loan - the maturity date was scheduled for November 14, 1976, subsequent to both the primary and general election. The loan was made with the Bank requiring no security whatsoever; the Bank's only legal recourse, in the event of default, would have been to any committee assets remaining after the election. No party other than the committee had any legal obligation to repay the loan. For the Bank to be dependent on such assets as the only source of repayment, seems to be questionable banking practice and does not seem to provide a reasonable expectation that the loan would be repaid.

In his letter to the Commission, dated November 4, 1977, counsel for the respondent states the following:

"Admittedly the Bank could have foreseen that the assets in the hands of the Committee might have been insufficient to pay the note when it matured, and in such event the only legal recourse on the part of the Bank to collect the balance due would have proved fruitless."

In that letter, counsel goes on to explain that Mr. Connolly and the other members of the Committee did not endorse the note because such an endorsement would be attributable as a contribution under 2 U.S.C. §431(e)(5)(g)(ii). In mitigating the Bank's failure to provide security for the loan, counsel also contends that the Bank felt confident that the

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loan was a good risk because the Committee members included outstanding citizens of the community who ". . . orally committed themselves to be responsible for raising the necessary funds for the purpose of seeing that the loan was paid in full." Similarly, Mr. Charles Presley, the Chairman of the Board of the Bank who personally authorized the loan, stated in his affidavit to the Commission:

". . . This loan was made to the Barnard for Congress Committee with no guarantors. Knowing Mr. Barnard, I knew he felt morally obligated to pay the note even though he was not legally obligated to."

Although the claimed "moral commitment" from certain individuals in the community may have entered into the Bank's decision to grant the loan, it seems clear that the candidate's position as an Executive Vice President of the Bank was the primary reason that the Committee received the loan without security or guarantors. The failure to require security for the loan becomes even more extraordinary in light of the fact that the Bank's only legal recourse, in the event of default, would be merely against any assets of the Committee remaining after the election; it was the inability of the committee to raise adequate funds for the primary which prompted the six-month loan in the first place.

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Under such circumstances we submit that the loan does not satisfy the "ordinary course of business" standards set forth in 2 U.S.C. §431(e) (5) (g) and constitutes a corporate contribution in violation of 2 U.S.C. §441b.

III. Recommendation

We recommend that the Commission find reasonable cause to believe that violations of 2 U.S.C. §441b have been committed by the Committee and the Bank. Send attached notification.

DATE:

2 Sept 1977

William C. Oldaker
General Counsel



Charles N. Steele
Associate General Counsel

79040105456



FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller, and Copers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218 (76)

Dear Mr. Waller:

This letter is to inform you that the Federal Election Commission, has determined that there is reasonable cause to believe that Mr. Barnard, the Doug Barnard for Congress Committee, and the Georgia Railroad Bank and Trust Company have committed violations of 2 U.S.C. §441(b), in connection with the \$10,000 loan obtained from the bank by the committee.

Please be advised that pursuant to 2 U.S.C. §437g(a) (5)(A), the Commission shall make every endeavor for a period of not less than 30 days to correct or prevent this violation by informal methods of conference, conciliation, and persuasion, and, to enter into a conciliation agreement. If the parties are unable to effect a conciliation agreement during this period, the Commission may, upon a finding of probable cause to believe that a violation has been committed, institute a civil action for relief in the appropriate United States District Court. 2 U.S.C. §437g(a)(5)(B).

Please contact David Stein, (202)523-4175, at your earliest convenience so we may begin the conciliation process.

Sincerely yours,

William C. Oldaker
General Counsel



79010101457



FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

26 AUG 1976

Mr. Druie Douglas Barnard, Jr.
Doug Barnard for Congress
P.O. Box 10123
Augusta, Georgia 30903

Re: MUR 218 (76)

Dear Mr. Barnard:

This letter is to advise you that the Federal Election Commission has received a complaint against you which has been numbered MUR 218. A copy of the complaint is enclosed. The Commission has made no determination that the matters alleged set forth a violation of the Federal Election Campaign Act of 1971, as amended (the Act).

The Commission has authorized a preliminary inquiry into this matter to determine what action, if any, it should take. Toward this end, I invite you to submit any factual or legal matters which you believe are relevant to the Commission's analysis. The Commission specifically requests that you explain the legend appearing on your pre-primary report regarding a possible pro-rata refund of certain itemized contributions. (See attached reports). Additionally, please advise us of the terms of the \$10,000 loan from the Georgia Railroad Bank and Trust Company and whether there are any co-signers, guarantors or sureties. Finally, I would appreciate your response to the allegations that you received contributions from your employer. Where appropriate statements should be submitted by individuals with personal knowledge of the matters herein and such statements should be under oath.

The Commission must consider such matters expeditiously; accordingly, please submit your response within ten days after receipt of this letter.

This matter will remain confidential unless you indicate in writing to the Commission that you wish it to be made public. If you have any questions, please do not hesitate to contact my office. The attorney assigned to this case is Gloria R. Sulton (telephone no. 202/382-4041).

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

Enclosure: Copy of complaint

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PC

PS Form 3811, Mar. 1976
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

Show to whom and date delivered..... 15¢

Show to whom, date, & address of delivery.. 35¢

RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢

RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Druie Douglas Barnard, Jr.

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438275	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

Druie Douglas Barnard, Jr.

4. DATE OF DELIVERY	POSTMARK
Sept 21, 1976	

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:	CLERK'S INITIALS



FEDERAL ELECTION COMMISSION

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

26 AUG 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John D. Hemenway
P.O. Box 267
Eatonton, Georgia 31024

Re: MUR 218 (76)

Dear Mr. Hemenway:

This letter acknowledges receipt of your complaint dated August 9, 1976, alleging certain violations of the Federal Election Campaign Act of 1971, as amended (the Act) by Druie Douglas Barnard, Jr. We have numbered your complaint as MUR 218; please refer to this number in any correspondence.

The Commission has authorized a preliminary inquiry into your allegations to determine what action, if any, it should take. If you have any other material to submit which may be relevant to our inquiry, please submit it within five days after receipt of this letter.

The attorney assigned to this case is Gloria R. Sulton (telephone no. 202/382-4041). Please contact her if you have any questions.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel



G. Sulton a/c 8/19/76

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PC

PS Form 3811, Mar. 1976
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

Show to whom and date delivered..... 15¢

Show to whom, date, & address of delivery.. 35¢

RESTRICTED DELIVERY.
Show to whom and date delivered..... 65¢

RESTRICTED DELIVERY.
Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

Mr. John D. Hemenway

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	43374	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE Addressee Authorized agent

John D. Hemenway

4. DATE OF DELIVERY **SEP 2 1976** POSTMARK

5. ADDRESS (Complete only if requested)

4816 S. ...
... DC

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

YCC 1223

RECEIVED
FEDERAL ELECTION
COMMISSION

Your Ref:
MUR 218 (76)

'77 AUG 24 AM 10:45

John D. Hemenway
4816 Rodman St., NW
Washington, D.C. 20016

22 August 1977

Federal Election Commission
Attn: Mr. David Stein
1325 K Street NW
Washington, D.C. 20463

772491

Dear Mr. Stein,

With reference to our telephone conversation today I am enclosing a copy of the Atlanta Journal of June 26, 1977. Although the article deals principally with the affairs of Mr. Holley, there are numerous references to the Georgia RR Bank, of which Mr. Barnard was Exec. Vice President during the recent election campaign in 1976 and also to the First Augusta and Mr. Jack Fink, identified in my complaint to the FEC as one of the chief fund raisers, whose bank was used to provide a source of money for the "enforcer" type loans which Mr. Barnard compelled his "supporters" to take out when they could not meet their quotas. All perfectly voluntary, of course!

Since you have been investigating this matter for nearly a year and it is complex and you are nearing the end of your investigation, I shall not belabor the references to other inter-locking directorate references to other banks in Georgia or to legislation which Mr. Barnard has now introduced in the H of R (e.g. HR 7902) to make it easier for bank holding companies to swallow up smaller county banks.

I am concerned only about your reference to the "complexity" of the new law governing elections. It does not seem to me to be anything else than perfectly obvious that if--as was the case-- Mr. Barnard was accepting full salary from the Georgia RR Bank even as he was campaigning full time or more, he was, in effect being subsidized by a corporation which now is represented in the Congress. I expect the F.E.C. to do something about it and, if the FEC does not, I will.

It does little to absolve Mr. Barnard's understanding of this not-so-complex law to point out that he is a lawyer and an officer of the court.

I shall await your report and/or the FEC recommendations with interest, since there is also a violation of the corrupt practices act involved in this election. I have not troubled you with that matter since I do not believe the FEC is competent in such affairs, but I will file directly with the Attorney General.

Encl: Atlanta Journal re: Holley
June 26, 1977

Sincerely yours,
John Hemenway

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Gene Holley Struggles to Keep His Financial Empire Intact

Former state Sen. R. Eugene Holley, longtime chairman of the Senate Banking and Finance Committee, parlayed massive credit into a financial empire stretching from Texas to Arabia. But that empire is tottering. Creditors are suing and Holley has warned in legal papers that he could be forced into a bankruptcy costing him at least \$100 million.

In this report, Atlanta Constitution political editor Jim Merriner and reporters Henry Eason and Paul Lieberman examine Holley's rise and his battle to keep his financial empire intact.

AUGUSTA, Ga. — Atop the 80-year-old Southern Finance Building in the center of this graying downtown sits the ultramodern glass penthouse in which Gene Holley is struggling to save his empire.

He walks past the glass and gleaming marble walls of the lavish office complex to the door to his personal helicopter pad. High overhead is the 37-foot cross he erected on top of his building.

Holley sweeps his arm to the right. Forty-five minutes, he says, to his South Carolina island.

He sweeps his arm to the left. An hour and 15 minutes, he says, to his Tennessee mountain.



Photo—Henry Eason

GENE HOLLEY LOOKS OUT OVER AUGUSTA FROM HIS HEADQUARTERS
He Is Confident Persian Gulf Oil Wells Will Provide Boost

Turn to Page 12A, Column 1

471 Journal & Const.

P. 1 June 26 1977

Holley Tries to Save

Continued from Page 1A

Atlanta, Ga. (AP)—The Georgia bank holding company that Gene Holley has chartered is the state's biggest bank, and with Holley as its leader, it retained the bill first introduced in 1975.

After the bill was passed by the Georgia House of Representatives, it was sent to the Senate. The bill would allow Georgia banks to form companies for the purpose of expanding their operations in which they are chartered. Backed strongly by the state's biggest bank, led by Holley as its leader, it retained the bill first introduced in 1975.

After the bill was passed by the Georgia House of Representatives, it was sent to the Senate. The bill would allow Georgia banks to form companies for the purpose of expanding their operations in which they are chartered. Backed strongly by the state's biggest bank, led by Holley as its leader, it retained the bill first introduced in 1975.

Holley built an antebellum style mansion on Augusta's Flowering Woods Road. He bought several downtown Augusta buildings — hotels, office buildings and a historic church — and constructed the glass penthouse.

He leased two helicopters — called "Holleyopters" by Augustans — and flew them all over the Southeast. Eventually, there were three private jets in his "air force" and two yachts, one 115 feet long.

Holley launched grand new projects.

He and a partner acquired Pritchard Island near Hilton Head Island off the South Carolina coast. They got a loan for the \$14 million purchase and announced plans for a multimillion-dollar religious center.

... a loan Viking ...

... the ...

... Texas oil ...

... believe in the \$750- ...

... owners and directors of ...

... recent years these banks ...



Photo—Henry E. Aho

CHASE WAREHOUSE ATOP AUGUSTA BUILDING
... Gene Holley Talks of His Goals

Empire

'LEMON' PAYS OFF

ST. LOUIS (UPI) — A man who proclaimed his motor home a lemon and paraded it in front of the dealership where he bought it will receive \$29,000 from a California firm in exchange for the vehicle.

Eugene Paddock won the exchange in an agreement reached in St. Louis County circuit court. He became involved in a dispute with an auto dealer, Art Haack Bank GMC, after failing in attempts to have the motor home repaired.

Paddock displayed his unhappiness by driving the vehicle near the dealership with signs saying such things as "Lemon," and "Junk Windshield Wipers — Fixed 14 Times — No Work."

Paddock will receive the money from Sports Coach of America, a California company.

Only \$300,000 of the First Augusta loans were secured by collateral.

Holley and Pisk refused to be interviewed. But First Augusta president J. Frank Windhock Jr. admitted during an interview May 18 that the bank had exceeded its legal lending limit. He and other bank officials said the bank's decision about because of a new interpretation of banking regulations under which various loans are added up and the total checked against the loan limit. Formerly, they said, loans were checked one by one.

Two days later, First Augusta was declared insolvent by State Banking Commissioner Jack Dunn. It was said in government-issued findings to First National Bank of Atlanta, and opened the next morning under the law guns.

Later, Holley admitted that the loans may have added to the burden that overpowered the small bank. "You might say I am part of the problem at First Augusta, but I am not all of the problem," he said.

While at no other bank were repercussions as severe as at First Augusta, officers of another bank in the city recently admitted to stockholders that they had also made some poor loans.

Georgia Railroad Bank, the largest bank in the state outside Atlanta, had loaned Holley and his interests \$5.1 million. AGB Holley admitted that of these loans were included in a group of loans called significantly deteriorated in a bank report.

The holding company which owns Georgia Railroad, in a report dated March 22,

The March proxy report shows neither Hester nor Monk were nominated for reelection to the Georgia Railroad holding company board.

"We're all very concerned and despondent to . . . be facing these kind of losses," said Georgia Railroad Bank president Monk.

Examining the possible political influence, Monk insisted. "We looked at Senator Sen. Holley's loans at the time they were negotiated and we bank on that. I don't think it could be done any other way on the bank books."

At all, 1000 bank of Holley's loans were obtained in Georgia banks throughout the country added him in his risk. Financial institutions totaling \$1 million or more in loans. These institutions of First State, the Harris Trust and Savings Bank of Chicago, Life of Georgia and North Carolina National Bank.

Financial institutions giving Holley and his interests less than \$1 million in credit were Bankers Trust of South Carolina, C&S Bank of Clayton County, County Trust Bank, Exchange National Bank, Federal Land Bank, First Federal Savings and Loan of Augusta, First Georgia Bank, First National Bank of Atlanta, First National Bank of Augusta, Fulton National Bank, Hamilton Bank, National Bank of Georgia, and Trust Co. Bank.

"I know I can work it out." Gene Holley talks for five hours. Rain falls for a spell on the penthouse's glass walls.

life, you are going to be governed either by faith or fear. My big job," he said, "has been to try to change the minds of men to turn from fear to faith."

Now, he said, the bankers are afraid. He offers them faith in himself. But he knows dark clouds are gathering over him.

The C&S Bank of Clayton County filed suit against him last December over \$95,000 that came due. First National Bank of Atlanta went to court last month claiming \$670,280 from Holley and a partner. Holley in turn asked \$100 million in damages from both banks. There are several other suits and an Internal Revenue Service lien for \$80,463 in taxes.

But Holley is optimistic. He pulls out some reports from a pile on a table. There are geologists' studies and projections of possible earnings from the Persian Gulf wells. He talks of possible profits of \$250 million.

But first, he says, he needs another \$12 to \$15 million investment to get the wells going. And so "in the last year, I've been around the world at least five times." A friend from his church now pays many of his expenses. He checks new companies. He

one year," he said. "The tough time is right where I am now. I know I got oil but I'm not being paid for it. But once you start selling it . . . you take the kind of income we talked about (\$700,000 or more a month) and you can go into any bank in the world and refinance all my debt, wipe all these bank debts out

"That is my full intention," Holley said.

And he sees other light through the dark clouds.

"Come downstairs," he told three visitors several weeks ago.

Two floors below, on a desk, was the model of a house built of plastic.

The enthusiasm flowed through him. Here, he said, was another way he could rebuild his financial empire. He may sell the plastic prefabricated houses to the Arabs and low-income Americans.

"Even if you only made \$1,000 a home, that's \$1 million for a thousand," he said.

"I can sell these in units of 10,000. I guarantee it," Gene Holley said.

BURGLAR-PROOF YOUR HOME

"I'm asking God, and he's waiting."

... more than 10 banks are waiting for Holley to pay them.

In recent years these banks loaned Holley, his partnerships and corporations more than \$32 million. Millions went for Texas oil wells, millions for real estate, more still for buildings, yachts and airplanes.

These banks have already taken them to court for their money. Partly because loans were not repaid, another bank failed.

"He (Holley) has a fantastic ability to present an idea extremely well," said Graeme M. Keith, president of the Georgia Railroad Bank & Trust Co. in Augusta, which loaned Holley and his interests \$5.1 million. "He's a very good salesman."

Bankers questioned five investors that it was Holley's persuasive presentation of ideas and his success as an investor which prompted them to agree to make loans. However, several bankers added that Holley's legislative standing had contributed to the ease with which he got loans.

The Journal-Constitution found that:

• While Holley held the powerful post of state Senate Banking and Finance Committee chairman, Georgia financial institutions gave Holley and his interests \$6.1 million in loans that were unsecured.

• A small bank in Augusta, whose directors included two of Holley's business partners, lent Holley and his interests \$2.9 million, which considerably exceeded its legal lending limits. In May, the bank was declared insolvent and was taken over by a larger bank.

"All my Senate career did for me was to allow me to meet some of the heads of the banks," said Holley. "I was helpful business."

... near Holley... the South Carolina coast. They got a loan for the \$1.4 million purchase and announced plans for a multimillion-dollar religious complex.

Holley also bought, again on a loan, Viking Mountains on the Tennessee-North Carolina border, a remote spot surrounded by national forests. He wanted to sell lots for \$20,000 each to top businessmen from America and the Middle East so they could meet in opulent isolation, make business deals and work for world peace.

"I think the man really had a vision that he was going to be able to do a lot of things for a lot of people, and in the meantime become one of the wealthiest men in the country," said John R. Adams, III, a former Augusta bank president.

Said another acquaintance of Holley's, "The whole time he was looking at the glass pyramid, thinking, 'What's Goo going to do next?'"

In the 1975 Christmas season, Holley put up the cross.

Lying in bed one night, he had a profound experience, like a vision. He later hired an artist to sketch what he had seen. On his Christmas cards that year appeared the drawing of a giant-like, robed, bearded Jesus placing a cross on the Southern Finance Building.

Soon after, the 37-foot monument was lifted into place. Illuminated at night, it dominated the Augusta skyline.

About the same time, the walls of his economic empire began to crack.

Between preparations for the 1976 legislative session and negotiations for a new oil deal, this time in the Middle East, Holley had barely noticed that expenses for operating his Texas oil wells were creeping higher.

... a few months later...



Photo—Henry Estes

GLASS PENTHOUSE ATOP AUGUSTA BUILDING Inside, Gene Holley Talks of His Goals

could cause a "wholesale filing of suits," Holley said. He could be forced into bankruptcy costing his businesses "a sum of not less than \$100 million," he warned.

And so the waiting game began. In the year since the first bankers' summit meeting, two banks have demanded their loan payments. But the others are waiting to see if Holley can pay it out.

Carver already has complicated matters by being Holley over terms of their contract in which Carver pays all the money for the Middle East oil operation. Despite their dispute, even Carver wouldn't bet against Holley putting his financial house in order.

"The guy is completely fantastic," said Carver. "But now, anybody who can pull that much money out of a clean light, just on his signature, has got to have a lot of ability. Does he not?"

"I did get to know some of the directors of the banks and could get to see them directly," said Gene Holley. He was sitting in his glass office, discussing the value of a political career in business.

He added quietly, "They loaned to me because they believed I could pay it back and for no other reason." However, Holley conceded that, thus far, he has been unable to pay back most of the loans.

By Jan. 1, 1976, loans to Holley personally plus loans to partnerships and corporations in which he holds a substantial interest had climbed to more than \$32 million. Holley said that by getting rid of airplanes and yachts, he has been able to reduce his net worth \$5 million.

Holley said the money to get him started in Texas oil came from a North Carolina bank, which he noted "I could not do 3 cents worth of good for in the Georgia Senate."

Most of the loans, more than \$25 million, were secured by collateral such as real estate.

But \$6.1 million of the loans came from Georgia financial institutions without requirement of any collateral.

"Any man who had the income and the assets and the position in the community and all these kinds of things Mr. Holley had at that time would have been bringing you down," said Gerald L. Conner Jr., senior vice president of Citizens and Southern National Bank of Augusta, which granted Holley and his interests \$4.8 million in loans.

Indeed, Holley was well connected in the community. Some of his business partners were directors of the banks to which he went to borrow.

Two partners, Glenn R. "Bert" Hester and Jack Pink were the prime stockholders and directors of the First Augusta Bank & Trust Co., which records show gave Holley and his interests \$2.9 million in loans.

Under state banking laws, a bank the size of First Augusta legally was permitted to lend one individual or corporation only \$150,000, or up to \$300,000 if all loans were backed by very secure collateral.

However, First Augusta had loaned Holley and his interests almost \$5 million by Jan. 1, 1976. Of that, \$275,000 was lent to Holley as an individual, the rest through partnerships.

... admitted... of these loans were included in a group of loans... significantly deteriorated in a bank report.

The holding company which owns Georgia Railroad, in a proxy report dated March 22, told stockholders that in all it identified \$16.2 million in bad loans during the second half of 1976. The report blamed the depressed economy, the poor real estate market and "lack of expected success in certain ventures of borrowers."

The bank company announced that it had to set aside \$6.5 million to cover anticipated losses because of all the bad loans.

Holley said that while some loans to him were part of that total, "The majority of my loans should have been no difficulty."

During the time Holley got the loans, three of his business partners gave up all part of the holding company stock to the Georgia Railroad Bank. They were former Gov. Sanders, law partner Hester and Peter H. Hunt, who also is Holley's brother-in-law.

Hester refused to be interviewed. Sanders and Hunt both said that as directors of the holding company they had no influence over credit decisions at the bank.

Sanders said that while he shared some loans with Holley and was an investor in the Texas oil enterprise, he had "never been in any of the big business situations that Sen. Holley has been in."

Sanders said the debts he shares with Holley are "all up to date and are well secured... I am not on unsecured notes with him."

Sanders had to step down this spring from the Augusta bank holding company board because of a federal regulation barring him from serving while he was also on the board of an Atlanta bank — First Georgia Bank — in which the holding company owned a large stake.

Bank, ... National Bank of Georgia, and Trust Co. Bank.

"I know I can work it out."

Gene Holley talks for five hours. Rain falls for a spell on the penthouse's glass walls, clouding the view of surrounding Augusta. But the sun comes out again.

He has explained away his luxuries, the yachts and the planes, as "trappings" needed to conduct high finance.

He has explained his philosophy: "Any time you make an important decision in your

... customer to get the works going. And so "in the last year, I've been around the world at least five times." A friend from his church now pays many of his expenses as he seeks new moneymen, Holley said.

Holley said he will meet in Dallas this week with potential investors from Pakistan. Another meeting is scheduled July 4 in London, he said.

"These are final meetings," Holley said late last week. "I think it's looking up."

"Shoot, I could pay off every bank in this country in

... 10,000. I guarantee it," Gene Holley said.

BURGLAR-PROOF YOUR HOME
with stickers on doors and windows

BEWARE 24 HOUR ELECTRONIC ALARM PROTECTION

See how you can protect your home from burglars and thieves.

See how you can protect your home from burglars and thieves.

EXTDA

Handwritten notes:
Barnes
Fund
revised
again
Trent
Barnes
Hester
1976

... million, which considerably exceeded its legal lending limits. In May, the bank was declared insolvent and was taken over by a larger bank.

"All my Senate career did for me was to allow me to meet some of the heads of the banks," said Holley. "True, it was helpful business-wise. But I never saw any evidence that the banks would favor me with loans because of my position. They had to answer to their stockholders."

"(In) my honest opinion, I may have made a great deal more money had I not been in the Senate," he said.

R. Eugene Holley, 51, was a child of the Depression-era South. Born in Aiken, S.C., he was orphaned at eight, then raised by a sister in Augusta. A boy who dreamed of being a jet pilot, he went on to win the Distinguished Flying Cross in Korea.

His ambitions did not start in finance. Politics came first, and for more than a decade Holley was one of the most powerful men in Georgia government.

He developed close ties with two governors, fellow Augustan Carl Sanders and Lester Maddox. He was elected to the Senate in 1964 and three years later joined the law firm that became Sanders, Hester and Holley. He became a top ally of Maddox, who was governor from 1967 to 1971, then lieutenant governor the next four years.

Holley's prime legislative interest was banking and in 1969 he won the political plum of chairmanship of the banking and finance committee.

For most of his eight years as chairman, the committee was the scene of furious lobbying over the "bank hold-

walls of his economic empire began to crack.

Between preparations for the 1976 legislative session and negotiations for a new oil deal, this time in the Middle East, Holley had barely noticed that expenses for operating his Texas oil wells were creeping higher.

Then, a few months later, he learned from auditors that owners of the Texas oil lands had not been paid their share of the oil profits. "I had no other alternative but to divert 100 per cent of my oil income back to Texas," Holley said later.

His one big source of cash had evaporated.

Soon after, there was another blow. With multimillionaire Roy Carver of Iowa, Miami and the French Riviera, Holley had contracted effective Jan. 1, 1976 with the government of Qatar for oil rights in an area of the Persian Gulf. But first tests showed the oil polluted with sulfur.

Production — and profits — would be delayed while equipment to extract the sulphur was installed.

Meanwhile, Holley's real estate holdings were languishing in the midst of a nationwide slump in the housing and second-home markets.

By late spring of 1976, Holley knew he had problems. Big problems.

In August, he called an Augusta summit meeting of his major bankers. They met again in the fall. Both times Holley said everything was okay. He just needed more time and investments in the Holcar (Holley-Carver) Oil Co to get the new oil flowing. But for the time being, he said, he couldn't pay off his loans.

In later legal papers, Holley said the bankers agreed to be "considerate" — to give him time and not to sue. Any suit

for no other reason. However, Holley explained that, thus far, he had been unable to pay back most of the loans.

By Jan. 1, 1976, loans to Holley personally plus loans to partnerships and corporations in which he holds a substantial interest had climbed to more than \$32 million. Holley said that by getting rid of his airplanes and yachts, he has since been able to reduce his debt by almost \$5 million.

bank the size of First Augusta legally was permitted to lend one individual or corporation only \$150,000, or up to \$300,000 if all loans were backed by very secure collateral.

However, First Augusta had loaned Holley and his interests almost \$3 million by Jan. 1, 1976. Of that, \$475,000 was lent to Holley as an individual, the rest through more than a dozen partnerships and corporations.

to date and are well covered ... See not up ... notes with him."

Sanders had to step down this spring from the Augusta bank holding company board because of a federal regulation barring him from serving while he was ~~also~~ on the board of an Atlanta bank — First Georgia Bank — in which the holding company has an interest.

Augusta
H. A.
1902

Now is the Time II. Time to take seriously. Time II LED watches, designed from the inside out, for rugged reliability and function. month, steel. \$9. Something



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John D. Hemenway
4816 Rodman St., NW
Washington, D.C. 20016



Washington, D.C. 20016
U.S. Bicentennial 13c

Federal Election Commission
Attn: Mr. David Stein
1325 K Street NW
Washington, D.C. 20463

13

17

400 1202

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

RECEIVED
FEDERAL ELECTION
COMMISSION
JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1969)
TELEPHONE
(404) 722-7541

77 AUG 22 AM 8:37

August 18, 1977

David Stein, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

77 AUG 16

Re: MUR 218 (76)

Dear Mr. Stein:

I acknowledge receipt of your letter dated August 3, 1977, which was in confirmation of our telephone conversation of July 29. I requested that an examination of the Bank's records be made in order to produce the information which you seek. This has now been completed and I enclose the following:

1. Selected pages from a volume prepared by the Bank for certain of its officers designated "Loan Policy". Although the information shown on these sheets does not appear to be of a confidential nature, the book itself is distributed to loan officers on a confidential basis and therefore it is requested that the sheets which are enclosed be treated on that basis. In looking through the pages which are enclosed, you will find that there is no reference to any policy as to loans to political parties or organizations. In discussing this matter with Mr. Presley and other bank officers, it is the position of the Bank that no guidelines have been established for loans to political parties or organizations because of the infrequency with which such loans are made.
2. The Bank's loan rate chart, dated January 26, 1976, which contains the rates in effect as of the date the loan was made to the Barnard for Congress Committee, May 14, 1976. Here again there is no applicable entry for loans to political parties and organizations.
3. A copy of a print-out which was obtained from the Bank's records showing the number of loans which were made or renewed during May 1976. The total number of new loans during that period was 307 and the total number of loans renewed was 502. The total number of all such loans

700 1010 1000

LOAN POLICY

A. BANK OBJECTIVES

The purpose of a formal Loan Policy is to provide a definite guide in determination of present and future decisions. It is an outline of defined standards of rules and procedures that will guide lenders in the making of sound loan decisions. Adherence to a reasonable and rational Loan Policy will assist bank management in the maintenance of proper credit standards, in the avoidance of unnecessary risks, and in the proper evaluation of new business opportunities. An effective Loan Policy is an invaluable tool in the creation and maintenance of that elusive combination of caution and adventurousness which leads to successful and profitable banking.

A specific objective of Loan Policy is to formalize not only the rules and procedures to be followed but also to further the basic goals of the bank and the direction those goals are to take. As a service institution our primary reason for being is to serve the legitimate needs of our community in concert with the need to be a responsible corporate citizen both in terms of the public good and in terms of the shareholder's interest.

Sound loans obtained through usual sources governed by a meaningful Loan Policy are a desirable and profitable means of

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employing funds available for loans. Lending personnel, with the guidance of senior management, are expected to solicit and make all of the sound loans that the resources of the bank permit and that opportunity affords. In the allocation of resources available for loans, primary consideration should be given to existing or potential customers with economic interests in our primary trade area. As the bank and its influence grows, this concept can be expanded to wider trade areas. Unprofitable relationships should be avoided as these represent a misuse of bank funds, may subject the bank to unnecessary loss, and/or to criticism by supervisory agencies.

A parallel objective of any banking institution, along with an obligation to serve the needs of the area, is the goal of profitability. No new customer relationship involving loans should be approved where there is a negative profit factor unless there is a genuine potential for a profitable relationship. Commitments for loans should be made with sufficient flexibility to provide for a reasonable profit based on existing and potential monetary conditions. Whenever a relationship exists that does not appear to be profitable under current conditions, the lending person responsible for the account has the responsibility to make every effort to increase the yield to a profitable level as quickly and as expeditiously as possible.

The Loan Administration Division is charged with the responsibility of reviewing conformity with the requirements of the Loan Policy. Details of this function are discussed under appropriate headings. The maintenance and control of policy compliance and overall loan portfolio quality and profitability will require complete cooperation of all lending personnel.

The cooperation of all affected bank personnel is expected in carrying out the goals and objectives of this Loan Policy.

With this cooperation, it is believed we can effectively:

1. Achieve our growth and profit goals.
2. Protect the interests of our depositors and shareholders.
3. Serve the needs of our customers and the community.

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B. DETERMINATION OF LOAN POLICY

The directors of the bank, through the Finance Committee, retain the ultimate responsibility for bank operations under State and Federal statutes. The Finance Committee also retains the responsibility to review and approve any formal loan policy recommended by management to be adopted by the bank.

Bank management delegates the policy formulation process to the division staff heads responsible for loan activities who in turn may form an appropriate committee of qualified personnel to produce the draft of any proposal involving loan policy. Such individual proposals or entire policy restructures will be discussed, edited and approved or rejected at the divisional staff level before presentation to management and the Finance Committee for approval.

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E. LOAN OFFICERS LENDING AUTHORITY

Individual lending authorities are prescribed for all lending personnel. (see supplements) The lending authorities are commensurate with prescribed responsibilities. The authorities will be reviewed on a continuing basis with the thought of increases where the responsibilities and experience of the individuals so indicate. Lending authorities are designed to foster initiative in the lending officers, to reduce their dependence on the loan committees to make credit judgments, and, at the same time, enhance the ability of the bank to respond to loan requests in a timely manner. Progression in loan limits also provides a means of following loan officer development.

An officer receiving a loan request exceeding his loan authority will be required to seek the advice and concurrence of a loan officer whose lending authority is sufficient to approve a loan of the amount requested. In these situations, the officer will be in a position to draw on the experience and expertise of the senior officer. If the dollar amount involved is less than the minimum required for committee approval, the loan can be handled at the lending officer level. Approval by concurrence should be indicated by having both loan officers initial the credit memo and the note. Both officers will be responsible for such

loans over the life of the credits, however, the originating officer will assume day to day supervision of the credits so approved.

Lending authorities are given only to personnel specifically assigned this responsibility by bank management as recommended by the various Division Heads.

Specific individual lending authority limits will be published for inclusion in this loan policy manual by the Loan Administration Division upon recommendations of the appropriate Division Head for various lending functions.

A loan officer is not restricted from presenting a particular loan within his lending authority to the loan committees. If the officer feels the circumstances surrounding a particular request are such that his experience or knowledge may be insufficient to make a sound credit judgment in the case in question, then it would be entirely appropriate and advisable to seek advice from other loan officers and the committees. If there is any question as to whether a given loan should be submitted for prior approval or for confirmation, the loan officer should discuss the loan with a member of the Officers Loan Committee.

G. INTEREST RATES

Rate charts will be prepared from time to time by the Division Head of Commercial Loans to reflect the current minimum and in some cases maximum interest that may be charged on loans made while the particular rate chart is in force. Minimum rates are to be charged only to our largest and best customers and only on loans that are prime credits. No interest should be affixed to any loan at a level which is obviously unprofitable to the bank when full consideration is given to all circumstances surrounding the credit, including compensating balances and usury laws. (See supplements for criteria on loans under \$1,000).

Exceptions below the minimum chart rates are expected to be virtually nil and any such exception shall be substantiated by an overwhelming abundance of evidence such as substantial deposit balances, or other important considerations. Exceptions are to be reported in writing, giving full explanation, to the Officer's Loan Committee who will approve or disapprove the exception based on the merits of the particular situation and within that committee's authority. If the Officer's Loan Committee disapproves the exception and the loan officer wishes to appeal the decision, he may do so to the Finance Committee. Finance Committee will rule on exceptions involving amounts in excess of the Officer's

Loan Committee's authority.

State usury laws must be observed where applicable. The current rate chart is included as a supplement to the Loan Policy.

In Georgia, state laws provide that any loan in excess of \$2,500 may be charged interest at any rate that may be agreed upon, so long as it is to a profit corporation. All loans to public, charitable, religious or other non-profit corporations may be charged interest only up to the amount of interest charged to individuals, proprietorships and partnerships. This limit of interest rate applies only to loans of less than \$100,000.

Loans of \$100,000 or more regardless of the nature of the borrower may be charged any rate of interest that may be mutually agreed upon.

The maximum interest that can be charged an individual, proprietorship, partnership, or non-profit corporation in a non-real estate secured transaction for loans of less than \$100,000 would be 8% under current Georgia Law. Real estate secured transactions in the above categories could be charged a maximum of 9% if for loans of less than \$100,000.

(Reference: Georgia Code 57-118 and 57-119)

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Interest rate limits by amount of loan and nature of the borrower for borrowers from South Carolina are shown on the current rate chart in the supplements to this Loan Policy.

The use of interest rates should reflect the following considerations:

1. Amount of loan.
2. Credit risk involved.
3. Deposit balances.
4. Liquidity of the borrower.
5. Liquidity of the collateral (if any).
6. Terms of repayment program (including whether or not the borrower has in the past met such programs).
7. Servicing requirements.
8. Fees to be collected.
9. Continuity of management in the company (age, health, provisions for succession, life insurance).
10. Experience and degree of success (the track record).
11. Purpose of the credit or use of proceeds.
12. Other latent considerations such as development of new business accounts and other factors.

GEORGIA RAILROAD BANK & TRUST COMPANY
LOAN RATE CHART

Our Prime Rate: 7%

CORPORATIONS:

<u>GEORGIA:</u>	<u>\$2,500 or Less</u>	<u>Over \$2,500</u>
Unsecured Loans	8 3/4%	8 3/4%
Unsecured Line of Credit	8 3/4%	8 3/4%
Security Loans:		
Govts. & Municipals	8 3/4%	8 3/4%
Listed Stocks	8 3/4%	8 3/4%
Unlisted-Readily Marketable	8 3/4%	8 3/4%
First Railroad	8 3/4%	8 3/4%
Not Readily Marketable	8 3/4%	9 1/4%
Life Insurance-Cash Value	8 3/4%	8 3/4%
Real Estate Loans:		
Fee for Investigation, Appraisal & Inspections	1%	1%
Amortized- <u>See Schedule Below</u>		
Development		OP + 2%
Land Acquisition		OP + 2%
Construction		OP + 2%
Warehousing		8 3/4%
Cotton Loans		7 3/4%
Letters of Credit	1%	1%
Floor Plan	8 3/4%	8 3/4%
Accounts Receivable	9 1/4%	9 1/4%
Finance Companies - Finance Committee will set rate		
Public, Religious, Charitable & non-profit corp.	8 3/4%	8 3/4%

SOUTH CAROLINA:

Individuals, Partnerships or Corp. with less than \$40,000 in Issued Capital Stock (Documented)	\$40,000 and over in Issued Capital Stock (Documented)
Loans of any amount-any type	
\$50,000 or less-any type (8% max.) R/E 9%	Chart Rate
Over \$50,000-any type (10% max.)	Chart Rate
\$100,000 to \$500,000-any type (12% max.)	Chart Rate
Over \$500,000-any type (negotiable)	Chart Rate

AMORTIZED REAL ESTATE LOANS (1% FEE)

<u>AMOUNT</u>	<u>MAX. TERM</u>	<u>LOAN RATIO</u>
\$7,500 or less	60 months	80% max. 6% add-on
\$7,501 and over	360 months	80% max. See R/E Dept.

SECOND MORTGAGES

Max. of \$10,000	36 months	75% max. 6% add-on
------------------	-----------	--------------------

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GEORGIA RAILROAD BANK & TRUST COMPANY
LOAN RATE CHART

Our Prime Rate: 7%

INDIVIDUALS, PROPRIETORSHIPS & PARTNERSHIPS

<u>GEORGIA:</u>	<u>UNDER \$100M</u>	<u>\$100M & OVER</u>
Unsecured Loans	8 3/4%	8 3/4%
Unsecured Line of Credit	8 3/4%	8 3/4%
Security Loans:		
Govt. & Municipal	8 3/4%	8 3/4%
Listed Stocks	8 3/4%	8 3/4%
Unlisted-Readily Marketable	8 3/4%	8 3/4%
First Railroad	8 3/4%	8 3/4%
Not Readily Marketable	8 3/4%	9 1/4%
Life Insurance -Cash Value	8 3/4%	8 3/4%
Real Estate Loans:		
Fee for Investigation, Appraisal & Inspections	1%	1%
Amortized- <u>See Schedule Below</u>		
Development	9%	OP + 2%
Land Acquisition	9%	OP + 2%
Construction	9%	OP + 2%
Warehousing	9%	9%
Letters of Credit	1%	1%
Floor Plan	8 3/4%	8 3/4%
Accounts Receivable	9 1/4%	9 1/4%
Our Savings Accounts & Savings Certificates	9%	Rate paid + 2%
Officer & Employee (on our savings-2% over rate paid)	Prime	Prime
Building & Loan Shares	8 3/4%	8 3/4%
Other Bankers & <u>Our</u> Directors	Prime	Prime

min. 2% above rate paid, max. 9%

AMORTIZED REAL ESTATE LOANS (1% FEE)

<u>AMOUNT</u>	<u>MAX. TERM</u>	<u>LOAN RATIO</u>
\$7,500 or less	60 months	80% max. 6% add-on
\$7,501 to \$100M	360 months	80% max. see R/E Dept.
Over \$100M	360 months	80% max. see R/E Dept.

SECOND MORTGAGES

		<u>1st & 2nd</u>
Max. of \$10,000	36 months	75% max. 6% add-on

SOUTH CAROLINA:

	Any type of loan	
Less than \$50,000		8% (except 9% on real estate)
\$50,000 - \$100,000	(10% max.)	10%
\$100,001-\$500,000	(12% max.)	Chart Rate
Over \$500,001	(Negotiable)	Chart Rate

* Must be 2% above rate paid

7001010431

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

U.S. DEPARTMENT OF JUSTICE
FEDERAL ELECTION COMMISSION
WASHINGTON

77 AUG 22 AM 8:37

David Stein, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

M E M O R A N D U M

To: Staff Director (for placement in compliance file)

From: Dave Vaughn *MDV*

Subject: Ex parte contact regarding complaint by Mr. Hemenway *

Date: September 22, 1976

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I received a telephone call at about 11:00 a. m., September 20, 1976, from Mr. Neil Bonsip ** regarding the above matter. He related that Mr. Hemenway had written the Commission August 9th (without specifying the nature of the letter) and, subsequently in mid-September but had heard no response from the Commission. He asked whether since the response could have impact on the general election, I could see if the Commission's response might be expedited.

Further inquiry, in which Mr. Bonsip outlined some of the facts with which the letter was concerned produced the information that the letter is apparently a Complaint, filed on behalf of the complainant's wife, who is a candidate for Congress.

While Mr. Bonsip did not urge any particular result, the discussion did involve explanation by Mr. Bonsip of some of the contents of the letter. When I learned that the matter

-1-

* I was not told and do not know the MUR number or the name of the party complained against.

** Mr. Bonsip is a fundraising consultant who works with Republican candidates, with whom I am casually acquainted through the graduate chapter of our college fraternity.

under discussion was a compliance matter, I informed Mr. Bonsip that Commission policy did not allow further discussion on the matter and that I could only assure him that the matter would be treated in accordance with Commission procedures. Mr. Bonsip made no attempt to discuss the matter further.

I am, however, writing this Memorandum pursuant to Commission policy concerning ex parte contacts. See § 8 of the Code of Ethics.

cc: Commissioner Staebler

7004010548

Record from S.C. Waller
By Hand of Conference Coordinator
M August 1978 12 p.m.

RE: MUR 218 (76)

- 79010101436
- August 26, 1976 - Letters from FEC advising D.D. Barnard, C.B. Presley and GA. RR Bank and Trust Co. of filing of complaint -- Gloria Sulton assigned to the case.
 - Sept. 16, 1976 - Affidavits of D.D. Barnard, C.B. Presley and Nancy McJunkin submitted.
 - Sept. ?, 1976 - Letter from FEC advising of receipt of affidavit and attachments from Mr. Hemenway.
 - Oct. 1, 1976 - Telephone conference between Gloria Sulton and S.C. Waller
 - Oct. 8, 1976 - Letter from FEC advising that it had found reason to believe that Mr. Barnard was in violation of Act -- in that loan (of May 14) may not have been made "in ordinary course of business."
 - Oct. 8, 1976 - Similar letter to GA. RR Bank and Trust Co. and C.B. Presley
 - Oct. 20, 1976 - Tel. Conf. - Gloria Sulton and S.C. Waller
 - Nov. 4, 1976 - Letter to FEC from S.C. Waller - proposed settlement
 - Dec. 22, 1976 - letter from FEC to S.C. Waller - request for additional evidence. Case assigned to David Stein
 - Dec. 28, 1976 - Tel. Conf. David Stein and S.C. Waller - advising FEC had taken a new view as to alleged violation
 - Jan. 13, 1977 - Tel conf. David Stein and S.C. Waller - RE:conciliation
 - Jan. 21, 1977 - Letter to David Stein from S.C. Waller supplying additional information

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- Jan. 26, 1977 - Tel. conf. David Stein and S.C. Waller - seeking additional info - RE: letter of Jan. 21, stated he would get back in touch with me on Jan. 28 or 31st RE: Conciliation
- July 26, 1977 - Tel. conf. David Stein and S.C. Waller - first contact since Jan. 26; apology for delay - stated question was a closed one. Asked for additional evidence.
- July 29, 1977 - Tel. Conf. David Stein and S.C. Waller - asking for additional evidence.
- August 3, 1977 - Letter from David Stern to S.C. Waller confirming request of July 24 for additional evidence
- August 18, 1977 - Letter from S.C. Waller to David Stein, supplying additional requested evidence.
- Oct. 26, 1977 - Letter from W.C. Oldaker to S.C. Waller advising that FEC had found:
 - 1) Reasonable Cause to believe GA RR Bank had violated act; and
 - 2) Reason to Believe Doug Barnard for Congress Comm. had violated act all in reference to loan of May 14, 1976.
 - This is first indication that FEC was investigating Committee
 - Conciliation Period began
- Nov. 1, 1977 - Tel. conf. from David Stein to S.C. Waller
 - Stein stated we could assume that messrs. Barnard and Presl~~y~~ had been removed from further consideration as having violated the act
 - Conciliation discussed advised that once we started discussing content of agreement, it would be necessary for representative of Bank to come to Washington.

Stein promised to call me back on Nov. 3.

- Nov. 14, 1977 - Letter from S.C. Waller to FEC advising that copy of agreement had not been received
- Nov. 18, 1977 - Tel. conf. - David Stein and W.C. Waller - Stein said the case was one of "first impression" and no comparable agreement on file. He stated, he would mail the "agreement" to me shortly.
- Jan. 5, 1978 - Letter from W.C. Oldaker enclosing conciliation agreements. Advised that Randall Johnson was assigned to case.
- Jan. 9, 1978 - Tel. conf. S.C. Waller and Randall Johnson. - For the first time I was told that the difference in the interest rate amounted to a contribution.
- Jan. 23, 1978 - Letter from Randall Johnson to S.C. Waller, enclosing copies of conciliation agreement in two other cases.
- Jan. 24, 1978 - Letter from S.C. Waller to Randall Johnson. Advised Mr. Johnson that I did not represent the Doug Earnard Committee. -Discussed provisions of proposed agreement.
- Feb. 16, 1978 - Letter from Mr. Oldaker to S.C. Waller - commented on my letter of Jan. 24. Suggests I could meet with Mr. Johnson.
- March 7, 1978 - Letter to Mr. Oldaker from S.C. Waller discussing proposed agreement and asking for opinions as to certain provisions. Asked for permission to submit additional evidence.
- March 28, 1978 - Letter from Mr. Oldaker to S.C. Waller in response to mine of March 7. Permission granted to submit additional evidence.
- April 3, 1978 - Letter to Mr. Oldaker from S.C. Waller. Referred to telephone conf. between Mr. Johnson and S.C. Waller in which latter stated FEC would take into consideration opinion by Georgia Commissioner of Banking and Finance.
- May 16, 1978 - Letter from S.C. Waller to Paul Lovejoy, enclosing an opinion from Deputy Commissioner of Banking and Finance that the loan of May 14 was made in the ordinary course of business. Also discussion of provision of conciliation agreement.

70010101437



FEDERAL ELECTION COMMISSION

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

August 18, 1977

Mr. John D. Hemenway
4816 Rodman St., N.W.
Washington, D.C. 20016

Dear Mr. Hemenway:

7 9 0 1 0 1 0 3 4 9 1

This letter is in response to your request for a status report on MUR 218 (76) and per your telephone conversation of August 16, 1977, with Sherrie Marshall. As you may know 2 U.S.C. §437g(a)(3) requires confidentiality of Commission investigations and thus absent consent of the respondents I am required not to disclose the status of your complaint until a final action is taken by the Commission. At this time the Commission is awaiting receipt of additional information requested from respondents, before taking a final action on your complaint. You will be promptly notified of any final action by the Commission on MUR 218 (76).

Should you have additional questions or information regarding this matter please contact David Stein, the attorney assigned to this case, at 202/523-4175.

Sincerely,

A handwritten signature in cursive script, appearing to read "William C. Oldaker".

William C. Oldaker
General Counsel



August 16, 1976

MEMORANDUM TO THE FILE

79040105491

Mr. John D. Henshaw, complainant in WBR 218, came in to discuss the matter with me this morning. I briefly explained to him our procedures and my doubts about our jurisdiction to look into the alleged matter of coercion of finance committee members by respondent. He did not provide any additional information. He indicated that the respondent was the Executive V. P. of the Georgia Railroad Bank and had considerable influence in the District by virtue of his position; reiterated possible corporate contributions by the bank in providing facilities and paying respondent and his treasurer while they were engaging in campaign activities.

He indicated that he intended to file another complaint which charges that the bank was used as a collection agent for the candidate for a breakfast. He also indicated that he would provide a copy of a letter requesting to further support his allegation that the bank is contributing by allowing respondent to campaign while paying him full salary.

Gloria R. Sulton
Gloria R. Sulton

MEMORANDUM: FOR FILES

RE: TELECON

FROM: Claude Hill to Wade McArthur

DATE: 8-7-78

NAME OF COMMITTEE: Barnard, Douglas
H6GA10027

MAR 218

Lovejoy/
Myerson

Claude Hill (803) 279-7632

Mr. Hill called this date as a concerned citizen concerning the status of complaints regarding Barnard, Druie Douglas Jr. H6GA10027.

It is suggested that someone from OGC or the appropriate office respond to Mr. Hill's inquiry.

7004010540

see 1108

RECEIVED
FEDERAL ELECTION
COMMISSION

John D. Hemenway
4816 Rodman St., NW
Washington, D.C. 20016

'77 AUG 9 AM 10:50

7 August 1977

General Counsel
Federal Election Commission
1325 K St., NW
Washington, D.C. 20463

772050

Dear Sirs,

About one year ago I provided information to the Federal Election Commission suggesting that the Georgia Railroad Bank and a candidate for office in the 10th District of Georgia had some improper financial relationships.

Some evidence in the form of a sworn affidavit signed by me, which I felt was compelling, was provided to the FEC.

The complaint was given a case number (MUR 218 (76)) and an FEC official promised to keep me informed.

I have heard nothing since that date, now nearly 10 months ago.

Would you please give me a status report?

For your convenience, copies of the receipted correspondence between me and the FEC are enclosed.

Sincerely yours,

John Hemenway
John D. Hemenway

Enclosures:

Hemenway letter to John G. Murphy Jr.,
General Counsel, FEC, dtd 14 Sept 1976
with enclosures:

Affidavit of John Hemenway dtd Aug 26
concerning conversation with Nancy McJunkin
Treasurer of the Barnard for Congress Committee

Letter of Doug Barnard of June 28, 1976

August 6, 1976 Press Release of Betty
Hemenway concerning illegal campaign
receipts of Doug Barnard and others

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- July 6, 1978 - Letter to Jay Myerson enclosing draft of proposed agreement submitted by GA. RR Bank.

- Aug. 3, 1978 - Tel. conf. Jay Myerson and S.C. Waller. He was unaware of suit filed against FEC by Hemenway. Said he would send to courthouse for copy.

Stated that he had arranged conference between Mr. Oldaker and me on Aug. 14, to discuss terms of proposed conciliation agreement.

- Aug. 8, 1978 - (Tuesday) - Tel. Conf. S.C. Waller and Jay Myerson RE:Aug. 14 meeting. Mr. Myerson stated he was going to meet with Mr. Oldaker that evening and would let me know whether Mr. Oldaker could meet with me at 1 PM rather than 11 AM. Said he would call me on Wed., Aug. 9.

- Aug. 9, 1978 - Tel. conference - Mr. Myerson and S.C. Waller, advised me that FEC had found that day (?) that there was probable cause that GA. RR Bank and Barnard Comm. had violated the act. Said the matter would still be worked out ..., but Mr. Oldaker would not meet with me as scheduled. Mr. Myerson admitted that on Aug. 4 and Aug. 7 Mr. Oldaker had told him that there was no need for continuing the negotiations. Myerson said he would take the blame for misleading me.

- Aug. 9, 1978 - Telegram from GA. RR Bank to FEC protesting decision until conciliation negotiations concluded.

- Aug. 10, 1978 - Tel. conf. between Mr. Myerson and S.C. Waller - said he had misstated Mr. Oldaker's reason for not meeting with me - that he had busy schedule and travelled a lot.

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coerce the raising of funds for Doug Barnard which, if not met, then had to be met by the signing of notes.

The designated groups marked for support allegedly included, but was not limited to:

- Finance Companies: Flint Hendricks (404) 724-0066
- Contractors: Baxter Clark (404) 798-2251
- Liquor Associations: Retail: (404) 733-2262 Jerome Heath
- Wholesale: Hy Selwyn (404) 724-2424
- Joe LaFouci (404) 724-9693
- Bill Wooten (404) 724-4338
- Auto Dealers: Stewart Walker of Walker Ford (404) 722-5371
- Stockbrokers: Fleming Norvell (404) 724-2601
- General Business: Bernie Silverstein (404) 733-3685
- Bottlers: Joe Byrd of Southern Beverage (404) 724-2677
- Delta Airlines: Joe Bates (404) 722-1232
- Gas-Light Utility: Rufus Foster (404) 722-7791
- C&S Bank: William Ellis (404) 722-2661
- Continental Can: William Wiseman (404) 798-5711
- Columbia Nitrogen: William Copenhaver (404) 724-8711

This material is provided you in the hope that it will facilitate the preliminary inquiry you stated in your letter to me of 26 August 1976 you are making in connection with my complaint dated August 9, 1976.

I understand that, as of this date, your inquiry is continuing and that at the appropriate time I will be informed of the action the Federal Election Commission will take, if any, into my complaint that Mr. Barnard violated the law when he did not report his Bank income as a campaign contribution and into certain other irregularities I have reported to the FEC.

Sincerely yours,

John D. Hemenway
John D. Hemenway

Enclosures:

- Affidavit of John Hemenway concerning August 26, 1976 conversation w/Nancy McJunkin
- Letter of Doug Barnard of June 28, 1976 to various leaders of special interest groups in Augusta
- August 6, 1976 Press Release of Betty Hemenway concerning illegal itemization of campaign receipts by Doug Barnard and others

7001101143

14 September 1976

AFFIDAVIT OF JOHN D. HEMENWAY

I, John D. Hemenway, legal resident of Eatonton, Georgia, and temporarily domiciled at 4816 Rodman St., NW, Washington, D.C., having been duly sworn according to law, hereby depose and say:

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1. On August 26, 1976, I called Nancy McJunkin of Augusta, Georgia, who is a Vice President of the Georgia Railroad Bank and Treasurer of the Doug Barnard for Congress Committee. I reached her by telephone at the Georgia Railroad Bank office where she works: Code (404) tel. no. 724-0811.
 2. I told Ms. McJunkin that I was calling at the suggestion of Mr. George Boyd, a Vice President of the Georgia Bank of which she also was a Vice President concerning Mr. Barnard's salary of record and concerning the loan made to Mr. Barnard or his campaign committee by the Georgia Railroad Bank.
 3. Ms. McJunkin said that Mr. Boyd had mentioned my call to her, but she referred me to Mr. Charles Presley for specific information and details on the matters I had raised with Mr. Boyd. She did volunteer that Mr. Barnard's salary is a matter of record and that Doug Barnard's primary income comes from the bank and approximates \$45,000.00 per year. Ms. McJunkin confirmed that Mr. Barnard was on an "active duty status here with the bank--he's not on leave of absence and he is Executive Vice President of the bank...." She said that Mr. Barnard's superior in the Bank is Mr. Charles Presley, Chairman of the Board. Ms. McJunkin acknowledged that Mr. Barnard had not been working a normal schedule during the five-month campaign period. Ms. McJunkin would not say that Barnard had not been performing any duties at all, but she specifically stated, "He hasn't been working eight hours a day" when she acknowledged that ^{not} his appearance at the bank during the campaign period had/been regular, but token.
 4. I suggested that if Mr. Barnard's duties were only nominal and yet he drew his regular pay for five months, in effect his salary was a kind of concealed contribution and should appear on the campaign report as a contribution. Ms. McJunkin hotly contested this point and stated flatly that this matter was discussed with officials of the FEC, both by her and by the Counselor of the bank. Ms. McJunkin recalled that she had been concerned about exactly this point and had called the FEC for an opinion. The FEC had advised her, she asserted, that the salary of Barnard did not have to be reported as a contribution to the campaign by the Georgia Railroad Bank. She stressed that she was a very conscientious person and she was very careful on this point, but when I requested the names of the FEC officials with whom Ms. McJunkin and the Counselor of the bank had had contact, Ms. McJunkin did not supply the names.

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5. When I pressed the point by mentioning that my wife, who was a candidate and political opponent of Mr. Barnard's in the race, decided to run, she was required to resign from her position on the staff of a Georgia Congressman--otherwise it would be tantamount to the Congress making a contribution to her campaign--Ms. McJunkin was not impressed. She suggested that "there's a difference between the government and private industry." She told me that there's just something in private industry that is built up by longevity, dedication and loyalty to the organization. She said that it is unfortunate that government does not have this compassion for their people such as private industry has for its employees. Ms. McJunkin felt that the Georgia Railroad Bank certainly has the loyalty of its employees and that those who have been around as long as Doug Barnard and she feel very comfortable that as long as they do their jobs, the bank would support them in each undertaking they might feel might be the best for the community and the organization. Ms. McJunkin said that she felt that the whole staff -- by and large -- have that same attitude. She believed and would say that only because Mr. Barnard is such a long-time employee would the bank ever entertain the idea of giving him the treatment that "Doug has justly received from this organization during the time that he has been campaigning." Ms. McJunkin continued, "It's just like if I were sick and I had to be out from my job for six months, the bank would pay me for that six months where it would not in all likelihood, pay for someone who'd been working here for only one year."

6. Ms. McJunkin continued, "Now, without being argumentative, how do you feel Mr. Barnard has been able to live and to feed the family and make his house payments and you know, his normal living expenditures, day-to-day expenditures while he has been campaigning?" She declared that such expenditures do not stop for a political campaign.

7. Ms. McJunkin stated that if his income from the bank had not gone to Mr. Barnard's campaign, it had gone to his day-to-day family living expenses, because those expenses go on regardless of whether Barnard runs for Congress or not. Ms. McJunkin told me that just because Mr. Barnard is a candidate for Congress did not mean that he did not have other obligations.

8. Ms. McJunkin opined that it just depends from which side Candidate Barnard's or his opponent's you are looking at it. She said, "I just have a lot of pride in being just as honest as I can be, but I wish you would put a little thought to...maybe you would realize that we sort of have some justification for it continuing Barnard's pay too. You know, he has a son ready to go to college and you know his interest rates and his house payments go on whether he is running for Congress or whether he is down here at the bank working 15 hours a day and I just feel that if you really analyze it that way you could feel a little bit differently about his family...I would almost venture to say that except for maybe some gas that he's put in his car or something like that, his salary has gone for his

ngoing living expenses, because he certainly can't live off of those campaign contributions."

9. When I showed some sympathy and agreed that it was not even proper to live off of campaign contributions, Ms. McJunkin said:


"That's exactly right, and you know you have to be independently wealthy, looks like, or you have to have an arrangement somewhat like Mr. Barnard has been fortunate enough to have in order to run for public office."

Ms. McJunkin concluded that she knew that there probably would be people who want to be critical of the fact that Mr. Barnard continues to draw his salary while campaigning, but that she just couldn't agree with me that the salary paid him should be considered, in fact, a campaign contribution.


10. I asked Ms. McJunkin about the footnote after certain names in the campaign report to the effect that some persons, often those whose husband/wife combination totalled \$2,000.00 exactly in contributions, would be eligible for a rebate of excess funds at the end of the campaign to be prorated. Ms. McJunkin confirmed this arrangement. She said that she had footnoted those names as the best way for the committee to indicate any "obligation to prorate this money if there was any". She could not tell me why some were selected and not others, yet she personally noted in the individual card file those individuals who would be so prorated, but she could not recall on what basis--I would have to talk to Mr. Overstreet for that information. She said, "Mr Overstreet was concerned with the raising of the funds--he had something to do with that and I don't believe that I have enough information to really intelligently discuss that with you."

11. In response to my direct question, Ms. McJunkin denied absolutely that Mr. Barnard had set up a quota system which required persons who had not raised their quota to take out loans to make up a total of \$2,000.00. I did not tell her that her denial was contrary to information I had obtained elsewhere.

Then the above-named John D. Hemenway personally appeared before me and stated UNDER OATH that the foregoing statements were his free act and deed.


John D. Hemenway

Sworn and subscribed before me this 14th day of September, 1976 in the City of Washington, District of Columbia


Notary Public
My Commission Expires April 30, 1979

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**Democrat
for
Congress**
Georgia 10th District

June 28, 1976

EXAMPLE:

Special Interest Group
leader in Augusta
Member of Barnard Committee
Augusta, Ga.

Address block —

different for each letter

Like anything else, this race cost money.
\$115,000 is what this one will cost.

You've said you would help in the area of a \$2,000 goal from each of the categories shown on the attached list. This is what is needed; it will get us through August 10th. The money is needed now! At our breakfast on the 11th we set out deadline as the 25th of June. Only about 1/3 of our goal was reached and I've not gotten a final report from your area.

Please finalize your efforts and let me hear from you. I appreciate your efforts and I must rely on you because my daily schedule keeps me going from 7 a.m. to 9 p.m. each day. If you will call me or Carlisle Overstreet at 722-7721, and give us a status report, I would appreciate it.

Best regards,

Doug

Doug Barnard

DB:bta

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BETTY HEMENWAY
FOR CONGRESS
10th District of Georgia

Betty Hemenway for Congress Committee
P.O. Box 267
Eatonton, Georgia 31024
(404) 485-8001
(404) 485-4651

"BEST QUALIFIED"

PRESS RELEASE

FOR IMMEDIATE RELEASE
August 6, 1976

"1976 Not the Year of the Georgia Railroad Bank and Special Interests"

Augusta, Ga. Aug. 6: Today, Betty Hemenway, the only woman candidate for Congress in the 10th District (there are six men), campaigning in Augusta, accused certain candidates of concealing massive campaign expenditures from the public by not itemizing receipts and by loaning money to themselves. Mrs. Hemenway deplored excessively high spending levels in the campaign and made public a letter signed by Doug Barnard on June 28, 1976 in which Barnard demanded that his finance committee raise the \$115,000 he feels he needs to win a seat in the U.S. Congress (copy of the text of the letter attached.)

Betty Hemenway accused Barnard and other candidates of attempting to buy a seat in the Congress. She said that two others, like Barnard had secured loans for their campaigns, presumably on the expectation of having this money restored later, if successful in obtaining federal office. The others were C.C. Moreland and Mike Padgett. Betty demanded in the name of even-handedness that the Georgia Railroad Bank offer to loan \$10,000.00 to each of the other candidates on the same favorable terms offered Mr. Barnard. So far, according to Betty, the Georgia RR Bank has made no reply. (Mr. Barnard is a Vice President in the Georgia RR Bank.)

Betty expressed the hope that the discerning voter in the 10th District would reject men attempting to "buy their way into Congress:"

"Thousands of dollars have been lavished by the male candidates in this campaign on 'say-nothing' advertising. If a man spends his own campaign funds so unwisely before he gets to Congress, can we really believe his pronouncements that he will reduce taxes and cut back on spending in Washington? "

Betty recalled a July 22 Athens, Ga., meeting at which a University of Georgia audience booed Barnard for evading a question about campaign financing, which already had become an issue in the campaign. Barnard finally admitted to the audience his expectation of spending a figure of "about" \$50,000 to \$60,000.00. In the letter made public today Mr. Barnard states that his real campaign expenditure goal is \$115,000.00. On July 22 in Athens, Betty had termed Barnard "less than candid." Mrs. Hemenway has promised the voters of the 10th District a full investigation of this campaign discrepancy and others.

Att: Barnard letter to

John D. Hemenway
4816 Rodman St., NW
Washington, D.C. 20016



General Counsel
Federal Election Commission
1325 K St., NW
Washington, D.C. 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 3, 1977

Samuel C. Waller Esquire
Nixon, Yow, Waller and Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218(76)

Dear Mr. Waller:

This will confirm our telephone conversation of Friday July 29, in which I requested, on behalf of the Commission, further information in connection with this matter.

Specifically, we are asking for the bank's loan guidelines, if any exist, which would be used by a loan officer, or any bank official authorized to grant loans. Further, we are asking for information relating to the extension of loans similar in nature to that which is in controversy. Supporting documentation for either of these requests would be helpful.

I appreciate your cooperation in this matter.

Sincerely yours,

David Stein

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6C MUR218

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered..... 15¢
 Show to whom, date, & address of delivery.. 35¢
 RESTRICTED DELIVERY.
 Show to whom and date delivered..... 65¢
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
Samuel C. Waller

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | 943751 | |

(Always obtain signature of addressee or agent)

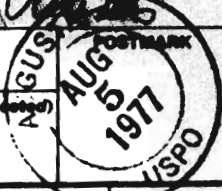
I have received the article described above.
 SIGNATURE Addressee Authorized agent
By Mary Mc...

4. DATE OF DELIVERY
8-5-77

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS



August 3, 1977

MEMORANDUM TO: Marjorie Emonds
FROM: Ellice T. Carr
SUBJECT: MUR 218 (76)

Please have the attached Interim Investigative Report on
MUR 218 (76) distributed to the Commission and placed on the
Compliance Agenda for the Commission meeting of August 19, 1977.

Thank you.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 218(76)

Druie Douglas Barnard, Jr.

INTERIM INVESTIGATIVE REPORT

I. Background

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This matter was generated by a complaint received by the Commission on August 11, 1976, from the husband of one of Mr. Barnard's primary opponents alleging that a \$10,000 loan from the Georgia Railroad Bank and Trust Company to the respondent's principal campaign committee constituted an illegal corporate contribution, in violation of 2 U.S.C. §§431(c)(5)(g) and 441(b).

The Commission, on October 7, 1976, found reason to believe that a violation of 441(b) had been committed by Mr. Barnard for receiving an illegal corporate contribution; by the Georgia Railroad Bank and Trust Company, for making the contribution; by Mr. Charles B. Presley, Chairman of the Board of the Bank, for authorizing the loan in question.

II. Facts

On May 14, 1976, the Georgia Railroad Bank and Trust Company granted a loan of \$10,000 to the Barnard for Congress Committee for primary campaign advertising expenses. The transaction was negotiated and executed by Hugh Connolly,

Finance Chairman of the Committee, on behalf of the Committee, and Charles Presley, on behalf of the bank. The loan was to be repaid within six months, at an interest rate of 7.6%, and was executed without any security or collateral. In the absence of guarantors or endorsers, only the committee itself had any legal obligation to repay the loan.

Douglas Barnard was employed by the bank as an Executive Vice President at the time of the execution of the loan, and held that position during the primary campaign.

III. Legal Issues

2 U.S.C. §431(e)(5)(g) provides that loans made by a national or state bank, in accordance with applicable banking laws and regulations, and in the ordinary course of business are not considered contributions. The issue here is whether the loan meets the two pronged test set out in the Act.

More specifically, we have attempted to ascertain whether this transaction violates a regulation promulgated by the Board of Governors of the Federal Reserve System, at 12 C.F.R. Part 215. This regulation forbids member banks from extending credit to its executive officers. Because the loan was not made to Mr. Barnard, who at the time of the transaction was an executive officer, but was extended to his committee, it is not clear as to whether the

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regulation was violated.

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Similarly, it is not clear as to whether the loan was made in the ordinary course of business. In applying this broad test, we have utilized criteria supplied to us by the Comptroller of the Currency: Did the bank exercise sound business judgment; was there a reasonable expectation of repayment underlying the extension of credit? These questions are answered by examining the transaction and the circumstances surrounding the transaction: Time of repayment; interest rate; collateral; guarantors; was the loan obtained through normal bank channels; were the sources of repayment adequate so as to justify the credit judgment; has the bank extended similar loans under similar circumstances to non-political borrowers; did the bank follow its own loan guidelines in granting the loan?

IV. The Investigation

We have requested, and received from the respondents, all documentation relative to the loan transaction. This includes the note; the loan data sheet; various memoranda and worksheets regarding the loan. Further, affidavits were obtained from the individuals who took part in the negotiation and execution of the loan - Charles Presley, Doug Barnard, Nancy McJunkin (treasurer of the Committee). Counsel for the respondents has supplied us with other information we have requested regarding this matter. Also,

we have been in contact with the Comptroller of the Currency and the Federal Reserve Board for guidance in answering the difficult questions raised in this case.

Prior to presenting our recommendation to the Commission, we have made one final request for further information from the respondents. Specifically, counsel has been asked to forward additional data with respect to the bank's formal loan guidelines, and documentation relative to the extension of credit of similar interest rate, amount, time of repayment, and lack of security to political borrowers.

We expect to receive this information soon and will issue a General Counsel's Report detailing our analysis of this case upon its receipt.

8/2/77
Date

W. J. Hall
General Counsel

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FEDERAL ELECTION COMMISSION

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

June 21, 1977

*Drawn by
JC
6-30-77*

MEMORANDUM TO: William C. Oldaker
FROM: Marjorie W. Emmons
SUBJECT: MUR 218 (76)

MWE

This is to advise you that the subject MUR, transmitted to my office on June 21, 1977 for inclusion in the materials for the Executive Session of June 22, 1977, has been placed on the Executive Session Agenda for June 29, 1977.

The material was not timely transmitted and did not meet the deadline for inclusion on the Agenda of June 22, 1977.

MWE:jet

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EXECUTIVE SESSION

JUN 29 1977

*W/ drawn by H.C.
6-30-77*



FEDERAL ELECTION COMMISSION

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

June 21, 1977

MEMORANDUM TO: Marjorie Emmons
FROM: William Oldaker
SUBJECT: Agenda Item - MUR 218 (76)

Please have the General Counsel's Report and draft letter on MUR 218 (76) distributed to the Commission and place it on the Commission Agenda for Wednesday, June 22, 1977.

JUN 29 1977

Thank you.

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June 21, 1977

MEMORANDUM TO: William C. Oldaker
FROM: Marjorie W. Emmons
SUBJECT: MUR 218(76)

MWE

This is to advise you that the subject MUR, transmitted to my office on June 21, 1977 for inclusion in the materials for the Executive Session of June 22, 1977, has been placed on the Executive Session Agenda for June 29, 1977.

The material was not timely transmitted and did not meet the deadline for inclusion on the Agenda of June 22, 1977.

MWE:jet

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FEDERAL ELECTION COMMISSION

1275 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esquire
Nixon, Yow, Waller, and Copers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218 (76)

Dear Mr. Waller:

This letter is to inform you that the Federal Election Commission, has determined that there is reasonable cause to believe that Mr. Barnard, the Doug Barnard for Congress Committee, and the Georgia Railroad Bank and Trust Company have committed violations of 2 U.S.C. §441(b), in connection with the \$10,000 loan obtained from the bank by the committee.

Please be advised that pursuant to 2 U.S.C. §437g(a) (5)(A), the Commission shall make every endeavor for a period of not less than 30 days to correct or prevent this violation by informal methods of conference, conciliation, and persuasion, and, to enter into a conciliation agreement. If the parties are unable to effect a conciliation agreement during this period, the Commission may, upon a finding of probable cause to believe that a violation has been committed, institute a civil action for relief in the appropriate United States District Court. 2 U.S.C. §437g(a) (5) (B).

Please contact David Stein, (202)523-4175, at your earliest convenience so we may begin the conciliation process.

Sincerely yours,

William C. Oldaker
General Counsel

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CO# 1287

RECEIVED
FEDERAL ELECTION
COMMISSION
JOSEPH E. CUMMING
OF COUNSEL

HENRY P. EVE
(1817-1888)
TELEPHONE
(404) 722-7541

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LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

January 21, 1977

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER

770233

David Stein, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

RE: MUR 218 (76)

Dear Mr. Stein:

In response to Mr. Oldaker's letter to me of December 22nd and which you and I discussed on the telephone on December 28th and January 13th, I wish to supply additional information concerning the above matter pending before the Federal Election Commission.

1. Necessity for loan. Mr. Barnard announced his candidacy for the Democratic nomination for the Office of Representative in February 1976. A campaign committee was formed, and thereafter a campaign chairman, a treasurer and a finance chairman were appointed. Campaign contributions were not coming in very rapidly and when May arrived it became clear to the Committee that there would be insufficient funds with which to enter into contracts for television, radio and newspaper advertising for the Primary Election to be held on August 10th. Because of the numerous candidates running for various offices, contracts for media time and space had to be made well in advance and the required charges paid therefor. It was therefore necessary that funds be made available at that time. It was determined by the Committee that \$10,000 would have to be borrowed for this purpose.

2. Negotiations for loan. Mr. D. Hugh Connolly, the Finance Chairman, and others applied to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company for a loan to be made to the Committee in the amount of \$10,000. No formal application was submitted,

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David Stein, Esq.
Page - 2 -
January 21, 1977

nor is one required or generally submitted for a loan in that amount. The request was made directly to Mr. Presley, rather than one of the lending officers, because of Mr. Barnard's connection with the Bank.

Mr. Connolly explained to Mr. Presley the need for the funds at that time, stating that various persons were actively soliciting contributions in the 10th Congressional District of Georgia and that funds would be available to pay the loan over a period of time. He further represented that he and other members of the Committee would be responsible for seeing that the debt would be paid. Although Mr. Connolly and others would have been willing to endorse the note personally, such action on their part would probably have resulted in their violating the Federal Election Campaign Act, in view of the attribution to them of a part of the loan as a contribution. However, the loan data sheet prepared in connection with the loan which shows the loan to be unsecured, also shows Mr. Connolly's net worth thereon, as evidence that the Bank intended that Mr. Connolly would see to it that the loan was paid.

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3. The loan transaction. Each Bank officer is authorized to make loans up to a certain amount without prior approval of the Finance Committee. Mr. Presley, as Chairman of the Board, of the Bank has authority by resolution of the Finance Committee to make loans to customers in amounts far in excess of the amount loaned to the Committee.

The loan was approved by Mr. Presley and the note was executed by Mr. Connolly as Finance Chairman for the Committee. The details in connection with making this loan were handled by Mr. George H. Boyd, an Assistant Vice President of the Bank.

A copy of the loan data sheet referred to above, prepared by Mr. Boyd, marked Exhibit A is attached hereto. Mr. Connolly's "net worth" figure is blocked out, which figure was substantial but is confidential information.

Mr. Barnard did not participate in the negotiations. nor did he know that said loan was made until after the transaction was completed. He did not "knowingly accept or receive" the loan nor did he have knowledge of the procedure which was followed in obtaining the loan.

David Stein, Esq.
Page - 3 -
January 21, 1977

4. Review of loan. Thereafter pursuant to Bank procedures the details of the loan were summarized on a sheet which is a computer print-out prepared daily. A copy of one of the report sheets dated May 18, 1975, on which the details of the said loan appear, (with information as to other loans thereon blocked out) is attached hereto, marked Exhibit "B". These daily reports are presented to the Finance Committee of the Bank's Board of Directors, which procedure was followed in this case. The Finance Committee meets two days each week and reviews all loan summaries shown on the report sheets, which is evidenced by each member present signing a paper captioned "Resume" a copy of which is attached hereto, marked Exhibit "C", on which all loans described on the attached sheets are referred to by number.

All loans appearing on the report sheets have presumably been previously approved, either by delegation of loan authority to the bank officer making the loan, or by Finance Committee approval, in the case of larger loans. The "Resume" however provides the Finance Committee with a complete report of loan activity within a given period of time so as to determine whether all loans have been made in accordance with Bank policy and pursuant to authority theretofore given.

The above sets forth a brief history of the loan and the pertinent facts in connection therewith, which facts are supplemented by the affidavits and information heretofore submitted to you. Although the loan is properly classified as an "unsecured" loan, I call your attention to the fact that the borrower by virtue of the execution of the note and the depositor's contract (which is obtained from each depositor) conveys to the Bank "a security interest in all property of the Borrower left with the Bank which now is in or may hereafter come into possession of the Bank, and in any and all balances, credits, deposits and accounts of the Borrower with the Bank ...". This language provides the Bank with a security interest in the Borrower's bank deposit or deposits. Therefore, at any time the loan is in default or the Bank deems itself insecure, to the extent there are any funds on deposit with the Bank the Bank may set off such funds against the amount due by the Borrower to the Bank.

As I understand it the sole question before the Commission, is whether or not under Section 441(b) (2) of the Act the loan made to the Barnard for Congress Committee was a loan "made in accordance with the applicable banking laws and regulations and in the ordinary course of business".

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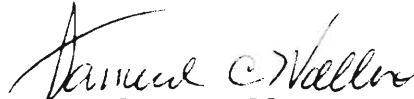
David Stein, Esq.
Page -4-
January 21, 1977

It is our contention that the loan was made in accordance with the applicable banking laws and regulations of the Department of Banking and Finance of the State of Georgia. In any event, there is no evidence to the contrary. It is also our contention that the loan was made in the ordinary course of business, and we believe that the evidence which we have submitted fully sustains that position.

After you have reviewed the above, I would be greatly indebted to you if I could appear before the Chief Counsel, together with Mr. Presley and Mr. Connolly, to allow you the opportunity of discussing the matter further with us, and perhaps assisting you in the determination of the question to be resolved. We would be pleased to come to Washington for such purpose at anytime convenient to the Chief Counsel, provided we be given approximately two days notice thereof.

I look forward to hearing from you concerning the above.

Very sincerely yours,


Samuel C. Waller

SCW/phh

cc: Honorable D. D. Barnard, Jr.
Mr. Charles B. Presley

79040105515

OFFICES OF
YOW, WALLER & CAPERS
GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902



7901019351

David Stein, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

COPIED
9/24/73

LOAN DATA SHEET

APPLICANT: Barnard Congr - D. Hugh Connolly

DATE OF NOTE 5/14/76

MATURITY DATE 11/10/76

COMMITTEE APPROVED OFFICER APPROVED

AMOUNT: \$ 10,000.00

RATE: 7 1/2%

NEW

RENEWAL

AMOUNT OF REDUCTION THIS RENEWAL \$ _____

Applied to DFC
STATEMENT DATE: 1-1-76

BLOCKED OUT
NET WORTH: _____

TOTAL DEBT INCLUDING THIS NOTE \$ 10,000

UNSECURED COLLATERAL

VALUE

BASIS OF VALUE

OK
OK

ENDORSERS OR GUARANTORS: Unlimited Limited

STATEMENT DATE

NET WORTH

PURPOSE OF LOAN:

Campaign - B. D. Barnard Jr. Congress

in print-out

SOURCE OF REPAYMENT:

Contributions

PLAN OF REPAYMENT:

at maturity

REMARKS: (pertinent credit information)

POSITIVE DATA:

cc
B. D. Barnard Jr.
By: [Signature]
LENDING OFFICES

10,000.00

Augusta, Georgia, May 14, 1976

FOR VALUE RECEIVED, THE UNDERSIGNED, hereinafter called "Borrower" PROMISES TO PAY TO THE ORDER OF GEORGIA RAILROAD BANK & TRUST COMPANY hereinafter called "the Bank" the principal sum of

Ten thousand and no/100

DOLLARS.

Hereinafter shown in the "Statement of Transaction" set forth immediately preceding the attestation clause as "Amount Financed" at any banking house of the Bank, Augusta, Georgia, or at such other place as the Bank may designate and notify Borrower thereof, together with the FINANCE CHARGE (hereinafter shown in the said "Statement of Transaction"), payable in accordance with the method checked below

180 days after date. (11/10/76)

in consecutive (monthly) payments, each in the amount of \$... the first payment to be due... and the remaining payments to be due on the same day of each consecutive... month(s) thereafter with the final payment being the unpaid balance, except for: (BALLOON) (irregular) payment(s) of \$... due on... and

in consecutive (monthly) payments, each in the amount of \$... plus interest on the outstanding indebtedness at the rate of...% per annum, the first payment to be due... and the remaining payments to be due on the same day of each consecutive... month(s) thereafter with the final payment being the unpaid balance, except for: (BALLOON) (irregular) payment(s) of \$... due on... and

Other: _____

The finance charge applies from date of note

and all costs of collection, including 15% attorney's fees if collected by law or through an attorney at law. If this Note is not paid at maturity, whether said maturity shall be according to its terms or by the acceleration thereof under the powers hereinafter set forth, the unpaid balance of the indebtedness (hereinafter shown in the said "Statement of Transaction" as "Amount Financed") shall bear interest from date of such maturity at the rate of 8% per annum until paid. Whenever any payment is not paid when due, the Borrower will pay (at the option of the Bank in lieu of additional interest on such delinquent payment) a late charge of 5¢ for each dollar of the payment in default (not to exceed \$5.00) and the Bank may, at its option, declare the Note to be immediately due and payable. Borrower waives demand, presentment, notice of dishonor and protest. Should this Note be paid in full before maturity a partial refund of the FINANCE CHARGE (hereinafter shown in the said "Statement of Transaction") will be made, computed by the proportion which the total of remaining unpaid balances bears to the original total of all unpaid balances, known as the "Sum of the Digits" refund method, or if checked here based on the actuarial method of computation, as such term is used by the Bank in its normal banking procedures, after first deducting a maximum of \$15 acquisition cost from the FINANCE CHARGE. A Balloon Payment, which shall be a payment that is more than twice the amount of any otherwise regularly scheduled equal payment, may be refinanced only upon such terms and conditions as the then parties to this Note may agree as of its due date.

To secure the payment of the indebtedness evidenced by this Note, any extensions or renewals hereof, and any and all liabilities, direct or indirect, absolute or contingent, now existing or hereafter arising, of the Borrower to the Bank and all expenses and costs incident to the collection of said indebtedness and the enforcement and protection of the security interest created hereby (all hereafter called "Obligations") the Borrower hereby pledges, assigns, conveys, transfers and deposits the following property as collateral, with the intent of granting to the Bank a security interest therein and security title thereto:

including all interest thereon, dividends and distributions on or other rights which may arise in connection with any property hereinabove referred to, all of which is hereafter called "Collateral". Borrower hereby warrants that sole and lawful ownership in fee simple of Collateral is in the Borrower with full power and authority to transfer, convey and encumber.

As additional Collateral, Borrower further grants to the Bank a security interest in all property of the Borrower left with the Bank or which now is in, or may hereafter come into, possession of the Bank, and in any and all balances, credits, deposits and accounts of the Borrower with the Bank, whether any of them be general, special, individual, joint or held as a tenant in common, and in any and all drafts, checks or other items deposited with the Bank by the Borrower for collection, with full authority to charge at any time without notice or demand any and all credits due Borrower represented by or resulting from any of the above against any obligation secured hereby, whether matured or not.

If more than one person shall execute this Note, the term "Borrower" as used herein shall mean all persons signing this Note and each of them, who shall be jointly and severally obligated hereunder. The term "the Bank" as used herein shall include the payee or other endorsee or transferee of this Note, or any other holder in due course who is in possession of it, or the bearer hereof, if this Note is of the time payable to the bearer.

INSURANCE

PROPERTY INSURANCE, if written in connection with this loan, may be obtained by Borrower through any person of his choice, subject only to the Bank's right to refuse any insurer offered by the Borrower, for reasonable cause. Such insurance cannot be obtained from or through the Bank.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the Borrower signs the appropriate statement below:

(a) The cost for Credit Life and Disability Insurance will be \$... for the term of the credit.

(b) The cost for Credit Life Insurance alone will be \$... for the term of the credit.

- I desire Credit Life Insurance only.
 I desire Credit Life and Disability Insurance.
 I DO NOT desire Credit Life or Disability Insurance.

(Date) (Signature)

STATEMENT OF TRANSACTION

Table with 2 columns: Description and Amount. Rows include: 1. Amount of Loan \$10,000.00; 2. Other Charges included in the Amount of Credit Extended: Credit Life Insurance \$--, Disability Insurance \$--, Property Insurance \$--, \$--; 3. AMOUNT FINANCED (1 and 2) \$10,000.00; 4. FINANCE CHARGE \$375.00; 5. ANNUAL PERCENTAGE RATE 7.60%; 6. TOTAL OF PAYMENTS (3 and 4) \$10,375.00

THIS PROMISSORY NOTE IS SUBJECT TO THE ADDITIONAL PROVISIONS SET FORTH IN PRINT ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE

IN WITNESS WHEREOF, the Borrower has executed this Agreement and hereby acknowledges receipt of a completed copy hereof.

c/o Sherman and Hemstreet 722-8334
Home Address Home Phone
739 Broad Street
(Give Location If P. O. Box or Route No.)
Augusta, Georgia

Signatures (Sign name in Ink. Do Not Print)
Doug Barnard for Congress
By: D. Hugh Connolly (L.S.)
D. Hugh Connolly



FEDERAL ELECTION COMMISSION

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

December 22, 1976

Samuel C. Waller, Esq.
Nixon, Yow, Waller and Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218 (76)

Dear Mr. Waller:

This is in reference to your letter dated November 4, 1976 in which you propose a settlement of this matter. I wish to advise you that the Commission will be unwilling to enter into conciliation until the pending investigation is complete.

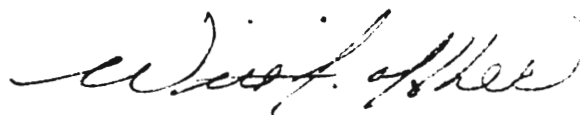
Accordingly, please submit within fifteen days any further material you wish the Commission to consider. In addition, please forward, within fifteen days, your response to the following:

1. Who, on behalf of the committee, made application, or participated in any negotiations, for the granting of this loan?
2. Provide any notes, memoranda, or correspondence prepared, or utilized by bank officers or board members relative to this loan. Include the loan application (if no application was made, please so state) or any written information filed with the bank in anticipation of the loan.
3. Provide the minutes of any bank meetings or conferences at which the granting of this loan was discussed.
4. Set forth any material relevant to the granting of other such unsecured loans by the bank.



Once again, please be advised that this matter will remain confidential, pursuant to 2 U.S.C. 437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact the attorney now handling this case, David Stein, at 202/382-6646.

Sincerely yours,



William C. Oldaker
Assistant General Counsel

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ACC 2062

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30601

RECEIVED
FEDERAL ELECTION
COMMISSION

JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1988)
TELEPHONE
(404) 722-7541

November 14, 1977

NOV 18 AM 9:26

203387

Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20643

RE: MUR 218 (76)

Dear Sirs:

This will acknowledge receipt of the letter of the Commission to me signed by its General Counsel, William C. Oldaker, dated October 26, 1977, in connection with the above matter. Since that date I have been in communication with Mr. David Stein, by telephone, concerning the obligation of the Commission to attempt to effect a conciliation agreement with respect to the charges against Georgia Railroad Bank & Trust Company. Presumably the 30 day period for conciliation purposes began running on October 26, 1977 although the statute is not clear in this regard.

On November 3, 1977 Mr. Stein advised me that he was sending by mail a copy of a proposed conciliation agreement which had been used in another similar matter. This is to advise the Commission that I have not yet received a copy of such an agreement. The primary purpose of this letter, however, is to advise the Commission that the Bank is prepared to confer with the Commission or its representatives by telephone or otherwise at any time for the purpose of attempting to "conciliate" the matter.

Very sincerely yours,

Samuel C. Waller
Samuel C. Waller

SCW/hbr

cc: Mr. Charles B. Presley, Chairman of the Board
Georgia Railroad Bank & Trust Company

Honorable D. Douglas Barnard, Jr.
U. S. House of Representatives

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

11 11 63
Federal Election Commission

1325 K Street, N. W.

Washington, D. C. ~~20543~~

20563

CC # 956

RECEIVED
FEDERAL ELECTION
COMMISSION
LAW OFFICES OF

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S.C.)
REGNOLD MAXWELL, JR.
WM. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S.C.)
JOSEPH H. FOWLER

NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

JOSEPH B. CUMMING
OF COUNSEL
HENRY P. EVE
(1917-1999)
TELEPHONE
(404) 722-7541

November 4, 1976

763446

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

Re: MUR 218 (76)

Gentlemen:

I reply to your letter to me dated October 8, 1976 in connection with the above matter, concerning Mr. Druie Douglas Barnard, Jr., as well as to that addressed to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company, dated October 8, 1976 in connection with the same matter. The two letters address themselves to complaints arising out of the same set of facts and state that the Commission had reason to believe (1) that Mr. Barnard was in violation of the Federal Election Campaign Act of 1971 as amended, (2 U.S.C. §441b(a)) on the ground that he had received an illegal corporate contribution, and (2) that Mr. Presley and Georgia Railroad Bank & Trust Company were in violation of said Act (2 U.S.C. §441b and §441b(a)) on the ground that the said Bank made a prohibited corporate contribution and that Mr. Presley, as an officer of the said Bank, authorized it.

The Commission's finding relates to the borrowing on the part of the Doug Barnard for Congress Committee of the sum of \$10,000 from Georgia Railroad Bank & Trust Company evidenced by a certain promissory note dated May 14, 1976, payable in 180 days, together with interest thereon at the rate of 7.60% per annum, without any security therefor.

The Commission found that since the note was unsecured it had reason to believe that it was not made in the ordinary course of business causing the transaction to be construed to be a possible illegal corporate contribution to the Barnard Committee.

Although the transaction appears to be one in which there was no security given for the payment of the note except the assets which the Committee may have had from time to time, it would be necessary for the Commission to know the

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November 4, 1976

candidate himself, as well as the persons who were identified with the Barnard Committee, to understand why the Bank determined that in making the loan no risk was involved. The Chairman, Mr. D. Hugh Connolly, is one of Augusta's outstanding citizens and the President of a local real estate firm.

Admittedly the Bank could have foreseen that the assets in the hands of the Committee might have been insufficient to pay the note when it matured, and in such event the only legal recourse on the part of the Bank to collect the balance due would have proved fruitless. However, the members of the Committee orally committed themselves to be responsible for raising the necessary funds for the purpose of seeing that the loan was paid in full. The Committee members were willing to endorse the said note, but in so doing they would probably have been violating the Act, inasmuch as the gift of each of the members would thereby in most cases have exceeded the \$1,000 maximum allowable contribution.

In addition to the explanation given, it should be stated that Mr. Barnard attempted to conform scrupulously to the provisions of the Federal Election Campaign Act and to the proposed regulations, as he understood them. The same statement is true as far as Mr. Presley is concerned. There was no knowledge on the part of either that by entering into this financial arrangement a possible violation of the Federal Election Campaign Act would result.

Although Mr. Barnard and Mr. Presley are confident that their position would be upheld in a full evidentiary hearing before the Commission, they have determined that it would not be wise to enter into prolonged hearings or discussions if the problem can be resolved by compromise. Therefore, the Doug Barnard for Congress Committee has agreed to pay in full the loan from Georgia Railroad Bank & Trust Company with funds which the Committee already has in hand and with funds which it proposes to borrow from another bank in the City of Augusta with which Mr. Barnard has no connection. The new loan will be adequately secured pursuant to the requirements of the lending bank which security will consist of the personal endorsement of Mr. Barnard and the pledging by him of whatever additional collateral may be required by the lending bank.

Federal Election Commission

November 4, 1976

Mr. Barnard and Mr. Presley do not wish this action to be misconstrued as an admission of wrongdoing and therefore we are submitting this proposal to the Commission as one made in compromise with the understanding that if the transaction is carried out as proposed, the complaints against Mr. Barnard, Mr. Presley and Georgia Railroad Bank & Trust Company will be handled without any finding of wrongdoing. In the event that the Commission accepts this proposal, we will submit evidence to substantiate the fact that the now existing loan has been paid in full as indicated above. On the other hand, if this proposal is not accepted by the Commission, we request permission to submit additional evidence to substantiate respondents' contention that the transaction was not in violation of the Federal Election Campaign Act.

Very sincerely yours,


Samuel C. Waller

SCW/je

cc: Honorable D. D. Barnard, Jr.
cc: Mr. Charles B. Presley

AA OFF 17 11
NIXON, YOW, WALLER & CAPERS

501 FEDERAL RESERVE BANK BUILDING

AUGUSTA, GEORGIA 30902



15

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

CC #738
MUE 218

RECEIVED
FEDERAL ELECTION
COMMISSION

LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902 18 P 1:20

JOSEPH B. CUMMING
OF COUNSEL

HENRY P. EVE
(1917-1969)

TELEPHONE
(404) 722-7541

GWINN M. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S. C.)
REGNOLD MAXWELL, JR.
Wm. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR. (ALSO MISS.)
JOHN B. LONG
ROY D. TRITT
RICHARD E. MILEY (ALSO S. C.)

October 15, 1976

Ms. Gloria R. Sulton
Staff Attorney
Federal Election Commission
1325 K Street, N.W.
Washington, D. C., 20463

Re: MUR 218 (76)

Dear Ms. Sulton:

I acknowledge receipt of the letter addressed to me by Mr. John G. Murphy, Jr., General Counsel of the Federal Election Commission, dated October 8, 1976 in connection with the above matter. I have also been furnished a copy of Mr. Murphy's letter to Mr. Charles B. Presley, Chairman of the Board of Georgia Railroad Bank & Trust Company, dated October 8, 1976 in connection with the same matter.

I wish to advise you that on behalf of Mr. Barnard and Mr. Presley we intend to submit further evidence to refute the finding of the Commission that it has reason to believe that Mr. Barnard and Mr. Presley were in violation of the Federal Election Campaign Act of 1971.

Although no deadline was set in the letter as to when such evidence should be submitted, it is expected that our reply will be mailed to you next week.

Very sincerely yours,

Samuel C. Waller
Samuel C. Waller

SCW/je

cc: Honorable D. D. Barnard, Jr.
Mr. Charles B. Presley

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LAW OFFICES OF

NIXON, YOW, WALLER & CAPERS

1500 GEORGIA RAILROAD BANK BUILDING

AUGUSTA, GEORGIA 30902

SEP 12 10:47

Ms. Gloria R. Sulton
Staff Attorney
Federal Election Commission
1325 K Street, N.W.
Washington, D. C., 20463



FEDERAL ELECTION COMMISSION

1275 K STREET, N.W.
WASHINGTON, D.C. 20563

18 OCT 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218 (76)

Dear Mr. Waller:

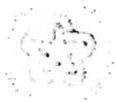
This letter is sent to you in your capacity as counsel to Mr. Druie Douglas Barnard, Jr., respondent in the above-captioned matter.

Based upon the allegations set forth in the complaint your response thereto, the Commission has found reason to believe that Mr. Barnard is in violation of the Federal Election Campaign Act of 1971, as amended (the Act). Specifically, the Commission's finding is that the loan of \$10,000 by the Georgia Railroad Bank & Trust Co. to the Doug Barnard for Congress Committee, being unsecured, may not have been made in the ordinary course of business and would therefore be in violation of 2 U.S.C. §441b(a) as an illegal corporate contribution whose receipt by Mr. Barnard is prohibited.

Under the Act you have an opportunity to respond and may submit any material of either a factual or legal nature which you believe is relevant to the matter under investigation. Where appropriate, statements should be submitted under oath by individuals with personal knowledge of the matters herein.

We also wish to advise you that a letter in this same regard has been sent to Mr. Presley, in his capacity as Chairman of the Board of the Georgia Railroad Bank & Trust Co.

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8 OCT 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles S. Presley
Chairman of the Board
Georgia Railroad Bank & Trust Co.
699 Broad Street
Augusta, Georgia 30902

Re: MUR 218 (76)

Dear Mr. Presley:

This letter is in reference to a complaint filed against Drue Douglas Barnard, regarding which you submitted an affidavit to the Commission dated September 16, 1976. The Commission has found reason to believe a violation of 2 U.S.C. §441b has occurred in connection with the \$10,000 loan from your bank to the Doug Barnard for Congress Committee. Further, your consent to the making of the loan gives reason to believe that you have violated the provisions of 2 U.S.C. §441b(a) as an officer of the bank.

2 U.S.C. §431(e)(5)(G) provides that loans made in the ordinary course of business by national or State banks are not contributions. However, loans not made in the ordinary course of business are corporate contributions prohibited under 2 U.S.C. §441b. In view of the fact that this loan was made to the candidate's committee without any endorsement by the candidate, committee officers or other persons, the Commission has found reason to believe that the loan was not made in the ordinary course of business.

You have an opportunity to respond before the Commission takes any further action and you may submit any factual or legal materials which you deem relevant to the matter herein. Where appropriate, statements should be submitted under oath by individuals with personal knowledge of the matters herein. In particular, I would appreciate it if

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you would submit all documentary material relevant to the loan, and any other material relevant to other such unsecured loans made by your bank.

This matter will remain confidential in accordance with the provisions of 2 U.S.C. §437g(a) (3) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Gloria M. Sulton (telephone no. 202/382-4041), the attorney assigned to this case.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

79040105533

GSulton:mpc:10/1/76

cc: GS
CHRON
MUR 218 File

PS Form 3811, Nov. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FC

① SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
 Show to whom and date delivered..... 15¢
 Show to whom, date, & address of delivery.. 35¢
 RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
 RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
Mr. Charles Presley

3. ARTICLE DESCRIPTION:
REGISTERED NO. CERTIFIED NO. INSURED NO.
938215

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: [Signature]

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: []

POSTMARK: A 10-12 1976

RECEIVED

★ 49-100-0-100-000


BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Druie Douglas Barnard, Jr.)

MUR 218 (76)

CERTIFICATION

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I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on October 7, 1976, the Commission determined by a vote of 4-1 that there was reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, had been committed with respect to allegation #3 and no reason to believe that a violation of the Act had occurred with respect to allegations #1 and #2 of the General Counsel's report dated October 1, 1976 in the above-captioned matter. Voting to make this finding were Commissioners Harris, Springer, Staebler, and Thomson. Voting against this finding was Commissioner Aikens. Commissioner Tiernan was not present.


Marjorie W. Emmons
Secretary to the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 218 (76)
Druie Douglas Barnard, Jr.)

GENERAL COUNSEL'S REPORT

I. Allegations

In a complaint filed with the Federal Election Commission on August 9, 1976, John D. Henenway, husband of Betty Hemenway, opponent of respondent in the primary, alleged that:

1. Respondent required members of his finance committee to obligate themselves to raise a specific amount of campaign funds on condition that they sign notes for any amounts below the specified sum; that those so obligated did sign notes and the receipt of these funds have been inaccurately reported on the pre-election report of July 29, 1976.

2. Respondent's employer, Georgia Railroad Bank and Trust Company, has made in-kind contributions to him by paying his full salary during his campaign allowing the use of office space, and paying a bank employee who serves as treasurer of his committee while she carries out her campaign duties.

3. That a \$10,000 loan from the Georgia Railroad Bank and Trust Company, unsecured, is in violation of campaign laws.

II. Evidence

1. Complainant offers no evidence, other than his sworn statement, to substantiate these claims. Respondent admits that a \$2,000 goal was suggested for each volunteer but denies any coercion or requirement that each volunteer personally borrow to make up any deficit.

The pre-primary report filed July 29, 1976 lists a number of contributors with the notation that each may be entitled to a pro-rata refund if funds are available.

2. Complainant submitted a second affidavit (see attached) purportedly containing the essence of a conversation with respondent's treasurer, Nancy McJunkin. This affidavit as well as the original complaint allege that full salary was paid to both respondent and Ms. McJunkin while they worked on the campaign. No specific instances of use of facilities are cited except to the extent that Ms. McJunkin used her office for

campaign activities.

Respondent replied by stating that he is Executive Vice-President of the Bank and as such is not required to work any specific number of hours so long as he fulfills his responsibilities; that he was not relieved of his duties during the campaign and was paid "accordingly." He further states that all campaign activities were conducted from his campaign headquarters.

With respect to Ms. McJunkin, respondent submitted an affidavit from her in which she states she performed her duties as treasurer during lunch, after bank hours and on weekends.

An affidavit from Charles B. Presley, chairman of the Board of the bank, states that neither Mr. Barnard nor Ms. McJunkin were relieved of their official duties and have continued to fulfill them throughout the campaign.

3. The July 10, 1976 quarterly report filed by the Doug Barnard for Congress Committee lists a \$10,000 loan on May 14, 1976 from the Georgia Railroad Bank and Trust Company Mr. Presley states in his affidavits that the loan was made by him to the Doug Barnard for Congress committee without guarantors. He states that

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"[k]nowing Mr. Barnard I knew that he felt morally obligated to pay the note even though he was not legally obligated to."

III. Analysis and Recommendation

1. The information submitted does not appear to state a violation of the Federal Election Laws. There do not appear to be any reporting violations with respect to the conditional loans listed in the pre-primary report. It is recommended that this allegation be dismissed.

2. "Anything of value" provided by a corporation in connection with a Federal election would constitute a contribution or expenditure within the meaning of 2 U.S.C. §441b(b)(2). The difficulty of proving corporate in-kind contributions in the form of salary, office space and personnel is enhanced by the fact that we are dealing with corporate officers who generally have variable office hours and duties. Complainant has offered no more than a bare allegation and the three officers of the bank have denied same. The Chairman of the Board states that Mr. Barnard and Ms. McJunkin have fulfilled their duties, obligations and responsibilities. It is recommended that this

allegation be dismissed.


3. The \$10,000 loan to the committee is an unsecured loan at 7.6% interest payable 180 days from date of note. 2 U.S.C. §441b(b)(2) provides that a contribution or expenditure does not include a loan of money by a national or state bank made in accordance with applicable banking laws and in the ordinary course of business. There appears to be no precise standard for what is in the "ordinary course of business;" therefore, examination of the individual bank's lending policy will be necessary. The affidavit of Mr. Presley, stated his belief that Mr. Barnard would repay the loan out of a "moral" sense of obligation. Since the committee must depend on donors for its receipts, there is little to guarantee a continual flow of funds. In this case, the loan was made prior to the primary, and payable after the general election. There appears to be a great deal of risk in this arrangement if the candidate loses the primary.* It is, therefore, recommended that

*The primary was held August 10, 1976 and Mr. Barnard was in a run-off election on August 31, 1976 which he won.

the Commission find reason to believe the bank has violated 2 U.S.C. §441b(b)(2). It is further recommended that the Commission find reason to believe that Charles B. Presley violated 2 U.S.C. §441b(a) by consenting to the loan. Finally, it is recommended that the Commission find reason to believe that respondent has violated 2 U.S.C. §441b(a) by receiving the loan herein.

IV. Conclusion

1. Dismiss allegations 1 and 2.
2. Find reason to believe with respect to the 3rd allegation. Send attached letters.



JOHN G. MURPHY, JR.
GENERAL COUNSEL

DATE: October 1, 1975

11550105511



FEDERAL ELECTION COMMISSION

125 K STREET N.W.
WASHINGTON, D.C. 20563

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Bldg.
Augusta, Georgia 30902

Re: MUR 218 (76)

Dear Mr. Waller:

This letter is sent to you in your capacity as counsel to Mr. Druic Douglas Barnard, Jr., respondent in the above-captioned matter.

Based upon the allegations set forth in the complaint your response thereto, the Commission has found reason to believe that Mr. Barnard is in violation of the Federal Election Campaign Act of 1971, as amended (the Act). Specifically, the Commission's finding is that the loan of \$10,000 by the Georgia Railroad Bank & Trust Co. to the Doug Barnard for Congress Committee, being unsecured, may not have been made in the ordinary course of business and would therefore be in violation of 2 U.S.C. §441b(a) as an illegal corporate contribution whose receipt by Mr. Barnard is prohibited.

Under the Act you have an opportunity to respond and may submit any material of either a factual or legal nature which you believe is relevant to the matter under investigation. Where appropriate, statements should be submitted under oath by individuals with personal knowledge of the matters herein.

We also wish to advise you that a letter in this same regard has been sent to Mr. Presley, in his capacity as Chairman of the Board of the Georgia Railroad Bank & Trust Co.



This matter will remain confidential in accordance with the provisions of 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Gloria R. Sulton (telephone no. 202/382-4041), the attorney assigned to this case.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

GSulton:mpc:10/1/76

cc: GSulton
MUR 218 File
Chron File

20010106542



FEDERAL ELECTION COMMISSION

125 K STREET, N.W.
WASHINGTON, D.C. 20543

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles B. Presley
Chairman of the Board
Georgia Railroad Bank & Trust Co.
699 Broad Street
Augusta, Georgia 30902

Re: MUR 213 (76)

Dear Mr. Presley:

This letter is in reference to a complaint filed against Drucio Douglas Barnard, regarding which you submitted an affidavit to the Commission dated September 16, 1976. The Commission has found reason to believe a violation of 2 U.S.C. §441b has occurred in connection with the \$10,000 loan from your bank to the Doug Barnard for Congress Committee. Further, your consent to the making of the loan gives reason to believe that you have violated the provisions of 2 U.S.C. §441b(a) as an officer of the bank.

2 U.S.C. §431(e)(5)(G) provides that loans made in the ordinary course of business by national or State banks are not contributions. However, loans not made in the ordinary course of business are corporate contributions prohibited under 2 U.S.C. §441b. In view of the fact that this loan was made to the candidate's committee without any endorsement by the candidate, committee officers or other persons, the Commission has found reason to believe that the loan was not made in the ordinary course of business.

You have an opportunity to respond before the Commission takes any further action and you may submit any factual or legal materials which you deem relevant to the matter herein. Where appropriate, statements should be submitted under oath by individuals with personal knowledge of the matters herein. In particular, I would appreciate it if



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you would submit all documentary material relevant to the loan, and any other material relevant to other such unsecured loans made by your bank.

This matter will remain confidential in accordance with the provisions of 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Gloria R. Sulton (telephone no. 202/382-4041), the attorney assigned to this case.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

10340105511

MUR 218
CC # 538

BETTY HEMENWAY
FOR CONGRESS
10th District of Georgia

RECEIVED
FEDERAL ELECTION
COMMISSION

76 SEP 14 P 1:25

Betty Hemenway for Congress Committee
P.O. Box 267
Eatonton, Georgia 31024
(404) 485-8001
(404) 485-4651

"BEST QUALIFIED"

14 September 1976

John G. Murphy, Jr., General Counsel,
Federal Election Commission,
1325 K St., NW, Washington, D.C. 20463

Dear Mr. Murphy,

This letter will confirm your letter to me of 26 August 1976 which was delivered to me in Washington, D.C. at my D.C. residence: 4816 Rodman St., NW, Washington, D.C. 20016, and my conversation with Mrs. Gloria R. Sulton, the attorney you informed me was assigned to case MUR 218 (76), with whom I had a conversation on September 12 to let her know this material was forthcoming.

I enclose a three-page affidavit of a conversation I had on August 26 with Ms. Nancy McJunkin, Treasurer of the Barnard for Congress Committee. In this conversation, Ms. McJunkin reveals that Mr. Barnard's income continued for the entire campaign period, despite the fact that it was not reported as a campaign contribution (it could not be--for it was illegal) and despite the fact that Mr. Barnard's constructive effort for the Bank for which he was the "executive vice president" was minimal. In effect, his "salary" was a contribution. In fact, since some of Ms. McJunkin's duties as Treasurer to the Barnard Campaign were performed on Georgia Railroad Bank premises (her checks and cards were kept on the premises--the tools of her major labor) it could be presumed that a second Bank Vice President also was working for the campaign.

As reported orally, a fund-raising breakfast for Barnard was organized and collected for exclusively from Bank premises.

The enclosed letter signed by Barnard, dated June 28, 1976, makes it clear that Barnard was not in the Bank much during the campaign. This is evident from other materials produced during the campaign and can be established as a matter of fact from the campaign schedule.

Quotas were set and, when not met, those assigned with a quota were expected to sign notes. These notes were signed at the 1st National Bank and the 1st Augusta State Bank of which Jack Fink is an officer. Mr. Fink, allegedly also was one of 31 key men/groups charged with using Georgia RR Bank influence on various areas of enterprise and industry to

Hand delivered by John D. Hemenway 9-14-76.
Rec'd by Gloria R. Sulton for F.E.C.

coerce the raising of funds for Doug Barnard which, if not met, then had to be met by the signing of notes.

The designated groups marked for support allegedly included, but was not limited to:

Finance Companies: Flint Hendricks (404) 724-0066
Contractors: Baxter Clark (404) 798-2251
Liquor Associations: Retail: (404) 733-2262 Jerome Heath
Wholesale: Hy Selwyn (404) 724-2424
Joe LaFouci (404) 724-9693
Bill Wooten (404) 724-4338
Auto Dealers: Stewart Walker of Walker Ford (404) 722-5371
Stockbrokers: Fleming Norvell (404) 724-2601
General Business: Bernie Silverstein (404) 733-3685
Bottlers: Joe Byrd of Southern Beverage (404) 724-2677
Delta Airlines: Joe Bates (404) 722-1232
Gas-Light Utility: Rufus Foster (404) 722-7791
C&S Bank: William Ellis (404) 722-2661
Continental Can: William Wiseman (404) 798-5711
Columbia Nitrogen: William Copenhaver (404) 724-8711

This material is provided you in the hope that it will facilitate the preliminary inquiry you stated in your letter to me of 26 August 1976 you are making in connection with my complaint dated August 9, 1976.

I understand that, as of this date, your inquiry is continuing and that at the appropriate time I will be informed of the action the Federal Election Commission will take, if any, into my complaint that Mr. Barnard violated the law when he did not report his Bank income as a campaign contribution and into certain other irregularities I have reported to the FEC.

Sincerely yours,

John D. Hemenway
John D. Hemenway

Enclosures:

Affidavit of John Hemenway
concerning August 26, 1976
conversation w/Nancy McJunkin
Letter of Doug Barnard of June 28,
1976 to various leaders of
special interest groups in Augusta
August 6, 1976 Press Release of
Betty Hemenway concerning illegal
itemization of campaign receipts
by Doug Barnard and others

7 0 0 4 0 1 0 5 5 4 5

14 September 1976

AFFIDAVIT OF JOHN D. HEMENWAY

I, John D. Hemenway, legal resident of Eatonton, Georgia, and temporarily domiciled at 4816 Rodman St., NW, Washington, D.C., having been duly sworn according to law, hereby depose and say:

1. On August 26, 1976, I called Nancy McJunkin of Augusta, Georgia, who is a Vice President of the Georgia Railroad Bank and Treasurer of the Doug Barnard for Congress Committee. I reached her by telephone at the Georgia Railroad Bank office where she works: Code (404) tel. no. 724-0811.
2. I told Ms. McJunkin that I was calling at the suggestion of Mr. George Boyd, a Vice President of the Georgia Bank of which she also was a Vice President concerning Mr. Barnard's salary of record and concerning the loan made to Mr. Barnard or his campaign committee by the Georgia Railroad Bank.
3. Ms. McJunkin said that Mr. Boyd had mentioned my call to her, but she referred me to Mr. Charles Presley for specific information and details on the matters I had raised with Mr. Boyd. She did volunteer that Mr. Barnard's salary is a matter of record and that Doug Barnard's primary income comes from the bank and approximates \$45,000.00 per year. Ms. McJunkin confirmed that Mr. Barnard was on an "active duty status here with the bank--he's not on leave of absence and he is Executive Vice President of the bank...." She said that Mr. Barnard's superior in the Bank is Mr. Charles Presley, Chairman of the Board. Ms. McJunkin acknowledged that Mr. Barnard had not been working a normal schedule during the five-month campaign period. Ms. McJunkin would not say that Barnard had not been performing any duties at all, but she specifically stated, "He hasn't been working eight hours a day" when she acknowledged that his appearance at the bank during the campaign period had ^{not} been regular, but token.
4. I suggested that if Mr. Barnard's duties were only nominal and yet he drew his regular pay for five months, in effect his salary was a kind of concealed contribution and should appear on the campaign report as a contribution. Ms. McJunkin hotly contested this point and stated flatly that this matter was discussed with officials of the FEC, both by her and by the Counselor of the bank. Ms. McJunkin recalled that she had been concerned about exactly this point and had called the FEC for an opinion. The FEC had advised her, she asserted, that the salary of Barnard did not have to be reported as a contribution to the campaign by the Georgia Railroad Bank. She stressed that she was a very conscientious person and she was very careful on this point, but when I requested the names of the FEC officials with whom Ms. McJunkin and the Counselor of the bank had had contact, Ms. McJunkin did not supply the names.

5. When I pressed the point by mentioning that my wife, who was a candidate and political opponent of Mr. Barnard's in the race, decided to run, she was required to resign from her position on the staff of a Georgia Congressman--otherwise it would be tantamount to the Congress making a contribution to her campaign--Ms. McJunkin was not impressed. She suggested that "there's a difference between the government and private industry." She told me that there's just something in private industry that is built up by longevity, dedication and loyalty to the organization. She said that it is unfortunate that government does not have this compassion for their people such as private industry has for its employees. Ms. McJunkin felt that the Georgia Railroad Bank certainly has the loyalty of its employees and that those who have been around as long as Doug Barnard and she feel very comfortable that as long as they do their jobs, the bank would support them in each undertaking they might feel might be the best for the community and the organization. Ms. McJunkin said that she felt that the whole staff -- by and large -- have that same attitude. She believed and would say that only because Mr. Barnard is such a long-time employee would the bank ever entertain the idea of giving him the treatment that "Doug has justly received from this organization during the time that he has been campaigning." Ms. McJunkin continued, "It's just like if I were sick and I had to be out from my job for six months, the bank would pay me for that six months where it would not in all likelihood, pay for someone who'd been working here for only one year."

6. Ms. McJunkin continued, "Now, without being argumentative, how do you feel Mr. Barnard has been able to live and to feed the family and make his house payments and you know, his normal living expenditures, day-to-day expenditures while he has been campaigning?" She declared that such expenditures do not stop for a political campaign.

7. Ms. McJunkin stated that if his income from the bank had not gone to Mr. Barnard's campaign, it had gone to his day-to-day family living expenses, because those expenses go on regardless of whether Barnard runs for Congress or not. Ms. McJunkin told me that just because Mr. Barnard is a candidate for Congress did not mean that he did not have other obligations.

8. Ms. McJunkin opined that it just depends from which side Candidate Barnard's or his opponent's you are looking at it. She said, "I just have a lot of pride in being just as honest as I can be, but I wish you would put a little thought to...maybe you would realize that we sort of have some justification for it continuing Barnard's pay too. You know, he has a son ready to go to college and you know his interest rates and his house payments go on whether he is running for Congress or whether he is down here at the bank working 15 hours a day and I just feel that if you really analyze it that way you could feel a little bit differently about his family...I would almost venture to say that except for maybe some gas that he's put in his car or something like that, his salary has gone for his



BETTY HEMENWAY

FOR CONGRESS

10th District of Georgia

Betty Hemenway for Congress Committee
P.O. Box 267
Eatonton, Georgia 31024
(404) 485-8001
(404) 485-4651

"BEST QUALIFIED"

PRESS RELEASE

FOR IMMEDIATE RELEASE

August 6, 1976

"1976 Not the Year of the Georgia Railroad Bank and Special Interests"

Augusta, Ga. Aug. 6: Today, Betty Hemenway, the only woman candidate for Congress in the 10th District (there are six men), campaigning in Augusta, accused certain candidates of concealing massive campaign expenditures from the public by not itemizing receipts and by loaning money to themselves. Mrs. Hemenway deplored excessively high spending levels in the campaign and made public a letter signed by Doug Barnard on June 28, 1976 in which Barnard demanded that his finance committee raise the \$115,000 he feels he needs to win a seat in the U.S. Congress (copy of the text of the letter attached.)

Betty Hemenway accused Barnard and other candidates of attempting to buy a seat in the Congress. She said that two others, like Barnard had secured loans for their campaigns, presumably on the expectation of having this money restored later, if successful in obtaining federal office. The others were C.C. Moreland and Mike Padgett. Betty demanded in the name of even-handedness that the Georgia Railroad Bank offer to loan \$10,000.00 to each of the other candidates on the same favorable terms offered Mr. Barnard. So far, according to Betty, the Georgia RR Bank has made no reply. (Mr. Barnard is a Vice President in the Georgia RR Bank.)

Betty expressed the hope that the discerning voter in the 10th District would reject men attempting to "buy their way into Congress:"

"Thousands of dollars have been lavished by the male candidates in this campaign on 'say-nothing' advertising. If a man spends his own campaign funds so unwisely before he gets to Congress, can we really believe his pronouncements that he will reduce taxes and cut back on spending in Washington? "

Betty recalled a July 22 Athens, Ga., meeting at which a University of Georgia audience booed Barnard for evading a question about campaign financing, which already had become an issue in the campaign. Barnard finally admitted to the audience his expectation of spending a figure of "about" \$50,000 to \$60,000.00. In the letter made public today Mr. Barnard states that his real campaign expenditure goal is \$115,000.00. On July 22 in Athens, Betty had termed Barnard "less than candid." Mrs. Hemenway has promised the voters of the 10th District a full investigation of this campaign discrepancy and others.

Att: Barnard letter to

**Democrat
for
Congress**
Georgia 10th District

June 28, 1976

EXAMPLE:
Special Interest Group
leader in Augusta
Member of Barnard Committee
Augusta, Ga.

*Address block —
different for each letter*

Like anything else, this race cost money.
\$115,000 is what this one will cost.

You've said you would help in the area of a \$2,000 goal from each of the categories shown on the attached list. This is what is needed; it will get us through August 10th. The money is needed now! At our breakfast on the 11th we set out deadline as the 25th of June. Only about 1/3 of our goal was reached and I've not gotten a final report from your area.

Please finalize your efforts and let me hear from you. I appreciate your efforts and I must rely on you because my daily schedule keeps me going from 7 a.m. to 9 p.m. each day. If you will call me or Carlisle Overstreet at 722-7721, and give us a status report, I would appreciate it.

Best regards,

Doug

Doug Barnard

DB:bta

1159010551

August 25, 1976

MEMORANDUM TO: BILL OLDAKER

FROM: MARGE EMMONS *MJE*
(BSE)

All of the MURS listed below were transmitted to the
Commission on August 24, 1976 - 9:00 a.m.. As of
August 25, 1976 - 10:00 p.m., no objections were received
in MUR# 218 (76)

7 9 9 1 0 1 0 3 5 1 1

DATE AND TIME OF TRANSMITTAL:

8/24/76

NO. MUR 218 (76)

REC'D: 8/11/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: John D. Hemenway (notarized)

Respondent's Name: Druie Douglas Barnard, Jr.

Relevant Statute: 2 U.S.C. §§434, 441b

Internal Reports Checked: Receipts and Expenditures filed by respondent and his committee.

Federal Agencies Checked: None

SUMMARY OF ALLEGATION

1) Candidate required members of his finance committee to obligate themselves to raise a specified amount of campaign funds on condition that they sign a note for any amounts they fell short; that those so obligated did sign notes and the receipt of these funds by the committee has been inaccurately reported on the pre-election report of July 29, 1976. 2) Respondent's employer has made contributions to him by paying his salary while he was a candidate and giving

PRELIMINARY LEGAL ANALYSIS

(See continuation sheet)

1) There appears to be no statutory basis for the Commission to investigate the alleged agreement or possible coercion. The alleged inaccurate reporting deserves further inquiry. The pre-primary report contains numerous contributions listed with the legend "subject to refund pro-rate from campaign funds available for that purpose as determined by the Committee." These funds are reported as contributions (line 15(a)) and not loans (line 16(a)). We should seek clarification of this language.

(See continuation sheet)

RECOMMENDATION

Conduct preliminary inquiry; send attached letters.

Date of Next Commission Review:

CONTINUATION SHEET

SUMMARY OF ALLEGATION

him other benefits such as the use of an office and an employee who is his campaign treasurer.

3) \$10,000 loan from the Georgia Railroad Bank may be in violation of FEC "regulations."

PRELIMINARY LEGAL ANALYSIS

2) At the present time, there is no evidence other than the bare allegation regarding corporate gifts; however, an initial inquiry should be made.

3) The July 10, 1976 report lists this loan as having been received on May 14, 1976 from the Georgia Railroad Bank and Trust Co. A review of the receipts and disbursements of the committee raises a question as to whether such a loan was made without security. An inquiry should be made to ascertain the details of the loan arrangement.

City of Augusta, Georgia

August 9, 1976

Sworn Statement

I, John D. Hemenway, of Eatonton, Georgia, having duly been sworn and deposed come forward under my own free will with no offer of reward and declare:

(1) I have examined the financial statement of July 29 1976 and the statement of July 9, 1976 of Mr. Doug Barnard, a candidate for Congress in the 10th District of Georgia and the financial records laid out confirm information which, to the best of my knowledge and belief is as follows:

(2) Mr. Barnard required members of his finance committee to obligate themselves to raising \$2,000.00 each toward his campaign. Failing that, they were to sign a note for the balance of the commitment.

(3) In a special letter to persons bound by this arrangement dated June 28, 1976, Mr. Barnard wrote: "The money is needed now!" Thereupon, those who had not yet collected their quota of money were required to sign a note at a certain Augusta bank. The proceeds of these notes were falsely reported in the July 29, 1976 report as if they were contributions. There was the further notation in 13 cases that these "contributions" were subject to a "pro-rata refund". In other words they were not cash contributions, but subject to repayment of sorts, a kind of loan falsely reported.

(4) Further, husband and wife combinations were used to mask the size of the loans and conceal them as \$2,000.00 contributions under the rules that make \$1,000.00 the limit. This happened in the case of Mr. and Mrs. Hugh Connolly; Mr. and Mrs. Dan Cook; Mr. and Mrs. Don A. Grantham; Mr. and Mrs. J. Carlisle Overstreet (who is the Barnard campaign manager); and Mr. and Mrs T.W. Paine, III.

(5) These arrangements were only possible because of the untoward influence that Mr. Barnard could exert on thirty-one (31) different business and industry groups by virtue of his position as executive vice president of the Georgia Railroad Bank including industrialists and doctors and dentists; airline and utility executives; bankers, lawyers, and real estate and stockbrokers, and a score of other major special interest groups. The names of contacts used in these industries are available to me and will be specified on an appropriate occasion.

(6) Additional direct contributions by the Georgia Railroad bank which are nowhere indicated on the Doug Barnard for Congress reports include Mr. Barnard's salary and allowances and other perquisites of office in the Georgia Railroad bank paid to him while he was not fully functioning, but was, in fact a candidate for office.

7 9 0 1 0 5 3 5

congressional office. Other unreported contributions in the form of support include the support for the Barnard campaign machine which used employees and the premises of the Georgia Railroad Bank having considerable value including, but not limited to the Treasurer of the Barnard campaign's services, Nancy McJunkin.

(7) The Georgia Railroad Bank has refused to reveal the terms of a \$10,000.00 additional loan granted to Mr. Barnard's Committee and, despite a clear necessity to deal with any guarantors of that loan as campaign contributors, in accordance with FEC regulations, their names nowhere appear. A request by me made to Mr. George H. Boyd, Vice President of the Georgia RR Bank, to ascertain whether the terms of the loan were commercial and whether identical terms would be given to all other candidates for office in the 10th District was actually referred to the Barnard Committee Treasurer, who also is an officer of the Georgia RR Bank.

Then the above named John Hemenway came forward and declared that the above statements were known to him of his personal knowledge or to the best of his belief, as he did SWEAR under oath.

John D. Hemenway
John D. Hemenway

Catherine G Skelley
NPR Co Ga

7 9 0 1 0 1 0 5 5 3 2

Betty Hemmenway for Congress
Eatonton, Georgia 31024

NOV 11 1984
AID: 17



Federal Election Commission
1325 K St. NW
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION

1325 K STREET NW
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 218

Date Filmed 3/13/79 Camera No. --- 2

Cameraman BPC



FEDERAL ELECTION COMMISSION

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

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THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 278.



MAR 218



FEDERAL ELECTION COMMISSION

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

May 4, 1979

Samuel C. Waller, Esq.
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Bank Building
Augusta, Georgia 30902

Dear Mr. Waller:

Your concern over the article which appeared in the February 5, 1979, issue of Campaign Practices Reports is understandable. As Campaign Practices Reports is not a Commission publication, I cannot answer your questions.

Sincerely,

William C. Oldaker
General Counsel



7 9 1 0 1 1 3 5 3 3

*original to
Bartanen*

GWINN H. NIXON
D. FIELD YOW
SAMUEL C. WALLER
JOHN D. CAPERS
O. PALMOUR HOLLIS (ALSO S C)
REGNOLD MAXWELL, JR.
W. BYRD WARLICK
PAUL H. DUNBAR, III
ROBERT F. WRIGHT, JR (ALSO MISS)
JOHN B. LONG
RICHARD E. MILEY (ALSO S C)
ROY D. TRITT
CHARLES C. STEBBINS, III (ALSO ALA)
JAMES E. BLANCHARD

LAW OFFICES OF
NIXON, YOW, WALLER & CAPERS
1500 GEORGIA RAILROAD BANK BUILDING
AUGUSTA, GEORGIA 30902

FEDERAL ELECTION
COMMISSION

GCC # 9850

JOSEPH B. CUMMING
OF COUNSEL

HENRY P. EVE
(1917-1969)

TELEPHONE
(404) 722-7541

79 APR 11 AM 11:51

April 9, 1979

001901

Jay Myerson, Esq.
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20433

Re: MUR 28(76)

Dear Jay:

I have received a copy of Mr. Hemenway's latest blast. Our present intention is to do nothing and await the court's reaction to the motion, which in my opinion must fail since the deadline for an appeal under any interpretation of the law has expired. Also, it appears that the motion is directed to the FEC and not to Mr. Barnard since there is no indication in the motion that the court's lack of jurisdiction over Mr. Barnard is being contested.

I would still very much like to receive a reply from you to my letter of March 6, 1979, concerning the inaccurate publicizing of the Commission's decision in the matter against Georgia Railroad Bank & Trust Company, Mr. Barnard and the Barnard Committee. I realize that you have been busy and appreciate your having advised me recently that you would give me your reply shortly. However, there may be some additional publicity in view of this latest action on Mr. Hemenway's part, and I would appreciate having the information which I requested in order to determine whether any action on our part against the publisher of "Campaign Practices Report" would be desirable or helpful.

Very sincerely yours,

Sam
Samuel C. Waller

SCW:jfb

79040113584

Jay Myerson, Esq.
March 6, 1979
Page Two

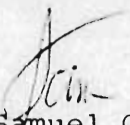
5) On what basis did the publication determine that a settlement agreement had been reached with the Bank and Mr. Barnard, inasmuch as no settlement agreement was reached with Mr. Barnard since none was necessary?

These are only some of the questions which arise when a person familiar with the facts of the case reads the article published in "Campaign Practices Reports." Apparently this is a totally unreliable publication and to the extent that it bears any imprimatur of the Commission or any other governmental entity, the same should be repudiated.

I received a telephone call from Mr. Tom Fairfield of the "Campaign Practices Reports" at a time when I was not available. He left a message that he would call me Monday (yesterday) but I have not heard from him.

With best regards, I am

Very sincerely yours,


Samuel C. Waller

SCW:jc

CC: Hon. D. Douglas Barnard, Jr.

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FEDERAL ELECTION COMMISSION

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

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 218.

79040113507





FEDERAL ELECTION COMMISSION

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

79040151969

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 218.



GWINN H. NIXON
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May 8, 1979

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William C. Oldaker, Esquire
General Counsel
Federal Election Commission
1325 K Street, NW
Washington, D. C. 20463

Re: MUR 28 (76)

Dear Mr. Oldaker:

I acknowledge receipt of your letter dated May 4, 1979, in reply to mine of March 6, 1979, addressed to Mr. Jay Myerson of your office. You doubtless know that Mr. Myerson and I have discussed this matter on two or three occasions following the publication of Campaign Practices Reports, Volume 6, Number 3, dated February 6, 1979. In rereading my letter of March 6, 1979, I understand why some of the questions cannot be answered by you since in effect I was asking for information that would be available only to the publisher of the said Reports.

However, I do believe that you can answer one or two questions for me which would be helpful in my continued investigation of the inaccurate reporting appearing in the publication referred to above.

On page 3 of the said Reports you are quoted as having made a certain statement to the Commission, whether in writing or orally before the Commission is not clear.

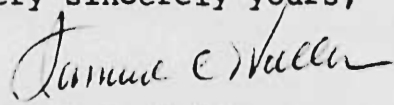
The question which I think you could answer is whether the statement attributed to you can be found in the public records of the Commission, and if so, was the statement contained in a report to the Commission or was there in fact some hearing at which you appeared and made such statement to the Commission. The purpose in asking for this is to see how irresponsible the publisher of the Reports has been in publicizing this matter.

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William C. Oldaker, Esq.
May 8, 1979
Page Two

I hope that it will not inconvenience you or place you in an embarrassing position to answer the question which I have posed in this letter.

Very sincerely yours,



Samuel C. Waller

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END OF ADDITIONAL MATERIAL FOR CLOSED MUR 218.

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