FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2185

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FEDERAL HOME LOAN BANK BOARD

SUPERVISORY AGENT - SECOND DISTRICT

ONE WORLD TRADE CENTER FLOOR 103 NEW YORK, N.Y. 10048

FHLBB NO.

December 13, 1985

85 DEC 16 P12: 29

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

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

Gentlemen:

This letter is to refer to your attention the political activities of Goldome FSB. Goldome's headquarters are located at One Fountain Plaza, Buffalo, New York 14203. Mr. Ross B. Kenzie is the bank's Chairman of the Board and Chief Executive Officer.

A Federal Home Loan Bank Board examiner met with Goldome's Chairman of the Board of Directors and Chief Executive Officer Ross Kenzie, and the bank's legal counsel Robert Edwards, on November 7, 1985 to discuss the bank's political activities during a recent local election. In addition, the internal audit department's files were reviewed. As a result, the examiner was able to determine the following:

> In late August 1985, Mr. Kenzie, in his capacity as Chairman of Buffalo's Chamber of Commerce, was reportedly contacted by the Committee to Re-elect the Mayor and provide a political endorsement of the mayor. Two "open letters" were subsequently issued by Mr. Kenzie supporting the re-election of Mayor Griffin.
>
> The first "open letter" was issued, prior to the election primaries, in-house on stationery with Goldome's logo, to all bank employees (see attached). Mr. Edwards indicated that this letter was a personal endorsement by Ross Kenzie, rather than Goldome FSB's endorsement. He further stated that because the letter was too close to a campaign announcement, it was determined that Goldome's funds could not be used, and the re-election committee paid for the letter. The bank's records indicate that a check in the amount of $75.84 was received from the re-election committee as reimbursement for all costs incurred.

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The second "open letter" by Mr. Kenzie was issued on September 30, 1985 to the Buffalo business community, in his capacity as Chairman of the Chamber of Commerce. The bank's records indicate $2,990.06 was received from the Committee to Re-elect the Mayor, in full payment of the bank's costs, for all expenses incurred in utilizing Goldome's facilities, including reimbursement for obtaining computerized mailing lists, printing and stationery charges, labor costs, and postage.

Following Mayor Griffin's defeat in the September 10, 1985 Democratic primary to George Arthur (Mayor Griffin won the Republican and Conservative party primaries), the bank agreed to lease its "Kwik-line" bank-by-telephone system for after hours use by volunteers from the Committee to Re-elect the Mayor. Mr. Kenzie stated that Goldome FSB frequently allowed charitable and public service organizations to utilize its telephone system during off peak hours when it was not in use for the bank. He noted that the service was provided at cost. He further stated that Mr. Arthur was offered a similar opportunity to use the telephone system, when he requested it in late October 1985, however, he subsequently decided not to use it. The bank's records indicate the Committee to Re-elect the Mayor has been billed $448.80 for the use of the telephones. As of report date, the bank has not received payment.

In addition, several of Goldome FSB employees were working after hours and on weekends, inserting political flyers for the Griffin campaign. The bank's records show that the re-election committee will be billed for labor costs of $482.24. Mr. Edwards stated that the employees worked after hours on a voluntary basis.

The bank's records also show that Goldome FSB's P.A.C. has made four contributions to the Committee to Re-elect Mayor Griffin totaling $3,680. Mr. Edwards reiterated that these funds were not used to pay for the above mentioned activities.

Goldome FSB's political activities were audited by its internal audit department as of October 27, 1985. The audit report concluded by indicating that all of the expenses incurred are reasonable in nature and amount. It was also noted that no internal corporate bank policy prohibits, or even addresses, the use of Goldome's stationery in the promotion of a candidate for public office or for general political topics. Mr. Edwards stated that such a policy will be developed.

The examiner's review disclosed that the bank's records are fully documented.

Mr. Kenzie informed the examiner that he was aware of the requirements of the Federal Election Campaign Act, and that from the beginning all activities were undertaken under the advice of the bank's legal counsel. He further stated that his actions were not recorded in the bank's minutes, because he was acting in his capacity as managing officer, however, the Board of Directors and the bank's audit committee were fully informed of these matters. Mr. Kenzie emphasized that all of the expenses incurred were paid for by the Committee to Re-elect Mayor Griffin and not from the funds of Goldome FSB or Goldome FSB's Political Action Committee (P.A.C.).

This information is being provided for your review and determination if violations of the Federal Election Campaign Act have been committed. We would appreciate hearing from you concerning whatever action your office may consider with respect to Goldome and ask that you provide us with copies of all relevant correspondence with the savings bank. Please feel free to call should you have any questions or require additional information.

Very truly yours,

Michael Simone

Michael Simone
Supervisory Agent

OPEN LETTERS

GOLDOME

An Open Letter to All Goldome ... ployees Living and Working in Western ... York:

WE'RE GOLDOME
WE'VE GOT TO BE
The Best

During the past several years th... I have served Goldome, you have often heard me say "I believe in Buffalo."

My faith has been justified many times over. Despite our torturous transition from a smokestack-dependent economy to a diversified one, Buffalo is again on the move.

Certainly, the past several years have been good ones for Goldome. We have grown from a $3-billion regional savings bank to a $13-billion broadly based financial institution employing 2500 men and women in Western New York alone. We can be proud, also, that Goldome has been a catalyst and a leading financial backer in the remarkable revitalization of downtown Buffalo and the reclamation of its urban neighborhoods.

I believe that our success as a company — and the progress we have made as a city — would have been less without the support and expertise of our Mayor, James D. Griffin. Mayor Griffin has eliminated a $19-million defic.., reduced the crime rate and has worked tirelessly to bring new dollars to Buffalo through state and urban programs.

Mayor Griffin has been instrumental in providing an Urban Development Action Grant, that — in partnership with Goldome's commitment to build its new corporate headquarters — resulted in the construction of two banks and a hotel/retail center representing $200-million of private and public investment at this end of Main Street.

This, in turn, triggered development of Buffalo's Theater District and enhanced prospects for the use of the City's new rapid transit.

Without the Mayor's expertise and support, it is difficult to imagine that many of our long-awaited and deeply needed revitalization projects would have come to fruition. The Mayor has been a partner with Goldome and others in the business community in the development of our waterfront and urban renewal projects, including Lovejoy, Pratt/Willert, St. Mary's Square and Roosevelt Apartments projects.

The relationship that Mr. Griffin has forged with the County, State and Federal governments — and with th. business community — has contributed enormously to our progress. I know Jim Griffin personally. He runs a lean, efficien. administration, and he is beholden to no one.

As the September 10th primary nears, I would like to encourage each of you to consider the Mayor's efforts and contributions to the community and to our welfare over the past seven years. I ask you to consider joining me in supporting Mayor James D. Griffin, a local businessman, administrator and public servant who has given renewed vibrance to our City and County.

Whether or not you agree with me, I hope that you will all get out and vote — particularly in the primary.

Ross B Kenzie

Ross B. Kenzie
Chairman and
Chief Executive Officer

1087

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 3, 1986

Mr. Michael Simone
Supervisory Agent
Federal Home Loan Bank Board
One World Trade Center
Floor 103
New York, NY 10046

RE: PRE-MUR 151

Dear Mr. Simone:

This is to acknowledge receipt of your letter dated December 13, 1985 pertaining to Goldome FSB. You will be notified as soon as the Commission takes action on your submission.

If you have any questions, please call Michele Brown, the attorney assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling matters such as this.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

8 9 0 4 0 7 6 1 9 2 8

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION ____________

Pre-MUR # 151
STAFF MEMBER(S)
M. Brown

SENSITIVE

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

Respondents' Names: Goldome FSB, Ross B. Kenzie, the Committee to Re-elect the Mayor, Mayor James Griffin

Relevant Statutes: 2 U.S.C. §§ 441b, 431(8)(B)(i)
11 C.F.R. 100.7(a)(1), 104.6(a), 114.1
114.2, and 114.9

Internal Reports Checked: Goldome Bank for Savings Political Action Committee

Federal Agencies Checked: None

GENERATION OF MATTER

Michael Simone, Supervisory Agent for the Second District of the Federal Home Loan Bank Board ("FHLBB"), referred this matter to the Commission. The matter involves possible corporate contributions, in-kind, from Goldome FSB and Ross B. Kenzie, its Chairman of the Board of Directors and Chief Executive Officer.

An FHLBB examiner met with Mr. Kenzie and its legal counsel, Robert Edwards, on November 7, 1985, to discuss the bank's political activities during a local election. The FHLBB also reviewed the internal audit department's files.

Summary of Allegations

According to the FHLBB, the Committee to Re-elect the Mayor (the "Committee") in Buffalo, New York, contacted Mr. Kenzie in late August 1985, in his capacity as Chairman of Buffalo's Chamber of Commerce. The Committee asked that Mr. Kenzie provide a political endorsement of the mayor. Subsequently, Mr. Kenzie wrote two "open letters" supporting Mayor Griffin's re-election.

Prior to the primary elections, Mr. Kenzie issued the first "open letter", in-house, on stationery with Goldome's logo to all bank employees. Mr. Edwards indicated to the FHLBB examiner that the letter was a personal endorsement by Mr. Kenzie, rather than Goldome FSB's endorsement. Because the letter was considered too close to a campaign announcement, it was determined that Goldome's funds could not be used, and the re-election committee paid for the letter. The bank's records indicate that it received from the re-election committee a check in the amount of $75.84 as reimbursement for all costs incurred.

On September 30, 1985, Mr. Kenzie issued the second "open letter". He issued the letter to the Buffalo business community in his capacity as Chairman of the Chamber of Commerce. The FHLBB does not state that the letter appeared on Goldome stationery nor does it include a copy of this second letter. It appears, though, that the letter was written on Goldome stationery, because the FHLBB referral states that the bank's records indicate the bank received $2,990.06 from the Committee, in full payment of the bank's costs, for all expenses incurred in utilizing Goldome's facilities, including reimbursement for obtaining computerized mailing lists, printing and stationery charges, labor costs and postage.

Mayor Griffin won the Republican and Conservative Party primaries, but lost the Democratic primary on September 10, 1985, to George Arthur. It appears that Mayor Griffin and Mr. Arthur then became general election opponents. After the Democratic primary defeat, the bank agreed to lease its "Kwik-line" bank-by-telephone system for after-hours use by volunteers from the Committee to Re-elect the Mayor. According to Mr. Kenzie, Goldome FSB frequently allowed charitable and public service organizations to use its telephone system during off peak hours when the bank was not using it. The bank provided the service to the Committee at cost. The bank, according to Mr. Kenzie, offered Mr. Arthur a similar opportunity to use the telephone system. Mr. Arthur requested it in late October 1985, however, he decided subsequently not to use it. The bank's records indicate the bank billed the Committee $448.80 for the use of the telephones. As of the FHLBB report date, the bank had not received payment.

In addition, several Goldome FSB employees worked after hours and on weekends inserting political flyers for the Griffin campaign. The bank's records show that the bank intends to bill the Committee $482.24 for labor costs. Mr. Edwards, the bank's legal counsel, said that the employees worked after hours on a voluntary basis.

Also, the bank's records show that Goldome FSB's political action committee made four contributions to the Committee, totaling $3,680. Mr. Edwards stated that the contributions were not used to pay for the activities described above.

Goldome FSB's internal audit department audited the bank's political activities as of October 27, 1985. The audit report concluded that all of the incurred expenses were reasonable in nature and amount. The FHLBB examiner's review disclosed that the bank's records are fully documented. Also, the audit report noted that no internal corporate bank policy prohibits, or even addresses, the use of Goldome's stationery in the promotion of a candidate for public office or for general political topics. Mr. Edwards said the bank would develop such a policy.

Mr. Kenzie told the examiner that he was aware of the requirements of the Federal Election Campaign Act and that he undertook all activities, from the beginning, under the advice of the bank's legal counsel. He stated that the bank's minutes did not include his actions because he was acting in his capacity as managing officer. The Board of Directors and the bank's audit committee, however, were fully informed of these matters. Mr. Kenzie emphasized that the Committee to Re-elect Mayor Griffin paid for all of the expenses incurred, and not Goldome FSB or Goldome FSB's political action committee.

Legal and Factual Analysis

Section 441b(a) makes it unlawful for a corporation organized by any law of Congress to make a contribution or expenditure in connection with any primary election to any political office. It is also unlawful, according to § 441b(a), for any candidate, political committee, or other person knowingly to accept or receive a contribution prohibited by section

441b(a). In addition, section 441b(a) makes it unlawful for any officer or director of a corporation or national bank to consent to any contribution or expenditure by the corporation prohibited by section 441b(a). Section 114.2(a) of the Commission's regulations indicates that "any political office" includes local offices. 11 C.F.R. 114.2(a).

The prohibition of section 441b against contributions or expenditures by banks, corporations or labor organizations is broader for national banks and corporations organized by authority of any law of Congress than for corporations or labor organizations. Section 441b prohibits contributions or expenditures by national banks or corporations organized by authority of any law of Congress in connection with any election to any political office. 2 U.S.C. § 441b(a) (emphasis added). The Act's prohibition on corporate or labor contributions or expenditures is limited to those contributions or expenditures in connection with any election for presidential and vice presidential electors, Senator, Representative, Delegate or Resident Commissioner to Congress. 2 U.S.C. § 441b(a). The prohibition extends to any primary election or political convention or caucus held to select candidates for those offices. 2 U.S.C. § 441b(a). Section 441b(a) does not prohibit, however, corporate or labor contributions or expenditures in connection with state and local elections, as it does for contributions or expenditures by a national bank or a corporation organized by authority of any law of Congress. The Act treats banks differently than it treats corporations or labor organizations.

The difference in treatment can be seen more clearly by looking at the Commission's regulations. Section 114.2 states:

> National banks, or corporations organized by authority of any law of Congress, are prohibited from making a contribution or expenditure, as defined in § 114.1(a), in connection with election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office.

11 C.F.R. 114.2(a). With respect to corporations and labor organizations, the regulations state:

> Any corporation whatever or any labor organization is prohibited from making a contribution or expenditure, as defined in § 114.1(a) in connection with any Federal election.

11 C.F.R. 114.2(b).

The Commission, in its advisory opinions, has recognized the different prohibitions for national banks and corporations or labor organizations. In AO 1981-33, the Vice President of a Federal savings and loan association asked if the bank could donate table favors, raffle prizes or journal ads to local political party clubs. The Commission determined that the donation of table favors, raffle prizes or journal ads would constitute a contribution. The AO cited section 441b which prohibits a corporation organized by authority of any law of Congress from making a contribution in connection with any election to any political office. Once Federal savings and loan associations receive their charters from the Federal Home Loan Bank Board, according to the AO, they become corporations organized under the authority of a Federal statute. Items which a Federal savings and loan association offers to a political organization without charge or at less than the usual charge would be in-kind contributions under 11 C.F.R. 100.7(a)(1)(iii). The Commission concluded the donations would be contributions and the savings and loan was prohibited from making such donations under section 441b. The AO stated that "Federal savings and loan associations are prohibited from making contributions in any form unless they are specifically excluded from the definition of contribution as contained in 2 U.S.C. § 441b(b)(2) and 11 C.F.R. 114.1(a)(2)." AO 1981-33.

Another advisory opinion, AO 1982-28, discussed corporations organized by authority of any law of Congress and the section 441b prohibitions. The AO discussed the broader prohibition of section 441b for corporations organized by authority of any law of Congress. First, the AO noted that "[t]he legislative history of section 441b indicates that the term 'corporation organized by authority of any law of Congress' is limited to corporations chartered by Congress, i.e. Federal corporations, or by an agency established by Congress with power to issue corporate charters."

AO 1982-28 cited the legislative history of 18 U.S.C. § 610 which is now codified at 2 U.S.C. § 441b(a):

> Now Mr. Speaker, the gentleman says that this bill under discussion is of doubtful constitutionality. To get the proposal to prohibit any corporation or corporations from making contributions in the election. Now, the bill does not propose that, but it does propose what it can rightfully propose, and that is, that <u>any corporation chartered under</u>

> *an act of Congress* shall not be allowed to make contributions to political campaigns. We can regulate the terms under which a corporation of that character can live and move and have their being. We might only have the right to regulate corporations along certain lines if they are not national corporations, but *when they are chartered under national laws*, we have the right to regulate the way in which they shall excercise the charter power granted them by this Government....

41 Cong. Rec. H-1853, January 21, 1907. Emphasis added. The AO then stated that, in judicial construction and enforcement of section 441b, the proposition that only Federal corporations are prohibited from making any political contributions has been upheld. The AO cited *United States v. United States Brewers' Association*, 239 F. 163 (W.D. Pa. 1916), which upheld the constitutionality of section 610. In a more recent case, which the AO cited also, the court distinguished between corporations with a Federal charter and those with a state charter. *United States v. Clifford*, 409 F. Supp. 1070 (1976), states, "The prohibitions against national banks in § 610 [now section 441b] is different from the prohibition against other corporations in the same section...." 409 F. Supp. at 1073. The case states further that the legislative history reinforces the conclusion that the portion of section 441b relating to national banks was meant to apply to all elections. *Id.* The following excerpt from the legislative history is set out by the *Clifford* court:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election

> to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

S. Rep. No. 3065, 59 Cong., 1st Sess. 2, as quoted in Clifford, 407 F. Supp. at 1073.

This background on section 441b is helpful in considering whether any exceptions to section 441b apply in the Goldome case before us. As AO 1981-33 stated, "Federal savings and loan associations are prohibited from making contributions in any form unless they are specifically excluded from the definition of contributions as contained in 2 U.S.C. § 441b(b)(2) and 11 C.F.R. 114.1(a)(2)."

Section 441b(b)(2) provides that the term "contribution or expenditure" as used in section 441b includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value...to any candidate [or] campaign committee...." Excluded from the term are, among other things, corporate communications to its stockholders and executive or administrative personnel and their families.

Goldome FSB is a federally chartered bank and, therefore, is within the purview of section 441b(a). The expenditures in this case were made in connection with a local election, also within the purview of section 441b(a).

When Mr. Kenzie wrote his first letter on Goldome stationery, he distributed it to all bank employees and Goldome FSB paid for the letter. The evidence for this is the fact that, according to the FHLBB referral, the Committee to Re-elect the

Mayor later reimbursed Goldome for costs incurred totalling $75.84. Mr. Kenzie's letter advocates the election of Mayor Griffin: "I ask you to consider joining me in supporting Mayor James D. Griffin, a local businessman, administrator and public servant who has given vibrance to our City and County." By distributing the letter to all Goldome employees, Mr. Kenzie exceeded the class of individuals, namely corporate stockholders and executive or administrative personnel and their families, with whom the bank could communicate as section 441b(b)(2) allows.

The other exclusion from the definition of contribution is contained in section 114.1(a)(2) of the Commission's regulations. The exclusions relevant to this case are the exclusion discussed above regarding corporate communications to its stockholders and the exclusion for "[a]ny activity which is specifically permitted by Part 114." 11 C.F.R. 114.1(a)(2)(x). The explanation and justification for section 114.1 says that "...section (a)(2)(x) makes clear that any activity permitted by Part 114 is not considered a contribution or expenditure." Activity which is permitted by Part 114 and which is relevant in this case is the "use of corporate or labor organization facilities and means of transportation" under section 114.9.

Section 114.9(a) excepts from the prohibition of section 441b the occasional, isolated, or incidental use of corporate facilities by stockholders and employees of the corporation for individual volunteer activity in connection with a Federal election. 11 C.F.R. 114.9(a)(1). The stockholders and employees must reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. 11 C.F.R. 114.9(a)(1).

Section 114.9(c) allows any person to use the facilities of a corporation or labor organization to produce materials in connection with a Federal election but that person must reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing the materials in the commercial market.

Section 114.9(d) provides that persons, other than stockholders and employees of a corporation, and officials, members and employees of a labor organization, as specifically mentioned in 114.9(a) and (b), may use corporate or labor facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election, but they must reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. 11 C.F.R. 114.9(c).

There is no "legislative history" to guide the Commission in interpreting section 114.9 on the question of its application to a local election. In 1976 the Commission transmitted to Congress the section 114.9 regulations. The regulations at that time included the "in connection with a Federal election" language. Neither during the public hearings nor during the Commission's discussions of the drafts of the regulations does it appear that the Commission considered specifically the language concerning

Federal elections. The Commission regulations do, however, acknowledge the general applicability of Part 114 to national banks or corporations organized under federal law in connection with both state and federal elections. 11 C.F.R. § 114.2(a)(2).

Still, the question remains whether section 114.9 applies to the Goldome situation. A reason it may not is the fact that the subsections of section 114.9 discuss activities specifically in connection with Federal elections while Goldome's activities were in connection with a local election, that is, a mayoral election. On the other hand, there is no apparent policy reason for supposing that Congress intended greater restriction on <u>exceptions</u> to 2 U.S.C. § 441b, as applied to state and local elections, than it intended for Federal elections.

Because the exceptions of section 114.9 might reasonably be applied to the Goldome FSB situation, an analysis of section 114.9 in connection with the facts of this case is provided below. The following discussion analyzes section 114.9 with regard to Goldome's production of the letters to bank employees and the Buffalo business community.

To qualify for the exception in section 114.9(c) from the Act's prohibition on corporate contributions or expenditures, a person who uses a corporate facility to produce materials must reimburse the corporation within a commercially reasonable time for the normal and usual charge for producing the materials in the commercial market. Mr. Kenzie, as the person using the bank to produce the letters, appears to be the one required to reimburse Goldome for the associated costs if the exception of section 114.9 are to apply. There is no evidence in the referral that Mr. Kenzie reimbursed the bank for production of the letters. The FHLBB referral indicates, instead, that the Committee to Re-elect the Mayor reimbursed Goldome for the costs incurred in producing the letter distributed to all bank employees, totalling $75.84. Also, the Committee paid Goldome $2,990.06 for all expenses incurred in utilizing Goldome's facilities, including reimbursement for obtaining computerized mailing lists, printing and stationery charges, labor costs, and postage, to produce the letter to the Buffalo business community. Thus, even if the Commission were to determine that section 114.9(c) was applicable to local elections, the exception may not apply here, and, Goldome's expenditures for producing the letters may be in violation of 2 U.S.C. § 441b(a). Furthermore, Mr. Kenzie, as Chairman of the Board and Chief Executive Officer of Goldome FSB, and any officers or directors of Goldome who consented to the production of the letters also appear to have violated 2 U.S.C. § 441b(a). In addition, Mayor Griffin, the Committee to Re-elect the Mayor, and the Committee's treasurer, as treasurer, appear to have violated 2 U.S.C. § 441b(a) by accepting the contribution from Goldome FSB.

The Committee's use of Goldome's phones after hours may also be a violation of 2 U.S.C. § 441b(a). The Committee, as of the time of the FHLBB review of the bank's files, had not yet paid for its use of the phones. Section 100.7(a)(1)(iii)(A) of the Commission's regulations provides that the provision of goods or services without charge or at less than the usual and normal charge for the goods and services is a contribution.

If Goldome provided telephone service without payment, a contribution in violation of 2 U.S.C. § 441b(a) may be the result. Again, assuming for purposes of this analysis that section 114.9(d) applies to local elections, persons using the telephones must reimburse Goldome FSB within a commercially reasonable time in the amount usually and normally charged as defined in 11 C.F.R. 110.7(a)(1)(iii)(B). In this case there has been <u>no</u> reimbursement of Goldome FSB (at least as of the time of the FHLBB review). Therefore, Goldome FSB, Mr. Kenzie, and any officers or directors of Goldome who consented to the use of the telephones, appear to have violated 2 U.S.C. § 441b(a) by providing the Committee with the use of the bank's phones. The Committee to Re-elect the Mayor, Mayor Griffin, and the Committee's treasurer, as treasurer, also appear to have violated 2 U.S.C. § 441b(a) by using the bank's phones without paying for that use.

Finally, Mr. Kenzie, as Chairman of the Board and Chief Executive Officer, Goldome FSB, its officers or directors who consented to allowing bank employees to work for the Committee after hours, Mayor Griffin, the Committee to Re-elect the Mayor and its treasurer, as treasurer, appear to have violated 2 U.S.C. § 441b(a) because bank employees worked for the Committee after hours and on weekends. Section 431(8)(B)(i) provides that the value of services provided without compensation by a volunteer is not a contribution. 2 U.S.C. § 431(8)(B)(i). It appears that the individuals were not volunteers, however, and that the bank paid the employees for their work because the bank's records show that the bank intended to bill the Committee for labor costs.

Therefore, the bank's payment of labor costs appears to constitute a corporate contribution in violation of 2 U.S.C. § 441b(a).

Section 114.9(a) of the Commission's regulations sets forth another exception to the terms contribution or expenditure as used in section 441b(a) of the Act. Pursuant to 114.9(a), employees may make occasional, isolated or incidental use of corporate facilities without making a contribution or expenditure if they reimburse the corporation to the extent the overhead or operating costs are increased. To apply section 114.9(a) to the Goldome situation, the Goldome employees would have had to reimburse the bank for any increased costs. It is unclear from the referral whether the bank's costs were increased, but the fact that the bank planned to bill the Committee for labor costs suggests that the costs were increased.

The regulations define "occasional, isolated or incidental use." Such use is limited to one hour per week or four hours per month. 11 C.F.R. 114.9(a)(1)(iii). The referral states the employees worked "after hours and on weekends." Although it is unclear, it sounds as if the volunteers, if truly volunteers, may have worked more than the one hour per week or four hours per month allowed by section 114.9(a)(1)(iii). An investigation will be required to clarify the facts. Thus, Goldome FSB, Mr. Kenzie, and any officers or directors to consented to the volunteer activity appear to have violated 2 U.S.C. § 441b(a).

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Goldome FSB, Mr. Kenzie, the Committee to Re-elect the Mayor, Mayor Griffin, and the Committee treasurer, as treasurer, have violated 2 U.S.C. § 441b(a) in connection with the use of Goldome's telephones in connection with Mayor Griffin's reelection campaign.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Open a MUR.
2. Find reason to believe Goldome FSB, Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer of Goldome FSB, Mayor James Griffin, the Committee to Re-elect the Mayor, and the Committee treasurer, as treasurer, violated 2 U.S.C. § 441b(a).
3. Approve and send the attached letters and factual and legal analyses.

Charles N. Steele
General Counsel

May 16, 1986
Date

BY:
Kenneth A. Gross
Associate General Counsel

Attachments
Referral
Proposed Letters
Proposed Factual and Legal Analyses

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

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

DATE: MAY 21, 1986

SUBJECT: OBJECTION TO Pre-MUR 151 - FIRST GENERAL COUNSEL'S SIGNED MAY 19, 1986

86040761945

The above-named document was circulated to the Commission on Tuesday, May 20, 1986 at 11:00 A.M.

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

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

This matter will be placed on the Executive Session agenda for Tuesday, June 3, 1986.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Goldome FSB, Ross B. Kenzie, the Committee to Re-elect the Mayor, Mayor James Griffin	)))))	Pre-MUR 151 (2185)

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session of June 5, 1986, do hereby certify the the Commission took the following actions in Pre-MUR 151:

1. Decided by a vote of 6-0 to

    a) Open a MUR.
    b) Find reason to believe Goldome FS, Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer of Goldome FSB, Mayor James Griffin, the Committee to Re-elect the Mayor, and the Committee treasurer, as treasurer, violated 2 U.S.C. § 441b(a).

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

2. Decided by a vote of 4-2 to approve and send the letters and factual and legal analyses as attached to the First General Counsel's signed report of May 16, 1986.

    Commissioners Aikens, Harris, McDonald, and McGarry voted affirmatively. Commissioners Elliott and Josefiak dissented.

Attest:

6-5-86
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

86040761940

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

June 11, 1986

Ross B. Kenzie
Chairman of the Board and Chief
Executive Officer
Goldome FSB
One Fountain Plaza
Buffalo, New York 14203

RE: MUR 2185
Ross B. Kenzie,
as Chairman of the Board
and Chief Executive
Officer
Goldome FSB

Dear Mr. Kenzie:

On June 5 , 1986, the Federal Election Commission determined there is reason to believe you, as Chairman of the Board and Chief Executive Officer, and Goldome FSB violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and Goldome FSB. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials within fifteen days of your receipt of this letter.

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

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

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

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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

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

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 11, 1986

Mayor James D. Griffin
65 Niagra Square
Buffalo, New York 14218

RE: MUR 2185
Mayor James D. Griffin,
Committee to Re-elect
the Mayor and its
treasurer, as treasurer

Dear Mr. Griffin:

On June 5 , 1986, the Federal Election Commission determined there is reason to believe you, the Committee to Re-elect the Mayor, and its treasurer, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you, the committee and its treasurer. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials within fifteen days of your receipt of this letter.

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

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-

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probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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

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

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

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

Down

MICHAEL L. BRODERICK
ATTORNEY AT LAW

(716) 847-2185

69 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

86 JUN 25 P4:52

June 23, 1986

MS. JOAN D. AIKENS, CHAIRMAN
Federal Election Committee
Washington, D.C., 20463

Dear Ms. Aikens:

Receipt is acknowledged of your notice of June 11, 1986, referring to an investigation into the allegations that certain campaign contributions were made Mayor James D. Griffin, the Committee to Re-Elect the Mayor, and its Treasurer, in violation of 2 U.S.C. §441b(a) of the Federal Election Campaign Act.

I have completed and am enclosing herein, a Statement of Designation of counsel and hereby appear on behalf of the parties aforementioned.

Following a review in depth of the analysis, I will respond in detail.

May I thank you for your materials and the information provided. Our further advice will follow.

Very truly yours,

MICHAEL L. BRODERICK

MLB/kb
Enc.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2185

NAME OF COUNSEL: MICHAEL L. BRODERICK

ADDRESS: 1002 Chemical Bank Building
69 Delaware Avenue
Buffalo, New York, 14202

TELEPHONE: (716) 847-2185

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

June 16, 1986
Date

James D Griffin
Signature

RESPONDENT'S NAME: HON. JAMES D. GRIFFIN

ADDRESS: 65 Niagara Square
Buffalo, New York, 14202

HOME PHONE: Unnecessary

BUSINESS PHONE: (716) 855-4841

86040761952

GCC#817

SMILEY, OLSON, GILMAN & PANGIA

ATTORNEYS AT LAW
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(202) 466-5100
TELEX WU 64174 ROGER
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NICHOLAS GILMAN, P.C. (DC, MD, PA)
MICHAEL J. PANGIA (DC, NY)
JOHN J. CARLINO (NY)
ROBERT A. MINEO (NC)
WILLIAM P. HARPER, JR. (NC)

DANIEL F. HAYES (DC, NY)
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OF COUNSEL
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530 NORTH BLOUNT STREET
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(919) 834-9965

39 BROAD STREET
(P.O. BOX 67, ZIP 29402)
CHARLESTON, SOUTH CAROLINA 29401
(803) 723-2323

June 25, 1986

86 JUN 26 P4: 25

HAND DELIVER

Michele Brown, Esquire
General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2185

Dear Ms. Brown:

We represent Goldome FSB and its Chairman of the Board and Chief Executive Officer, Ross B. Kenzie. I am writing to follow up on our conversation of June 24, 1986 in which we requested and you agreed to an extension of time from July 1 to July 21, 1986 within which to respond to your office's letter of June 11. As I explained yesterday, due to our firm's being recently retained and the difficulty of coordinating information gathering long distance, this extension became necessary, and we appreciate your understanding.

We are also enclosing executed Statements of Designation of counsel on behalf of myself and our firm, Frederick A. Wolf,

8 6 0 4 0 7 0 1 6 5 5

Esquire of Saperston, Day, Lustig, Gallick, Kirschner & Gaglione of Buffalo, and Robert M. Edwards, Esquire, Vice President and General Counsel of Goldome FSB.

Sincerely yours,

William J. Olson

WJO:rg

Enclosures

cc: Frederick A. Wolf, Esquire
Robert M. Edwards, Esquire

R7040791654

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2185

NAME OF COUNSEL: William J. Olson and other Partners and Associates of Smiley, Olson et al.

ADDRESS: Smiley, Olson, Gilman and Pangia

815 H Street N.W.

Suite 600, Washington, DC 20006

TELEPHONE: (202) 466-5100

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

6-23-86

Date 6/23/86

Signature ROSS B. KENZIE

RESPONDENT'S NAME: Ross B. Kenzie, individually and as Chairman of The Board and Chief Executive Officer

ADDRESS: Goldome FSB

One Fountain Plaza

Buffalo, New York 14203

HOME PHONE: (716) 947-5326

BUSINESS PHONE: (716) 847-5800

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2185

NAME OF COUNSEL: Frederick A. Wolf, and other Shareholders and Associates of Saperston, Day, et al.

ADDRESS: Saperston, Day, Lustig, Gallick, Kirschner & Gaglione, PC

One Fountain Plaza

Buffalo, New York 14203

TELEPHONE: (716)856-5400

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

6-23-86

Date 6/23/86

Signature ROSS B. KENZIE

RESPONDENT'S NAME: Ross B. Kenzie, individually and as Chairman of the Board and Chief Executive Officer

ADDRESS: Goldome FSB

One Fountain Plaza

Buffalo, New York 14203

HOME PHONE: (716) 947-5326

BUSINESS PHONE: (716) 847-5800

86040761950

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2185

NAME OF COUNSEL: Robert M. Edwards, Vice President General Counsel

ADDRESS: Goldome FSB
One Fountain Plaza
Buffalo, New York 14203

TELEPHONE: (716)-847-5800

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

6-23-86
Date 6/23/86

Signature
ROSS B. KENZIE

RESPONDENT'S NAME: Ross B. Kenzie, individually and as Chairman of the Board and Chief Executive Officer

ADDRESS: ~~Goldome FSB~~
One Fountain Plaza
Buffalo, New York 14203

HOME PHONE: (716)-947-5326

BUSINESS PHONE: (716)-847-5800

86040761957

MICHAEL L. BRODERICK
ATTORNEY AT LAW

(716) 847-2185

69 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

RECEIVED AT THE FEC
GCC 820
86 JUN 27 A8:48

June 25, 1986

FEDERAL ELECTION COMMISSION
Washington, D.C., 20463

Att: Ms. Michele Brown

Dear Ms. Brown:

May this letter confirm our telephone conference of June 25, 1986 in which I advised that I have been consulted and retained by the Hon. James D. Griffin, Mayor of the City of Buffalo, his Committee to Re-Elect the Mayor, and its Treasurer, regarding claims of irregularity during his recent re-election campaign.

It is alleged that the Mayor, the Committee and its Treasurer violated a provision of the Federal Election Campaign Act. A thorough summary of the allegations and a description of the basic preliminary procedures were forwarded for which we thank you.

I am in the process of reviewing the law and marshalling documentation in support of the facts as my clients recall them. Not having been involved in the campaign on a day-to-day basis, it is impossible for me to present a complete and accurate display of our position without more time.

May I respectfully request that an extension of twenty (20) days be given which should prove sufficient time within which to respond in sufficient detail to eliminate the need for future amendment. It is my understanding from our phone conversation that such an extension, under the circumstances, would not be unreasonable.

May I thank you for your courtesy and cooperation.

Very truly yours,

MICHAEL L. BRODERICK

86 JUN27 A9:59

MLB/kb

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 30, 1986

William J. Olson, Esquire
Smiley, Olson, Gilman & Pangia
Attorneys at Law
1815 H Street, N.W.
Washington, D.C. 20006-3604

Re: MUR 2185
Goldome FSB
Ross B. Kenzie, as Chairman and
Chief Executive Officer

Dear Mr. Olson:

This is in reference to your letter dated June 25, 1986, requesting an extension of 20 days to respond to the Commission's reason to believe notification. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on July 21, 1986.

If you have any questions, please contact Michele Brown, the staff member assigned to this matter at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2 July, 1986

Michael L. Broderick, Esquire
Attorney at Law
69 Delaware Avenue
Buffalo, New York 14202

Re: MUR 2185
Mayor James D. Griffin
Committee to Re-Elect the Mayor and its treasurer, as treasurer

Dear Mr. Broderick:

This is in reference to your letter dated June 25, 1986, requesting an extension of 20 days to respond to the Commission's reason to believe notification. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on July 21, 1986.

If you have any questions, please contact Michele Brown, the staff member assigned to this matter at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

GCC #979

MUR 2185

SMILEY, OLSON, GILMAN & PANGIA

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WILLIAM P. HARPER, JR. (NC)

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NANCY A. CHILES (SC)
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OF COUNSEL
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(P.O. BOX 67, ZIP 29402)
CHARLESTON, SOUTH CAROLINA 29401
(803) 723-2323

86 JUL 21 P5: 16

870407619961

July 21, 1986

HAND DELIVER

Honorable Joan D. Aikens
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2185
Goldome FSB, and
Ross B. Kenzie, as Chairman of the
Board and Chief Executive Officer

Dear Chairman Aikens:

On behalf of our clients Goldome FSB and Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer, we hereby submit the enclosed Factual and Legal Response in the above referenced MUR. This Response is directed to the General Counsel's Factual and Legal Analysis transmitted to our clients on June 11, 1986.

Our Response was originaly due on July 1 but extended upon our application to July 21 by Lawrence M. Noble, Deputy General Counsel.

If there are additional matters that need amplification, we would be pleased to work to accomplish this end.

We believe that this response fully supports a determination that no further action should be taken against the respondents in this MUR.

Sincerely yours

William J. Olson

Enclosure

cc: Michele Brown, Esquire
Office of General Counsel, Room 657
Federal Election Commission

89040761962

BEFORE THE
FEDERAL ELECTION COMMISSION

In re Goldome FSB, and Ross B. Kenzie, Chairman of the Board and Chief Executive Officer	)	MUR 2185

RESPONDENTS' RESPONSE TO THE
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

Respondents Goldome FSB (hereinafter "Goldome") and Ross B. Kenzie, Chairman of the Board and Chief Executive Officer, (hereinafter "Kenzie") hereby submit their response to the General Counsel's Factual and Legal Analysis (hereinafter "General Counsel's Analysis").

I. KENZIE OPEN LETTER TO GOLDOME EMPLOYEES

A. FEC Statement

> By distributing the letter to all Goldome employees, Mr. Kenzie exceeded the class of individuals, namely corporate stockholders and executive or administrative personnel and their families, with whom the bank could communicate as section 441b(b)(2) allows [General Counsel's Analysis, at 9-10]

B. Respondent's Response

1. The Communication in Question

In an open letter dated September 3, 1985, respondent Kenzie communicated to certain individuals concerning the upcoming primary election for Mayor of the City of Buffalo (Exhibit A-1). In this letter Kenzie urged those Goldome employees living and working in Western New York:

> to consider joining [Kenzie] in supporting Mayor James D. Griffin, a local businessman

> administrator and public servant who has given renewed vibrancy to our City and County.

The letter closed with the encouragement:

> [w]hether or not you agree with me, I hope that you will all get out and vote particularly in the primary.

Respondents had established a pattern of communicating through Open Letters. Sample Open Letters are appended as Exhibit A-2, A-3, and A-4.

2. FEC Statutes and Regulations

According to the General Counsel's Analysis, an evaluation of this allegation requires an analysis of the exclusions set out in Federal Election Campaign Act (hereinafter "FECA") section 441b(b)(2) as they specifically relate to Goldome. As discussed in subsection 3 below, Goldome is not incorporated but rather is an association. Section 441b(b)(2) provides that

> the term "contribution or expenditure"...shall not include
>
> (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject... (emphasis added).

The implementing regulation directly correlates a stock corporation's stockholders with a nonstock corporation's members:

> An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may communicate with its members.... [11 C.F.R. section 114.3(a)(2) (emphasis added)].

The term "members" is defined for purposes of the entirety of 11 C.F.R. Part 114 as follows:

> "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock. [11 C.F.R. section 114.1(e) (emphasis added)].

3. Nature of Goldome

Goldome is not incorporated under the law of any state or the federal government. It is an unincorporated association.

Goldome is not a national bank. Goldome is a Federal Mutual Savings Bank organized pursuant to 12 C.F.R. section 543.11, based upon the Federal Home Owners Loan Act of 1933. This is to be distinguished from the National Banking Act pursuant to which national banks are chartered. (The name "Goldome FSB" contains an approved abbreviation for the phrase "Federal Savings Bank".)

Goldome received its original Federal Mutual Charter from the Federal Home Loan Bank Board on September 26, 1983, which was amended October 23, 1984 (Exhibit B), approximately one year prior to the time frame involved in the instant MUR which is the fall of 1985. Prior to that time Goldome was a New York Chartered Mutual Savings Bank.

The Federal Deposit Insurance Act defines a Federal Mutual Savings Bank as:

> a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers. [12 U.S.C. section 1813(f) (emphasis added)]

The Federal Mutual Charter under which Goldome specifically operates (patterned after the Federal Home Loan Bank Board approved form set out in 12 C.F.R. section 544.1) states:

> All holders of the savings banks savings, demand or other authorized accounts are members of the savings bank. [section 6 (emphasis added)]

Account holders (members) of a Federal Mutual Savings Bank are directly analogous to policy holders (members) of a mutual life insurance company, or "any type of organization that had members" (122 Cong. Rec. 12469), entities that the FECA was not intended to limit with respect to these types of communications.

4. Goldome Account Holder Membership Rights

The Federal Mutual Charter of Goldome (Exhibit B) provides expressly that account holders have voting rights:

> In consideration of all questions requiring or permitting action by the members of the savings bank, each holder of an account shall be permitted to cast one vote for each $100 or fraction thereof, of the withdrawal value of the member's account. [section 6]

The Charter provides for the right of members to participate in election of trustees (directors):

> Members of the savings bank shall elect trustees by ballot.... [section 7]

The Charter provides for membership rights upon dissolution:

> All holders of accounts of the savings bank shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the savings bank. [section 8]

The Charter also provides for membership voting in any amendment of the charter, other than preapproved amendments:

> Any other amendment, addition, alteration, change, or repeal of this charter must be submitted to, and preliminarily approved by the Board prior to submission to and approval by the members at a legal meeting. [section 9]

5. <u>Recipients of the Communication in Question</u>

The communication in question was made to the employees of Goldome, and at the time of the communications in question (September 3, 1985), every employee of Goldome who received the letter was also an account holder of Goldome. All Goldome employees are paid by direct deposit to a designated bank account, and largely due to certain favorable account terms for employees all employees of Goldome had voluntarily elected to participate in Goldome's own direct deposit program on the date in question. (These favorable account terms as of September 3, 1985 included no service charge on checking accounts, checks personalized free of charge, pay checks deposited in employees accounts given immediate credit, no minimum balance required in savings account to earn interest -- when normally a $250 minimum balance was required.) It should be noted that each employee's election to open an account was voluntary, as required by the Electronic Fund Transfer Act. [15 U.S.C. section 1693k]

Additionally, it should be noted that the Kenzie letter of September 3, 1985 was not distributed to "all Goldome employees" as stated in the General Counsel's Analysis (at 1) but to only those employees living in Western New York, as the letter itself states. (Exhibit A-1). (Those living in Western New York were approximately 60 percent of the total number of employees.) By way of contrast, another such open letter relating to support for the United Way, the letter of August 20, 1985 was distributed to all Goldome employees as the letter indicates. (Exhibit A-2)

6. Permissible Communications to Members

During Senate consideration of the Conference Report on the 1976 amendments to the FECA, the following colloquy took place between Senators Allen and Cannon:

> MR. ALLEN: Now, an amendment which I offered on the floor which was accepted by the manager of the bill, the distinguished Senator from Nevada (MR. CANNON), amendment No. 1496, was adopted by the Senate and agreed to in the conference.
>
> This amendment was made necessary by the fact that there are certain types of corporations or organizations that do not have stockholders.... So if the members of such an organization, who, not being stockholders still make up the corporation, would solicitations by such an organization of its members fall into the first category that I enumerated as to who may be solicited. Would they come in the class that could be solicited at any time?
>
> MR. CANNON: Yes, the Senator is correct that the provisions of section 321(b)(2)(C) and later on page 19, section 321(b)(4)(C) would permit, for example, a mutual life insurance company or a separate segregated fund established by such an organization to solicit contributions for such a fund from its members. So any type of an organization that had members, though not categorized as stockholders, and so on, would be covered under that provision.
>
> MR. ALLEN: And could solicit at any time.
>
> MR. CANNON: They could solicit at any time just as a corporation and its separate

> segregated fund can solicit certain classes at any time....
>
> MR. ALLEN: I appreciate the answers from the chairman. I am glad he mentioned specifically a mutual life insurance company.... Any mutual life insurance company would be able to solicit its policyholders since they are the group that make up the corporation.
>
> MR. CANNON: If the policyholders are members within the definition of that type of an organization, then they could be solicited under that provision of the law. [122 Cong Rec. 12468-69 (1976) (emphasis added)]

Goldome is a mutual federal association, and is not a corporate entity under state or federal law. As such it does not have stockholders. It does, however, have account holders who, like the policy holders of a mutual life insurance company, are its members.

In other settings, there is significant legal support for the direct analogy between stockholders and account holders that is being drawn here. For example, in OCHS v. Washington Heights Federal Savings & Loan Ass'n, 17 N.Y.2d 82, 215 N.E.2d 485, 268 N.Y.S.2d 294 (1966) the Court of Appeals of New York, where Goldome is located, stated:

> There is no doubt that many of the specific characteristics of a Federal savings and loan association are analogous to those of a stock corporation. The association members (both depositors and borrowers) possess rights and duties similar to those of a shareholder in a typical stock corporation, e.g., a financial interest in the association; the right to vote on management policy and to elect the board of directors; proxy voting; the power to call special meetings under specified circumstances; and the right to amend the by-laws of the association. We hardly need point out that these are some of the most basic attributes indigenous to a shareholder in a corporation ....[17 N.Y.2d at 86-87 (emphasis added)]

The decision in OCHS was favorably cited in In re McVann, 96 Misc.2d 879, 409 N.Y.S.2d 923 (N.Y.Sup.Ct. 1978) where the New York Supreme Court, Queens County flatly stated:

> The rights of <u>members</u> in federal savings and loan associations are analogous to those of a corporate <u>shareholder</u> [409 N.Y.S.2d at 926 (emphasis added)]

<u>See also</u> <u>Kupiec</u> v. <u>Republic Federal</u> Savings & Loan Ass'n, 512 F.2d 147 (7th Cir. 1975).

Although these two New York cases deal specifically with federal savings and loan associations, not federal mutual savings banks as in the instant case, these categories of entities are virtually indistinguishable for the purposes discussed here. Federal banking law demonstrates this close parallel:

> The term "association" means a <u>Federal savings and loan association</u> or a <u>Federal savings bank</u> chartered by the Board under section 1464 of this title, and any reference in any other law to a <u>Federal savings and loan association</u> shall be deemed to be also a reference to such <u>Federal savings banks</u>, unless the context indicates otherwise. [12 U.S.C. section 1462(d)]

The breadth of the ownership, voting, and other rights possessed by Goldome account holders becomes evident when contrasted with the rights of members that were said by the FEC to be adequate to justify solicitation (not just communication as in the instant case) under 2 U.S.C. section 441b(b)(4)(C) in FEC Advisory Opinion 1977-67. Indeed, the instant case easily meets even the more stringent test set out in the Dissenting Opinion of two Commissioners in that there are "member rights and obligations vis-a-vis the corporation", and members have "direct and enforceable participatory rights as a matter of law", members have the right to "direct the policies and activities of the corporation", and members have the right to "elect corporate directors or officers". The instant case also easily meets the test implied by <u>Federal Election Commission</u> v. <u>National Right to Work Committee</u>, 459 U.S. 197 (1982).

In Advisory Opinion 1984-63, the FEC determined that the political action committee of a federally chartered mutual savings and loan association, which described itself as a corporation to the FEC, could solicit "all holders of the association's savings, demand or other authorized accounts" and each borrower, as members of the savings and loan. For the reasons set out above, the parallel between a federal mutual savings bank and a federal mutual savings and loan is compelling and justifies no less favorable treatment in the instant case as in AO 1984-63.

7. Cost of Communication

It has been demonstrated that in writing to certain employees/account holders/ members of Goldome, Mr. Kenzie did not "exceed the class of individuals" with whom the bank could communicate under 2 U.S.C. section 441b(b)(2) as stated in the General Counsel's Analysis, at 9-10. Such communications are constitutionally and legally protected. Even if Goldome were a national bank or a corporation organized by authority of any law of Congress, such communications could be paid for by the entity and could be "on any subject". [2 U.S.C. section 441b(b)(2)(A)]

Nevertheless, although permissible, the bank did not pay the costs of the letter. The total printing cost for this letter was $75.84. (Check appended as Exhibit C). This amount was promptly billed to the committee to Re-elect Mayor Griffin and paid by the committee in full on September 16, 1985, thirteen days after the communication was distributed. (Affidavit of Anthony Mancuso, Exhibit D).

III. KENZIE LETTER TO BUFFALO BUSINESS COMMUNITY

A. FEC Statement

> On September 30, 1985, Mr. Kenzie issued a second "open letter". He issued the letter to the Buffalo business community in his capacity as Chairman of the Chamber of Commerce. The FHLBB does not state that the letter appeared on Goldome stationery nor does it include a copy of this second letter. It appears, though, that the letter was written on Goldome stationery, because the FHLBB referral states that the bank's records indicate the bank received $2,990.06 from the Committee, in full payment of the bank's costs, for all expenses incurred in utilizing Goldome's facilities, including reimbursement for obtaining computerized mailing lists, printing and stationery charges, labor costs and postage. [at 2]

B. Respondent's Response

1. Communication in Question

Kenzie signed a letter supportive of Mayor Griffin dated September 30, 1985, entitled "An Open Letter to the Business Community of Buffalo". (Exhibit E). The General Counsel's Analysis is not accurate in several particulars with regard to this letter.

The letter of September 30, 1985 was sent on Kenzie's personal stationary, not on Goldome stationary, contrary to the assumption in the General Counsel's Analysis. (Exhibit E contains an original copy of both the letter and envelope used for this mailing -- both bearing the following information: Rose B. Kenzie, Suite 1200, Three Fountain Plaza, Buffalo, New York 14203.)

The letter was written by Kenzie in his private capacity. He wrote the letter as a "concerned businessman".

2. Applicable FEC Law and Regulations

FEC regulations permit a volunteer to use [illegible] corporate facilities if certain conditions are met, including reimbursement being made "within a commercially reasonable time." 11 C.F.R. section 114.9(a)(2). Additionally, any person who uses the

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facilities of a corporation to produce materials must make such reimbursement on the same basis. 11 C.F.R. section 114.9(c)

3. Costs and Reimbursement

The General Counsel's Analysis stated that the bank received $2,990.06 from the Committee in full payment of the bank's costs. This is not totally accurate. The costs susceptible to reimbursement to the Bank pursuant to 11 C.F.R. section 114.9(a) were $2,710.06.

The difference between these two numbers is apparently the $280.00 cost of the mailing labels. The Committee to Re-elect Mayor Griffin paid this $280.00 directly to the Buffalo Chamber of Commerce for these labels. At no time did Goldome bear this expense and therefore it was not reimbursed for this amount. As to the $2,710.06 expense item associated with Kenzie's volunteer activity, the bank was reimbursed in full. This reimbursement was timely, as the letter to the Buffalo business community was mailed on September 30, 1985 and Goldome received a check from the Committee to Re-elect Mayor Griffin on October 23, 1985. (It is true that this check was not drawn on the account of Kenzie but rather drawn on the account of the Committee. Under 11 C.F.R. section 114.9 it should not matter who made the reimbursement, but rather that it was made, and made timely.)

The FEC has dealt with similar situations [illegible] national banks, unlike Goldome, which are subject to 2 U.S.C. section 441b, at least twice previously in the context of Matters Under Review. In both cases reimbursement was considered adequate by the General Counsel's office.

In MUR 928 a national bank purchased adve[illegible] local political party "ad books" and purchased tickets to "politically sponsored events". The total funds expended directly by the bank were $2,600. These were considered political contributions. The FEC General Counsel's Report explained that the:

> bank president...made restitution of the $2,600 which had been disbursed.
>
> In order to remedy the situation, the Commission might, in other circumstances, demand that the bank seek reimbursement from the recipient or pay a civil penalty. However, in light of the Comptroller's Office having notified the bank that reimbursement by the Board or by those responsible for the contributions would constitute rectification and the bank having taken that action, [illegible]

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> recommend that the matter not be pursued.
> [MUR 928, General Counsel's Report, at 1-2]

In MUR 1268 a national bank made contributions to two state campaigns. The FEC General Counsel's Report stated:

> Upon discovery of the violations [the] Chairman of the Board, reimbursed the Bank for the contributions made to the Gil Carmichael for Governor Campaign which amounted to $1,050. This amount was also refunded to [the Chairman] by the Carmichael Campaign. In addition, [the Chairman] reimbursed the Bank for $250 which was the amount of the contribution to the Ed Pittman Campaign. As [the Chairman] desired to make a personal contribution to that committee, he did not ask for a refund from them.
>
> Although it is clear the Bank violated the Act, the General Counsel recommends the Commission take no further action in light of [the Chairman's] explanation of the circumstances and the fact that the Bank has been reimbursed. [MUR 1268, General Counsel's Report, at 1-2].

It should be remembered that in the instant case, unlike the two prior MURs, there was no contribution or donation, but rather a sale of services for which reimbursement was promptly received.

III. GOLDOME'S RENTAL OF TELEPHONE FACILITIES

A. FEC Statement

> The Committee's use of Goldome's phones after hours is also a violation of 2 U.S.C. section 441b(a). The Committee, as of the time of the FHLBB review of the bank's files, had not yet paid for its use of the phones. Section 100.7(a)(1)(iii)(A) of the Commission's regulations provides that the provision of goods or services without charge or at less than the usual and normal charge for the goods and services is a contribution. Goldome's provision of telephone service without payment is a contribution in violation of 2 U.S.C. section 441b(a). Again, assuming for purposes of this analysis that section 114.9(d) applies to local elections, persons using the telephones must reimburse Goldome FSB within a commercially reasonable time in the amount usually and normally charged as defined in 11 C.F.R. 110.7(a)(1)(iii)(B). In this case there has been *no* reimbursement of Goldome FSB (at least as of the time of the FHLBB review). [General Counsel's Analysis, at 13-14 (emphasis original)]

B. Respondent's Response

1. Circumstances Surrounding Telephone Lease

The General Counsel's Analysis is not accurate in stating that reimbursement by the Committee was not received within a commercially reasonable time or that the charges were less than that usually and normally charged.

Goldome had an established pattern of providing access to its telemarketing facilities, termed Kwik Line, on an after hours basis to a variety of organizations. For example, Goldome had previously provided these telephone facilities at no cost to the annual fund raising campaigns of the United Way, the Buffalo Symphony Orchestra, and similar nonprofit organizations.

The conditions imposed on the use of the telephones by the Committee to Re-elect Mayor Griffin was virtually identical to those imposed on other organizations. (Affidavit of Michael [illegible] Neff, Assistant Vice President of Goldome and manager of

Goldome's Kwik Line Department, Exhibit F). The only difference was that the Committee was required to pay the usage charges.

Goldome set the price it charged based on the cost that it incurred, rounded up on a per call basis. Therefore, Goldome charged the Committee slightly more per call than its actual cost. Neff set out the pricing and conditions for the use of the telephones in his letter of September 23, 1985. (Exhibit G-1). When the telephone vendor increased Goldome's costs, the price to the Committee was increased on October 24, 1985. (Exhibit G-2).

Calling commenced on September 30, 1985 and ceased on October 26, 1985. Goldome issued its bill for services on November 1, 1985 and on November 8, 1985 the Committee paid the bill in full. (Copies of the bill and check are attached as Exhibit G-3).

Goldome also offered these telephone facilities to the opponent of Mayor Griffin, George K. Arthur, under the same conditions as offered to the Griffin Committee when requested.

2. <u>Legal Analysis</u>

The above stated facts show that 11 C.F.R. section 114.09(d) was fully complied with, both in terms of the charges rendered and the payment received.

IV. USE OF GOLDOME FACILITIES BY EMPLOYEES

A. FEC Statement

> In addition, several Goldome FSB employees worked after hours and on weekends inserting political flyers for the Griffin campaign. The bank's records show that the bank intends to bill the Committee $484.24 for labor costs. Mr. Edwards, the bank's legal counsel, said that the employees worked after hours on a voluntary basis. [General Counsel's Analysis, at 3]

> Finally, Mr. Kenzie...consented to allowing bank employees to work for the Committee after hours...because bank employees worked for the Committee after hours and on weekends....It appears that the individuals were not volunteers, however, and that the bank paid the employees for their work because the bank's records show that the bank intended to bill the Committee for labor costs. [General Counsel's Analysis, at 14]

B. Respondent's Response

1. Factual Background

The confusion implicit in the above statements centers on the term volunteer. The background is important to understand.

Goldome has certain sophisticated automatic folding and inserting machines which are physically located in the Goldome Mail Room/Folding Room. This machinery is capable of folding, stuffing, sealing and labeling 8,000 pieces per hour. It is operated by regular employees, and occasionally temporary personnel, who are specifically trained on this equipment. The established Goldome mail room departmental policy is to announce to employees whenever overtime work is available, and to ask employees to volunteer for this work. Despite the fact that employees must volunteer to take this overtime work, they are paid for their overtime work.

The Committee to Re-elect Mayor Griffin approached Goldome about the assistance of this equipment. Goldome agreed on the standard condition that it would have sufficient volunteers to take on the overtime work. Goldome also informed the Committee that the rates that it would charge would be based on overtime pay rates.

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The use of the facilities occurred on October 6, 16, 19, and 28, 1986. The Committee was billed $291.12 on December 4, 1985, and payment in full was made on December 9, 1985 (Exhibits H-1 and H-2).

Goldome subsequently discovered a separate work order which had been overlooked. Immediately upon its discovery, on December 12, 1985, this work order for $191.12 was billed to the Committee. Payment was received on December 16, 1985 (Exhibits H-3 and H-4).

2. <u>FEC Regulations</u>

FEC regulations permit the "use of corporate or labor organization facilities to produce materials" under certain conditions:

> Any person who uses the facilities of a corporation or labor organization to produce materials in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market. [11 C.F.R. section 114.9(c)]

In its Explanation and Justification statement relative to this regulation, the FEC stated:

> If, for example, a candidate had his or her handbills reproduced on a mimeograph machine by a labor organization, the candidate would be required to reimburse the labor organization in the amount of the normal and usual charge for producing the handbills in the commercial market. The reimbursement must be made within a commercially reasonable time.

3. <u>Analysis</u>

Although Goldome is not incorporated and is not a national bank, the application of the regulation to the facts shows that Bank's performing this service was permissible, and it was timely billed to and paid by the Committee at appropriate rates.

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IV. SUMMARY

For the reasons set out above, respondents submit that the FEC should determine that no further action should be taken against respondents in this MUR.

Respectfully submitted.

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MUR 2185

RESPONDENTS' EXHIBITS

A-1	Ross B. Kenzie Open Letter to All Goldome Employees Living and Working in Western New York dated September 3, 1985
A-2	Ross B. Kenzie Open Letters
A-3	
A-4	
B	Federal Mutual Charter of Goldome, FSB October 23, 1984
C	Check to Goldome FSB for $75.84
D	Affidavit of Anthony V. Mancuso, Audit Manager/Officer for Goldome FSB
E	Ross B. Kenzie Open Letter to the Business Community of Buffalo dated September 30, 1985 with envelope
F	Affidavit of Michael J. Neff, Assistant Vice President of Goldome FSB, manager of Goldome Kwik Line Department During September-October 1985
G-1	Letter of Michael J. Neff dated September 23, 1985
G-2	Letter of Michael J. Neff dated October 24, 1985
G-3	Goldome billing for Kwik Line Telephone Usage dated November 1, 1985 and check 509 from the Committee to Re-elect Mayor Griffin dated November 8, 1985, $696.80
H-1	Goldome billing dated December 4, 1985
H-2	Committee to Re-elect Mayor Griffin Check #541 December 9, 1985, $291.12
H-3	Goldome billing dated December 12, 1985
H-4	Committee to Re-elect Mayor Griffin Check #555 December 16, 1985, $191.12

September 3, 1985

OPEN LETTERS

GOLDOME

An Open Letter to All Goldome Employees Living and Working in Western New York:

WE'RE GOLDOME
WE'VE GOT TO BE
The Best

During the past several years that I have served Goldome, you have often heard me say "I believe in Buffalo."

My faith has been justified many times over. Despite our torturous transition from a smokestack-dependent economy to a diversified one, Buffalo is again on the move.

Certainly, the past several years have been good ones for Goldome. We have grown from a $3-billion regional savings bank to a $13-billion broadly based financial institution employing 2500 men and women in Western New York alone. We can be proud, also, that Goldome has been a catalyst and a leading financial backer in the remarkable revitalization of downtown Buffalo and the reclamation of its urban neighborhoods.

I believe that our success as a company — and the progress we have made as a city — would have been less without the support and expertise of our Mayor, James D. Griffin. Mayor Griffin has eliminated a $19-million deficit, reduced the crime rate and has worked tirelessly to bring new dollars to Buffalo through state and urban programs.

Mayor Griffin has been instrumental in providing an Urban Development Action Grant, that — in partnership with Goldome's commitment to build its new corporate headquarters — resulted in the construction of two banks and a hotel/retail center representing $200-million of private and public investment at this end of Main Street. This, in turn, triggered development of Buffalo's Theater District and enhanced prospects for the use of the City's new rapid transit.

Without the Mayor's expertise and support, it is difficult to imagine that many of our long-awaited and deeply needed revitalization projects would have come to fruition. The Mayor has been a partner with Goldome and others in the business community in the development of our waterfront and urban renewal projects, including Lovejoy, Pratt/Willert, St. Mary's Square and Roosevelt Apartments projects.

The relationship that Mr. Griffin has forged with the County, State and Federal governments — and with the business community — has contributed enormously to our progress. I know Jim Griffin personally. He runs a lean, efficient administration, and he is beholden to no one.

As the September 10th primary nears, I would like to encourage each of you to consider the Mayor's efforts and contributions to the community and to our welfare over the past seven years. I ask you to consider joining me in supporting Mayor James D. Griffin, a local businessman, administrator and public servant who has given renewed vibrance to our City and County.

Whether or not you agree with me, I hope that you will all get out and vote — particularly in the primary.

Ross B. Kenzie
Chairman and
Chief Executive Officer

August 20, 1985

OPEN LETTERS

GOLDOME

To All Goldome Employees:

This year, once again, the United Way is asking all of us to help our various communities. Without the support of Goldome and others in the business community, many of the people who need our United Way agencies will be unserved.

Who benefits from United Way? We tend to think of the handicapped, the illiterate, the homeless — those less fortunate than ourselves. But United Way also serves our Boy Scouts and Girl Scouts, our YMCA's, our Council of Senior Citizens and a host of other agencies that touch all our lives.

WE'RE GOLDOME
WE'VE GOT TO BE
The Best

Without question, the agencies of the United Way provide far-reaching benefits to our communities. And they do so with a high level of efficiency. For this reason, it is Goldome's policy to allow only one organization — United Way — to solicit our employees. It has also been Goldome's policy to go all out in support of the United Way campaign through significant corporate contributions, loaned executives, personal volunteer involvement and employee support.

We will launch our United Way campaign corporate-wide on August 26th and continue our solicitation through September 6th. I strongly urge each of you to help Goldome reach 100% participation — everyone giving something — in this year's campaign.

Your contributions — every dollar of them — are important. When you are approached by your solicitor, please give your fair share. Help us fulfill the promise of neighbor helping neighbor to make our communities a better place to live.

Ross B Kenzie

Ross B. Kenzie
Chairman and
Chief Executive Officer

OPEN LETTERS

GOLDOME

To All Goldome Employees in Western New York

In September, we will begin a $4-million renovation of the former Western Building at 438 Main Street. The twelve story, 140-thousand square foot facility, to be renamed Goldome Court, will be our fourth major office complex in Western New York.

With our headquarters building fully occupied, Goldome Court will give us the much needed space to accommodate our growth over the past year and allow us room for future expansion.

The Bank currently occupies three floors and 30-thousand square feet of the building. After renovation, we will utilize six floors comprising 52-thousand square feet. The facility will house all of Goldome's operations in Consumer Lending, Life Insurance and Strategic Investments. Upon completion, nearly 400 Goldome employees will be based at Goldome Court.

WE'RE GOLDOME
WE'VE GOT TO BE
The Best

After renovation, Goldome Court will be a major "A-space" building and a vital part of downtown. A major element of the renovation includes converting the former main floor, which has been closed since 1985, into offices for Goldome's Consumer Lending Group. The Main Street entrance of the building and the escalators leading to the second floor will also be redesigned.

It is our goal to gain maximum utilization of space, and at the same time, retain the architectural integrity and beauty of the building.

Goldome Court will continue to have a mix of bank offices, retail space, and other professional offices. Major tenants include: Prudential Bache Securities, MONY (Mutual of New York), Ernst & Whinney, CPAs, and several legal firms. Major retail occupants include: Ulbrich's, CVS, Tanke Jewelers and the William Mathias Cigar Store.

The project is expected to be completed by late spring of next year.

Sincerely,

Ross B. Kenzie

Ross B. Kenzie
Chairman and
Chief Executive Officer

[redacted]

Direct Communications to Goldome Employees January 1985

OPEN LETTERS

GOLDOME

An Open Letter to All Goldome Employees Living and Working in Western New York:

It has been several months since we last published **Open Letters,** and in that time, we have begun work on an exciting new program designed to help all of us better understand — and succeed in — the new and very challenging environment of banking deregulation.

This program will be launched on a pilot basis in Western New York, and will initially include all line and "back office" staff in retail areas whose work involves direct contact with customers, or direct support of customer service personnel. Our theme is, "We're Goldome — We've Got to Be the Best" — and you'll be seeing our emblem more frequently over the next few months.

WE'RE GOLDOME
WE'VE GOT TO BE
The Best

Our intent is to help these key employees to focus on customer service, the most critical factor of our business in this new, more competitive environment. Through this program, we hope also to channel the efforts of the rest of the organization toward giving our customer service staff all the support and information they will need to succeed at their work.

We will begin with special training sessions for all full and part-time employees in these selected retail areas. These sessions will educate employees about deregulation and deal specifically with related customer service issues. The program will build continually throughout the year, as more areas of the organization become directly involved, and as employee communications programs, recognition, and other forms of support tied directly to this strong new effort to focus on customer service.

We expect this program to be highly successful, and hope to introduce it to employees of all divisions and subsidiaries during 1985. We hope to have every Goldome employee educated about deregulation and more comfortable with our goals and direction as a result of this corporate-wide effort. And we hope to sustain our leadership, and our long tradition as "the best" in customer service.

Those employees who will be attending the first of our special training sessions have already received their invitations. Managers will receive further details in special sessions on January 23rd, and future programs and communications will involve every employee.

The idea is for all of us — throughout the organization — to join together to better understand our direction and goals under deregulation and to give increased focus and support to the most important goal of all — our strong and shared commitment to customer service.

Thanks to all the officers on this task force who have worked to coordinate this program. I appreciate their hard work.

I look forward to joining with you as this program unfolds.

Sincerely,

Ross B Kenzie

Ross B. Kenzie
Chairman and
Chief Executive Officer

GOLDOME FSB

BUFFALO, NEW YORK

I HEREBY CERTIFY that the attached Federal Mutual Charter of Goldome, FSB is a true copy of the original document duly executed on the 23rd day of October, 1984, that is still in full force and effect.

Dated: July 1, 1986

Kenneth C. Kirsch
Vice President
Corporate Secretary

Subscribed and sworn to before me this 1st day of JULY, 1986

Juliet T. Masci
Notary Public

JULIET T. MASCI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1987

FEDERAL MUTUAL CHARTER
GOLDOME FSB

Section 1. Corporate title. The full corporate title of the Federal savings bank hereby chartered is Goldome FSB.

Section 2. Office. The home office shall be located in the City of Buffalo, County of Erie and State of New York.

Section 3. Duration. The duration of the savings bank is perpetual.

Section 4. Purpose and powers. The purpose of the savings bank is to pursue any or all of the lawful objectives of a Federal mutual association chartered under section 5 of the Home Owner's Loan Act of 1933, as amended, and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Home Loan Bank Board ("Board"). In addition, the savings bank may make any investment and engage in any activity as may be specifically authorized by the Board, including authorization by delegated authority, in connection with action approving the issuance of the Charter.

Section 5. Capital. The savings bank may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Board.

Section 6. Members. All holders of the savings banks' savings, demand or other authorized accounts are members of the savings bank. In the consideration of all questions requiring or permitting action by the members of the savings bank, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1,000 votes. Voting may be by proxy, which is subject to the rules and regulations of the Board. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members, shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. All accounts shall be nonassessable.

Section 7. Trustees. The savings bank shall be under the direction of a board of trustees. The authorized number of trustees shall not be fewer than five nor more than fifteen persons, as fixed in the savings bank's by-laws, except that the number of trustees may be increased to a number greater than fifteen with the prior approval of the Board or its delegate. Each trustee of the savings bank shall be a member of the savings bank. Members of the savings bank shall elect trustees by ballot; provided, that in the event of a vacancy on the board, the board of trustees may fill such vacancy, if the members of the savings bank fail to do so, by electing a trustee to serve until the next annual meeting of the members. Trustees shall be elected for a period of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board each year.

Section 8. Reserves, surplus, and distribution of earnings. The savings bank shall maintain for the purpose of meeting losses the amount of general reserves that the Board requires by regulation; such reserves shall include the reserve required for insurance of accounts. Any losses may be charged against general reserves. The savings bank shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Board; provided, that the savings bank may establish minimum-balance requirements for accounts to be eligible for distribution of earnings.

All holders of accounts of the savings bank shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the savings bank. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the savings bank having the same priority as the claims of general creditors of the savings bank not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the savings bank.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment pursuant to Sections 544.2 or 544.3 of the Board's regulations shall be effective upon filing the amendment with the Board in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, alteration, change, or repeal of this charter must be submitted to, and preliminarily approved by, the Board prior to submission to and approval by the members at a legal meeting. Any amendment, addition, alteration, change or repeal so acted upon and approved shall be effective upon filing with the Board in accordance with regulatory procedures.

DATED: October 23, 1984

Attest: ______________________
Secretary of Goldome FSB

GOLDOME FSB

By: ______________________
Chief Executive Officer

Attest: ______________________
Secretary to the Board

FEDERAL HOME LOAN BANK BOARD

By: ______________________
Chairman

8 9 0 4 0 7 6 1 9 8 8

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

340

PAY seventy-five 84/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO
9/16/83	Goldome FSB	Prtg. Open Letter	340

$ 75.84

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000340⑈ ⑆022000839⑆ 32 100094 3⑈

AFFIDAVIT

Anthony V. Mancuso, being duly sworn, deposes and says as follows:

1. I am an Audit Manager/Officer for Goldome FSB, a federally chartered mutual savings bank headquartered in Buffalo, New York and I have been employed by Goldome FSB since March 24, 1980. I currently reside at 95 17th Street, Buffalo, New York 14213.

2. I am a graduate of Canisius College, with a degree in Accounting, and I am continuing my education to become a Certified Public Accountant.

3. As an Audit Manager/Officer, I report to John Torris, Vice President and Chief Auditor of Goldome FSB. Mr. Torris is a Certified Public Accountant who is directly responsible to the Audit Committee of the Board of Trustees of Goldome FSB.

4. During the month of October 1985, following publication of newspaper reports containing charges that Goldome FSB was engaged in illegal political activities, I was directed by Mr. Torris to investigate and audit bank records concerning activities by Goldome FSB which might in any way be related to political campaigns or activities.

[redacted]

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5. I reviewed the Bank's records and found four transactions relating to the primary and general election campaigns of Buffalo Mayor James Griffin. In each case, I found the documentation of the transactions sufficient and acceptable pursuant to the general standards applied by the Audit Department of Goldome FSB. The transactions are as follows:

(a) An op n letter dated September 3, 1985 from Ross B. Kenzie, Chairman of the Board and Chief Executive Officer of Goldome FSB, to Goldome employees of the Western New York Division requesting Bank employees to consider supporting Mayor James Griffin for re-election and urging employees to vote in the primary and general election. The work order relative to this letter, dated September 3, 1985, revealed the cost of reproducing the letter to be $75.84. This amount was promptly billed to the Mayor's Campaign Committee. The Committee to Re-elect Mayor Griffin paid this amount in full on September 16, 1985;

(b) A letter on Mr. Kenzie's personal stationery dated September 30, 1985 to members of the Buffalo business community, printed and mailed using Bank facilities. The work orders revealed the total cost of printing, stuffing envelopes, and postage to be $2,710.06, which was billed to the Mayor's Campaign Committee on October 7, 1985. The Committee to Re-elect Mayor Griffin paid this amount in full on October 23, 1985. Inquiry revealed that the mailing labels used for this mailing were obtained from the Buffalo Area Chamber of Commerce by the Mayor's Campaign Committee. The $280.00 cost of the labels was billed by the Buffalo Area Chamber of Commerce and paid to that entity by the Committee to Re-elect Mayor Griffin;

(c) The Bank rented unused telephones to the Mayor's Campaign Committee for use by campaign workers. The records revealed that each call was accounted for, billed to and paid for by the Mayor's Campaign Committee in the total amount of $696.80. The campaign workers commenced using the telephones during the week of September 30, 1985 and ended their use of the telephones on October 26, 1985. During the rental period, the per call cost was increased by the telephone company, and the increase was immediately passed on to the Campaign Committee. The Committee to Re-elect Mayor Griffin was billed for telephone usage on November 1, 1985. A check for $696.80 from the Mayor's Campaign Committee was received on November 8, 1985;

(d) Campaign literature produced and provided by the Mayor's Campaign Committee was folded on the Bank's automated folding machine operated by Bank personnel. The records revealed the costs of the service totalled $482.24.

The Mayor's Ca[redacted]gn Committee was billed [redacted] $291.12 on December 4, 1985. A check for $291.12 was received in payment on December 9, 1985. Upon discovery of an amount not previously billed ($191.12), a bill was sent on December 12, 1985. A check for $191.12 was received from the Committee to Re-elect Mayor Griffin on December 16, 1985.

6. These were the only four instances of politically related activites found in the Bank's records. In each case the documentation of the transactions was complete. The records reveal that the transactions were handled in the normal course of business. In each case, there were no unusual or abnormal delays in billing or in payment.

7. From my audit of the records, I determined that full and timely payment was made by the Committee to Re-elect Mayor Griffin for all services which had been provided by Goldome FSB. In addition, Goldome FSB presented prompt and timely demands for payment. Accordingly, there was no critical report issued by the Audit Department relative to the services provided to the Committee to Re-elect Mayor Griffin.

8. This concludes my statement.

Sworn to before me this 9th
day of [illegible], 1986

Anthony V. Mancuso

Notary Public

DANIEL K. McDONALD
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires September 30, 19__

ROSS B. KENZIE
Suite 1200, Three Fountain Plaza, Buffalo, NY 14203

September 30, 1985

An Open Letter to the Business Community of Buffalo

Dear Fellow Businessman:

This letter is not personalized, as I had wished, due to the constraints of time and money. But please read on.

I'm writing to you not as the Chairman of Goldome, nor the Chairman of the Chamber of Commerce, nor at any expense to either of these entities, but rather as a concerned businessman.

On November 5th, we will be faced with a decision that will directly impact our respective businesses and our city for the next four years. We will once again - for better or for worse - elect a mayor for the city of Buffalo.

Those of you who know me have no question as to where I stand on the upcoming mayoral election. I am convinced that the success of the business community and the progress we have made as a city would have been far less without the support and the guidance of Mayor Jim Griffin.

Mayor Griffin has been the chief architect and catalyst in the revitalization of downtown Buffalo, the development of its waterfront and the reclamation of its urban neighborhoods. He has worked tirelessly to bring new Federal and State dollars to Buffalo. And he has forged a liaison with business - large and small - that was unknown prior to his election to Mayor in 1977.

The Mayor is not perfect -- who is? There are obviously things that have taken place in his administration that are not completely beneficial to the business community. I think we all wish he wouldn't be quite as quick on the trigger and that he would be a little more statesmanlike. Nevertheless, we should be mindful that Mayor Griffin's programs have produced results.

Over the past eight years, Jim Griffin has helped make available more than $60 million in federal grants, commercial and industrial loans, minority loans and small business loans to help 292 Buffalo businesses. Those businesses, in turn, have invested $332 million in private financing for new development. Through this partnership, more than 7,800 jobs were retained in Buffalo and 5,551 new jobs were created, with another 3,000 new jobs projected. This does not include the 2,300 new construction jobs created by these projects. That speaks clearly about this administration's commitment to business. Jim knows that jobs are the bottom line.

[redacted]

E

Over the past eight years, the Griffin administration has spent $307 million on neighborhood programs. This includes loans and grants to homeowners, free paint, commercial loans to neighborhood businesses and a homestead program which allows people to buy a vacant home for $200, provided they will restore it.

In the inner city, this administration has built 239 garden apartments, and, in partnership with the business community, has completed urban renewal projects including Lovejoy, Pratt/Willert, St. Mary's Square, Roosevelt Apartments, and others including 250 units for the elderly at St. John's Towers and God's City.

Through fiscal responsibility, Mayor Griffin has turned a $19 million deficit into a surplus. And he has helped to reduced the crime rate by almost 10% a year. Police are more visible; the K-9 Corp. was increased from 9 dogs to 20, and 31 walking tours were added throughout the city.

Most importantly, Jim Griffin is his own man, beholden to no one. He is free to act on his convictions, and, on the record, his actions have been good for business and good for Buffalo.

Maybe the other candidate would do a fine job as mayor, but we don't know that. I submit to you that known is better than unknown -- that proven results are better than possible results, and that a proven bottom line, as we all know, beats a plan made on the if-come.

Whether or not you agree with my choice of Jim Griffin for mayor, I would like to leave you with one thought -- Buffalo will elect a mayor on November 5th, and it is crucial that the businessmen of this community be a leading force in the electoral process. I urge you to be an active participant and to encourage your employees to get out and vote in this election, which is so critical to the future of our city. Let people know where you stand.

Very best regards,

Ross B. Kenzie

Ross B. Kenzie

8904076199 5

ROSS B. KENZIE
Suite 1200, Three Fountain Plaza, Buffalo, NY 14203

AFFIDAVIT

I, Michael J. Neff of 11 Manning Road, Eggertsville, New York, 14226, first being duly sworn, make the following statement of my own free will and accord:

I am an Assistant Vice President of Goldome FSB, a federally chartered mutual savings headquartered in Buffalo New York.

During the months of September and October 1985, I was manager of the Kwik Line Department, the telemarketing arm of Goldome;

In September 1983, I met with a representative of Mayor Griffin's Campaign Committee to discuss rental of our excess telephone lines to the Committee for use by committee volunteers;

I explained to the representative that Goldome would charge on a per call basis and that volunteers would only be permitted to use those telephones and lines not being used by Goldome for its own business purposes;

I further explained that the telephones would be available during evening hours and on Saturdays and that no volunteer would be permitted in the Bank or in the Department unless Goldome personnel were also present and engaged in business activities for Goldome because we would not have personnel on duty soley for the convenience of the committee;

After the representative agreed to the terms I had set forth, I contacted the Telecommunications Department to determine the cost per call of telephones to Goldome and was advised that the cost amounted to 7.9 cents per call;

I then advised the representative that the charge to the Campaign Committee for use of the telephones would be 8¢ per call subject to any increase that might occur;

The volunteers began using the telephones September 30th 1985 and my staff kept records of the calls per my instructions;

Goldome was advised of a rate increase effective October 20th 1985 to 9.7¢ per call and effective that date the Campaign Committee was billed at the rate of 10¢ per call;

The total cost of the calls amounted to $696.80, which was billed to the Campaign Committee on November 1, 1985 and total payment was received on or about November 14th 1985.

89040761995

F

This concludes my statement.

Michael J. Neff
Michael J. Neff

STATE OF NEW YORK)
: SS.
COUNTY OF ERIE)

Sworn to and subscribed before me this 2nd day of July, 1986.

Robert M. Edwards
Notary Public

ROBERT M. EDWARDS
Notary Public State of New York
Qualified in Erie County
My Commission Expires Sept. 30, 19 88

Goldome One Fountain Plaza, Buffalo, NY 14203-1499 716 847-5800

EXHIBIT C

GOLDOME

September 23, 1985

Robert Tatu
Committee to Re Elect Mayor Griffin
Buffalo, NY

Dear Bob,

The purpose of this letter is to confirm our conversations regarding lease of Goldome phones for your volunteers.

I anticipate that twenty phones will be available in the Kwik-Line Department on the third floor of Goldome Headquarters at One Fountain Plaza. These phones will be available beginning at 6:00 p.m. weekdays and 2:00 p.m. Saturdays. You will be billed at a rate of $.08 per call.

Bank business must have first priority on the phones. I will notify you by 4:00 p.m. on any day that the phones will not be available for your workers due to our business demands.

If you have any questions about this arrangement, please feel free to contact me at 847-5981.

Sincerely,

Michael J. Neff

Michael J. Neff
Assistant Vice President

MJN:km

[illegible] of Telecommunications contacted Tom [illegible] of [illegible]tel who verified accuracy of .08 charge.

[redacted]

Goldome On tain Plaza, Buffalo, NY 14203-1499 716 847-

REVISED

GOLDOME

October 24, 1985

Robert Tatu
Griffin Re-Election Headquarters
40 Bailey Avenue
Buffalo, NY 14220

Dear Bob,

I have been notified of a price increase by our telephone vendor.

Effective October 20, I will begin billing at a rate of 10¢ per call.

Please contact me if you have any questions.

Sincerely,

Michael J. Neff
Assistant Vice President

MJN:km

cc: Thomas Bowen
Marc Chodorow
Robert Edwards
Karen Ball

89040761666

GOLDOME

November 1, 1985

Mr. Robert Tatu
Griffin Re-Election Headquarters
40 Bailey Avenue
Buffalo, NY 14220

Dear Mr. Tatu:

I understand that your volunteers have completed their phone calls, and will not be using our phones any longer. I have, therefore, prepared a final accounting of calls made and payment due.

Week	Number Calls	Unit Cost	Amount
09/30 - 10/05	2,160	8¢	$172.80
10/07 - 10/12	2,320	8¢	185.60
10/14 - 10/19	1,130	8¢	90.40
10/21 - 10/26	2,480	10¢	248.00
	8,090		$696.80

Please remit $696.80 payable to Goldome FSB. Mail the payment to my attention in the Kwik-Line Department at One Fountain Plaza, Buffalo, NY 14203.

Sincerely,

Michael J. Neff
Assistant Vice President

MJN:km

cc: Jan Duffy

bcc: T. Bowen
R. Edwards
M. Chodorow
K. Ball

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

509

PAY Six Hundred and Ninety-six ——— 80/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
11/8/85	Goldome FSB	Phones	509	$ 696.80

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000509⑈ ⑆022000839⑆ 32 100094 3⑈

Goldome One Fountain Plaza, Buffalo, NY 14203-1499 716 847-

GOLDOME

December 4, 1985

Committee to Re-elect Mayor Griffin
1947 Seneca Street
Buffalo, NY 14210

Gentlemen:

Please forward your check in the following amount, to reimburse Goldome for expenses incurred for inserting letters to be mailed during the campaign.

Items were inserted in the envelopes and sealed. No postage was affixed. Detail is as follows:

Work Order	Date	Number/Pieces	Cost
85-45	10/16	92,000	$149.63
85-47	10/19	60,000	119.45
85-51	10/28	10,000	22.04
			$291.12

Please draw check payable to Goldome and return to my attention.

Very truly yours,

Marvin M. Madison

Marvin M. Madison
Manager, Office Support Services

MMM:mm

83040762002

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

8904076200 3

220

541

PAY Two Hundred and Ninety-one —— 12/00 DOLLARS

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.		CHECK AMOUNT
12/9/85	Goldome	Envelopes Inserts + Seal	541	$	291.12

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

"000541" :022000839: 32 100094 3"

H-2

Goldome One F[illegible]in Plaza, Buffalo, NY 14203-1499 716 847-580[illegible]

GOLDOME

December 12, 1985

Committee to Re-Elect Mayor Griffin
1947 Seneca Street
Buffalo, NY 14210

Gentlemen:

Thank you for your check in the amount of $291.12 to cover inserting and sealing of envelopes.

We do have one final item that was not billed. Please remit your check to cover this work order.

Work Order 8544 92,000 Inserted 10/6/85 = $191.12

TOTAL $482.24

Please contact me if you have any questions.

Very truly yours,

Marvin M. Madison

Marvin M. Madison
Assistant Controller

MMM/caj

83040762004

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

9 0 4 0 7 6 2 0 0 5

220

555

PAY One Hundred and Ninety-one —— 12/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.
12/16/85	Goldome	W.O. #8544	555

$ 191.12

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000555⑈ ⑆022000839⑆ 32 100094 3⑈

MICHAEL L. BRODERICK
ATTORNEY AT LAW
(716) 847-2185

RECEIVED AT THE FEC
HAND DELIVERED
86 JUL 21 A10: 11
GCC#994

69 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

July 18, 1986

LAWRENCE M. NOBLE, ESQ.
Deputy General Counsel
Federal Election Commission
Washington, D.C., 20463

86 JUL 22 A11: 18

Re: MUR #2185
Mayor James D. Griffin, Committee to Re-Elect the Mayor and its Treasurer, as Treasurer.

Dear Mr. Noble:

Enclosed is our factual memorandum with attached documentation relative to the above-captioned matter.

We will hold ourselves ready to discuss this matter with you and the Commission at the next level of the proceedings.

May I thank you for your courtesies.

Very truly yours,

Michael L. Broderick

MICHAEL L. BRODERICK

MLB/kb
Enc.

8 6 0 4 0 7 0 6 2 0 0 0

FEDERAL ELECTION COMMISSION

MATTER UNDER REVIEW NO. 2185

RESPONDENTS, MAYOR JAMES D.
GRIFFIN, COMMITTEE TO RE-
ELECT THE MAYOR AND ITS
TREASURER, AS TREASURER.

MEMORANDUM

FACTUAL AND LEGAL RESPONSE

This memorandum is offered in response to the Federal Election Commission General Counsel's factual and legal analysis containing a summary of allegations against Respondents, Mayor James D. Griffin, Committee to Re-Elect the Mayor and its Treasurer, as Treasurer, hereafter collectively referred to as the Committee, and Ross B. Kenzie, Chairman of the Board of Trustees and Chief Executive Officer of Goldome FSB, and served on the Respondents identified as the Committee.

It is alleged that for the Mayoral election held in November of 1985, Goldome FSB and Ross B. Kenzie provided services to the Committee, contrary to the Federal Election Campaign Act.

Initially, be advised that we have not been contacted by a Federal Home Loan Bank Board (FHLBB) examiner. We are unable to comment on any discussion that may have taken place between that Board and Ross B. Kenzie or his representatives.

It appears during the Mayoral election campaign, Mayor James D. Griffin and the Committee asked Ross B. Kenzie what, if any, services could be rendered the campaign by Mr. Kenzie or Goldome FSB. The Committee was advised that nothing could be done as a contribution to the election campaign itself, but there were services that could be rendered at a fair price. Thereafter, services were provided, in fact.

In September of 1985, Mr. Kenzie authorized the printing of an open letter to all bank employees. The letter, in part, praised the past performance of Buffalo Mayor James D. Griffin and highlighted his contributions to the Western New York economic community. It contained a personal endorsement of the Mayor and emphasized the degree to which Goldome FSB prospered during his administration. Mr. Kenzie encouraged participation in the electoral process by the employees regardless of who each favored.

The costs of producing this open letter was presented the Committee to Re-Elect Mayor Griffin on September 10, 1985 in the amount of $75.84. (See Exhibit A) It was paid in full by Committee check on September 16, 1985. (See Exhibit B) The bank draft was processed October 7, 1985.

On September 30, 1985, Mr. Kenzie, as a private citizen, sponsored a letter that was sent to the general Buffalo business community endorsing Mayor Griffin. It was not on Goldome FSB stationery, and all costs of printing and postage were presented to the Committee in mid October of 1985. (See Exhibit C and D) It was paid October 23, 1985 and processed by the bank November 13, 1985. (See Exhibit E) A small portion of the bill for those services (folding and stuffing) was not included in the October invoice. That portion in the amount of $191.12 was presented for payment on December 12, 1985. (See Exhibit F)

It was paid December 16, 1985 and processed by the bank on January 3, 1986. (See Exhibit G)

During October of 1985, Goldome FSB permitted campaign volunteers to use a Goldome FSB phone bank, with the express understanding that the Committee would be billed on a per unit basis. A log of calls was maintained and a bill rendered November 1, 1985. (See Exhibit H) The bill was immediately paid on November 8, 1985 and processed by the bank on November 14, 1985. (See Exhibit I)

It further appears that a campaign-end review revealed a second service that was unbilled which was forwarded to the Committee on December 4, 1985, paid December 9, 1985 and apparently processed by the bank on January 3, 1986. (See Exhibit J and K)

During the course of the campaign, the Committee's own phone bank of 25 phones plus other private and political phone banks totalling, conservatively, 35 to 40 phones made the use of Goldome FSB's phones helpful but not indispensable. The hundreds of volunteers who handled the phones and mailings would have been able to absorb the mailings purchased from Goldome FSB.

The volunteers who used the phones at Goldome FSB could have called from other phones offered and available during the campaign from other sources. The phone charges would have been the same but the Committee could have saved money had it chosen to have the volunteers do the mailing purchased from Goldome FSB.

Interviews with the involved volunteers who formed the Committee to Re-Elect the Mayor, and it is important to realize that these people are all volunteers, none are paid professionals, confirmed that it was intended by all parties that the services provided by Goldome FSB be paid for in full. It was the desire of everyone that even the appearance of any impropriety be avoided. All of the parties involved were aware of the agreement and care was exercised that compliance be exact and timely.

CONCLUSION

Mayor Griffin and the Committee to Re-Elect the Mayor and its Treasurer, as Treasurer, asked the bank to provide the services. The bank, through Mr. Kenzie, made the services available insisting, however, that according to law, they be paid for, for full value, upon receipt of invoices. It was never intended or expected that the bank would contribute or expend any services or make a gift, loan or advance of any service, or thing of value that would not be paid for in full.

Services were provided, or if you will, sold to the Committee. The record is very clear that payment was prompt and in full. If anything, payment was much quicker than you would generally expect in a normal or usual commercial transaction. All payments were made within a week of the invoices.

The services themselves were requested of the bank by the Committee, the services were rendered to the Committee, the services were billed the Committee and paid in full by the Committee. The facts seem to place the transaction within the exception to the general rule provided under Section 114.9 of the Commission's regulations.

Respectfully submitted,

MICHAEL L. BRODERICK

Memorandum

VED

SEP 10 1985

GOLDOME

~~GOLDOME F.S.B.~~
FC. OF CORP. SECRETARY

TO: Ruthmary Goldman

FROM: David L. Galas DG

RE: Open Letter

DATE: September 9, 1985

Following are charges incurred for printing the open letter to all Goldome Western New York employees endorsing Mayor James D. Griffin, signed and authorized by Ross B. Kenzie.

Quantity: 2500

Total Print/Production Costs: $75.84

Pd. 9/16/85
ck # 340

/bjw

Ken C. Kirsch V.P.

89040762013

EXHIBIT A

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

340

PAY Seventy-five 84/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
9/16/85	Goldome F.S.B.	Prtg Open Letter	340	$ 75.84

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000340⑈ ⑆022000839⑆ 32 100094 3⑈ ⑈0000007584⑈

8 9 0 4 0 7 6 2 0 1 4

PAID
KEY BANK OF WESTERN NY, N.A.
BUFFALO, N.Y.

MICHAELS
OCESSING

EXHIBIT B

Memorandum

GOLDOME

MEMO TO: Ruthmary Goldman

FROM: David L. Galas

RE: Ross Kenzie - 2 Page Letter and Envelope

DATE: September 30, 1985

Printing charges for 2 page letter and envelope:

Quantity	
16,000 letters (8M each)	$552.24
8,000 envelopes	251.44
16,000 letters folded	45.15
Total Cost	$848.83
	1861.23

Ruthmary, please credit Print Shop, cost center 868, printing expense account no. 534390 to cover expenses.

2710.06

DLG:mm

Pd. 10/23/85
Ck # 471

89040762015

EXHIBIT C

Memorandum

R[illegible]ED

OCT 1[illegible]

GOLDOME

GOLDOME F.S.B
OFC. OF CORP. [illegible]ARY

MEMO TO: Ruthmary Goldman

FROM: Beverly Carlisle

DATE: October 7, 1985

RE: Ross Kenzie - Hand Collating and Inserting of Two Page Letter

Mailing charges for two page letter:

	Postage Charges -	$ 1376.44
Applied Sticker -	Niagara Rehab. Center -	106.96
	Personnel Charges -	377.83
	Total Charges	$ 1861.23

EXHIBIT D

10-83
220

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

471

PAY Two Thousand Seven Hundred and Ten — 06/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
10/23/85	Goldome	Letters & Env. Postage	471	$ 2,710.06

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000471⑈ ⑆022000839⑆ 32 100094 3⑈ ⑈0000271006⑈

8904076 2017

KEY BANK OF WESTERN N.Y. N.A.
BUFFALO, N.Y.
PAID
10-83
NO 85 14

JULIA ADAMS
CENTRAL PROCESSING

NOV 13

EXHIBIT E

Goldome One Fountain Plaza, Buffalo, NY 14203-1499 716 847-5800

GOLDOME

December 12, 1985

Committee to Re-Elect Mayor Griffin
1947 Seneca Street
Buffalo, NY 14210

Gentlemen:

Thank you for your check in the amount of $291.12 to cover inserting and sealing of envelopes.

We do have one final item that was not billed. Please remit your check to cover this work order.

Work Order 8544 92,000 Inserted 10/6/85 = $191.12

Please contact me if you have any questions.

Very truly yours,

Marvin M. Madison

Marvin M. Madison
Assistant Controller

MMM/caj

Pd. 12/16/85
ck # 554

8 9 0 4 0 7 6 2 0 1 8

EXHIBIT F

KEY BANK OF WESTERN NY, N.A.
BUFFALO, N.Y.
PAID
JA '86

GOLDOME FSB
ACCOUNTS PAYABLE

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

555

PAY One Hundred and Ninety-one —— 12/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.
12/16/85	Goldome	W.O. #8544	555

$ 191.12

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000555⑈ ⑆022000839⑆ 32 100094 3⑈ ⑉0000019112⑉

EXHIBIT G

Goldome One Fountain Plaza, Buffalo, NY 14203-1499 716 847-5800

GOLDOME

November 1, 1985

Mr. Robert Tatu
Griffin Re-Election Headquarters
40 Bailey Avenue
Buffalo, NY 14220

Dear Mr. Tatu:

I understand that your volunteers have completed their phone calls, and will not be using our phones any longer. I have, therefore, prepared a final accounting of calls made and payment due.

Week	Number Calls	Unit Cost	Amount
09/30 - 10/05	2,160	8¢	$172.80
10/07 - 10/12	2,320	8¢	185.60
10/14 - 10/19	1,130	8¢	90.40
10/21 - 10/26	2,480	10¢	248.00
	8,090		$696.80

Please remit $696.80 payable to Goldome FSB. Mail the payment to my attention in the Kwik-Line Department at One Fountain Plaza, Buffalo, NY 14203.

Sincerely,

Michael J. Neff
Assistant Vice President

MJN:km

cc: Jan Duffy

Pd. 11/18/85
ck # 509

89040762020

EXHIBIT H

97 NOV 14 '85

$696.80
1139 11/14/85 97 221 003 024028

*******$985.66

11-14-85

0400762021

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

509

PAY Six Hundred and Ninety-six 80/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
11/8/85	Goldome FSB	Phones	509	$ 696.80

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

Janice A. Duffy

⑈000509⑈ ⑆022000839⑆ 32 100094 3⑈ ⑈0000069680⑈

EXHIBIT I

Goldome One Fountain Plaza, Buffalo, NY 14203-1499 716 847-5800

GOLDOME

December 4, 1985

Committee to Re-elect Mayor Griffin
1947 Seneca Street
Buffalo, NY 14210

Gentlemen:

Please forward your check in the following amount, to reimburse Goldome for expenses incurred for inserting letters to be mailed during the campaign.

Items were inserted in the envelopes and sealed. No postage was affixed. Detail is as follows:

Work Order	Date	Number/Pieces	Cost
85-45	10/16	92,000	$149.63
85-47	10/19	60,000	119.45
85-51	10/28	10,000	22.04
			$291.12

Please draw check payable to Goldome and return to my attention.

Very truly yours,

Marvin M. Madison

Marvin M. Madison
Manager, Office Support Services

MMM:mm

Pd. 12/9/85
ck # 541

EXHIBIT J

GOLDOME FSB
ACCOUNTS PAYABLE

163

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

541

PAY Two Hundred and Ninety-one 12/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.
12/9/85	Goldome	Envelopes Inserts + Seal	541

$ 291.12

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000541⑈ ⑆022000839⑆ 32 100094 3⑈ ⑈0000029112⑈

EXHIBIT K

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Goldome FSB, Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer, Mayor James Griffin, the Committee to Re-elect the Mayor, and Committee's treasurer, as treasurer	)))))))))	MUR 2185

87 FEB 3 PM 12:01

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 6, 1986, the Commission found reason to believe that Goldome FSB, Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer of Goldome FSB, Mayor James Griffin, the Committee to Re-elect the Mayor, and the Committee's treasurer, as treasurer, violated 2 U.S.C. § 441b(a). These determinations were based upon information conveyed to the Commission by the Federal Home Loan Bank Board ("FHLBB") concerning the bank's political activities during the 1985 mayoral election in Buffalo. The FHLBB referral set forth specific activities which may have violated 2 U.S.C. § 441b's prohibition against expenditures or contributions in connection with any election to political office by corporations organized by authority of a law of Congress. 1/ Those activities include the distribution of partisan communications, the rental of telephone banks and the use of corporate facilities by corporate employees.

1/ Goldome FSB is a Federal Mutual Savings Bank organized pursuant to a Federal statute, 12 U.S.C. Part 543, and became a corporation when it received its charter from the Federal Home Loan Bank Board. See 12 U.S.C. § 543.5. Thus, contrary to respondent's assertion, Goldome FSB is within the purview of section 441b(a).

Upon notification of the Commission's reason to believe determinations, all respondents requested and were granted extensions of time in which to respond. This Office received the responses on July 22, 1986. 2/ A thorough review of these responses raises questions which require further information in order for this matter to be properly resolved. For example, Respondent Ross Kenzie explained that his open letter to the Buffalo business community constituted permissible voluntary use of corporate facilities by an individual under 11 C.F.R. § 114.9(a)(i). The response however, does not adequately address whether the use of Goldome's corporate facilities was "occasional, isolated or incidental" or whether the corporation was sufficiently reimbursed. More information on these issues is necessary to determine whether Mr. Kenzie's activity falls within the scope of 11 C.F.R.§ 114.9(a)(i). Similarly, other activities raise valuation questions for which additional information is needed. Finally, the information thus far obtained suggests that there may have been a high degree of coordination between Goldome, FSB and the Committee to Re-elect Mayor Griffin. In light of the foregoing, this Office recommends that the Commission approve the attached interrogatories and request for documents.

II. RECOMMENDATIONS

1. Approve the attached interrogatories and request for documents.

2/ After the responses were received, the staff member working on this MUR left the Commission, and the matter was subsequently reassigned.

2. Approve the attached letter.

Charles N. Steele
General Counsel

2/2/87
Date

By:
Lawrence M. Noble
Deputy General Counsel

Attachments
1. Response of Goldome FSB and Ross Kenzie
2. Response of Committee
3. Interrogatories and Request for Documents
4. Letter

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ JOSHUA MCFADDEN JM

DATE: FEBRUARY 6, 1987

SUBJECT: OBJECTIONS TO MUR 2185 - GENERAL COUNSEL'S REPORT SIGNED FEBRUARY 2, 1987

The above-captioned document was circulated to the Commission on Tuesday, February 3, 1987 at 4:00 P.M.

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

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

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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Goldome FSB, Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer, Mayor James Griffin, Committee to Re-elect the Mayor, and Committee's treasurer, as treasurer	)	MUR 2185

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 18, 1987, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2185:

1. Approve the interrogatories and request for documents as recommended in the General Counsel's report dated February 2, 1987.

2. Approve the letter attached to the General Counsel's report dated February 2, 1987.

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

Attest:

2-19-87
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

87040762023

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 25, 1987

William J. Olson, Esquire
Smiley, Olson, Gilman
& Pangia
1815 H Street, N.W.
Suite 600
Washington, D.C. 20006-3604

RE: MUR 2185
Goldome FSB, and Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer

Dear Mr. Olson:

Upon review of the response submitted on behalf of your clients in the above-captioned matter, this Office has determined that certain areas of Goldome FSB's involvement with the Committee to Re-elect Mayor Griffin require clarification. We therefore enclose questions addressing those areas and request that Mr. Kenzie respond to them by March 13, 1987.

If you have any questions, please contact Lisa Klein, the attorney assigned to this matter at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosure

CCC#2878

SMILEY, OLSON, GILMAN & PANGIA

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MICHAEL J. PANGIA (DC, NY)
JOHN J. CARLINO (NY)
ROBERT A. MINEO (NC)
WILLIAM P. HARPER, JR. (NC)

NANCY A. CHILES (SC)
WILTON J. SMITH (VA)

OF COUNSEL
GUY O. FARLEY, JR. (VA)

SUITE 310
10521 JUDICIAL DRIVE
FAIRFAX, VIRGINIA 22030
(703) 591-9200

150 BROADWAY
NEW YORK, NEW YORK 10038
(212) 406-4949

SUITE 500
1420 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19102
(215) 546-1430

530 NORTH BLOUNT STREET
RALEIGH, NORTH CAROLINA 27604
(919) 834-6965

39 BROAD STREET
(P.O. BOX 67, ZIP 29402)
CHARLESTON, SOUTH CAROLINA 29401
(803) 723-2383

RECEIVED
OFFICE OF THE GENERAL COUNSEL
P 4: 49

March 13, 1987

HAND DELIVER

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

Attn: Lisa Kline, Esquire

Re: MUR 2185

Dear Mr. Noble:

Following up on our telephone conversation of yesterday afternoon with Lisa Kline, we want to request in writing a 10-day extension of the time in which to file answers to the Interrogatories and Request for Documents in the above-referenced MUR.

This additional time will allow me to work with our client in Buffalo to obtain the information you requested in a full and complete manner as possible. Accordingly, unless we hear from you to the contrary, we will make our filing on or before March 23, 1987.

Sincerely yours,

William J. Olson

William J. Olson

WJO:rg

cc: Robert M. Edwards, Esquire

0 3 0 4 0 7 6 2 0 3 0

GCC#2967

SMILEY, OLSON, GILMAN & PANGIA

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150 BROADWAY
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(215) 546-1430

530 NORTH BLOUNT STREET
RALEIGH, NORTH CAROLINA 27604
(919) 834-9965

39 BROAD STREET
(P.O. BOX 67, ZIP 29402)
CHARLESTON, SOUTH CAROLINA 29401
(803) 723-2323

March 23, 1987

HAND DELIVER

RECEIVED
GENERAL COUNSEL
87 MAR 25 P2:36

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

Attn: Lisa Klein, Esquire

Re: MUR 2185

Dear Mr. Noble:

In response to your letter of February 25, 1987, and our letter of March 13, 1987 regarding an extension, we are today filing answers in response to your Interrogatories and documents in response to your Request for Documents in the above-referenced MUR. The answers are being signed by Mr. Kenzie, as you requested. Nevertheless, because Mr. Kenzie could not answer certain of the questions, he arranged for a supplemental statement to be prepared and signed by Mr. Edwin A. Ratka.

Mr. Kenzie's answers refer to an Exhibit 1, the 1985 membership of the Buffalo Chamber of Commerce, but this document is not included. It will be furnished by the end of this week. The page number for page 4 of the answers will also be supplied.

Obviously, this filing should not be seen as any waiver of the threshold jurisdictional set out in our prior filing, but we want to be fully responsive so that you can operate with a full understanding of the facts.

Should you need to have any additional information, we would be pleased to provide it.

Sincerely yours,

William J. Olson

WJO:rg

cc: Robert M. Edwards, Esquire

BEFORE THE
FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
87 MAR 25 P2:38

In re	)	
	)	
	)	
Goldome FSB, and	)	MUR 2185
Ross B. Kenzie	)	
Chairman of the Board and	)	
Chief Executive Officer	)	
	)	

ANSWERS OF ROSS B. KENZIE
TO INTERROGATORIES AND
RESPONSE TO PRODUCTION OF DOCUMENTS

1. With respect to the September 3, 1985 letter addressed to Goldome Employees Living and Working in Western New York:

a) Did Mayor Griffin or anyone associated with the Committee to Re-elect Mayor Griffin in any way suggest or request that such a letter be sent. If so, identify said person(s).

b) Identify who decided to bill the Committee to Re-elect Mayor Griffin for the printing of this letter, and state the basis (bases) for that decision.

c) Identify all persons who participated in the drafting of this letter and/or all persons who reviewed the letter before its distribution.

d) Explain the basis for determining the costs of printing the letter.

ANSWER:

a) Yes. Mayor Griffin asked me to send a letter to the employees.

b) I asked the General Counsel's office of the bank to review any laws and regulations that may apply to sending this letter. I was advised that I could send such a letter. Goldome's General Counsel, Robert M. Edwards, advised that I had the right to communicate with the employees on this subject

87040762033

because Goldome is a mutual savings bank and the employees are members of the Bank by virtue of being account holders. Mr. Edwards recommended the Mayor's Campaign Committees be billed for the letter anyway to avoid any allegations about the use of bank funds to pay for the letter, and I agreed. I also asked him to advise the people involved of the legal restrictions.

c) The letter was drafted by myself with the assistance of Ruthmary Goldman, Goldome's Public Relations Coordinator. It was reviewed by the General Counsel, Robert M. Edwards, and by the Deputy General Counsel, Daniel R. McDonald before its distribution.

d) I do not know how the costs were determined, but I have asked Edwin A. Ratka to prepare an affidavit explaining how the costs of printing were determined, and respond to other inquiries.

2. With respect to September 30, 1985 letter signed by Ross Kenzie to the Business Community of Buffalo:

a) Did Mayor Griffin or anyone associated with the Committee to Re-elect Mayor Griffin in any way suggest or request that such a letter be sent. If so, identify said person(s).

b) State how the recipients of this letter were selected.

c) If the names of recipients were obtained from mailing lists or other lists of names:

(i) Identify and produce copies of those lists.

(ii) State how these lists were acquired and identify the source of each list.

d) Identify all persons who were sent this letter who were Goldome employees, account holders, or in anyway doing business with Goldome.

e) Identify all persons who participated in the drafting of this letter and/or all persons who reviewed the letter before its distribution.

f) Identify and describe all accounts credited or charged to cover the costs of typing, printing, collating and mailing this letter.

   (i) Specify and document which of these costs were billed directly by Goldome to the Committee to Re-elect Mayor Griffin.

   (ii) Identify and explain any costs associated with this letter which were not billed to or paid for by the Committee to Re-elect Mayor Griffin.

g) Explain the basis for determining all of the costs associated with this letter.

h) Identify all persons who directed and/or supervised the typing, printing, collating and mailing of this letter.

<u>ANSWER</u>:

a) I really do not remember if Mayor Griffin asked for this letter to be sent or not. The impetus for the letter may have come from one of my discussions with the mayor which occurred after I had sent the other letter to the employees.

b) The recipients of the letter were selected by virtue of their being members of the Buffalo Chamber of Commerce.

c) The list used was the current membership list of the Buffalo Chamber of Commerce. I do not have a copy of the labels used on the envelopes, however, enclosed is a copy of the 1985 membership directory (Exhibit 1).

d) Obviously the officers listed under Goldome (see Directory at ___) are employees of Goldome. No effort was made to determine the relationship to Goldome of the others in the directory. Doing the computer work to correlate these two lists would be expensive and involves important legal issues of the privacy of our account holders and other confidential information. I do not understand what information is being sought from this question. If additional information is needed, those legitimate business and banking interests of Goldome and third parties would need to be accommodated.

e) This letter was drafted by myself with the assistance of Ruthmary Goldman, Goldome's Public Relations Coordinator. It was reviewed by the General Counsel Robert M. Edwards.

f) Since I was not personally involved with billing these costs, I must refer you to the Affidavit of Edward A. Ratka. I am unaware of, and do not believe there are, any other accounts credited or charged to cover the costs associated with this letter. It is my belief that all costs associated with this letter were billed to and paid for by the Committee to Re-elect Mayor Griffin.

g) I do not know the answer, but I refer you to the Affidavit of Edwin A. Ratka.

h) I do not know the answer, but I refer you to the Affidavit of Edwin A. Ratka.

3. State the title of the position held by Ruthmary Goldman at Goldome and provide a brief description of her

responsibilities.

ANSWER:

Her title is Goldome's Public Relations Coordinator. As Public Relations Coordinator, she is responsible for the preparation of press releases; communications to employees and customers; research and drafting for speeches by Goldome officers; and any other form of communication with the public, except for advertising.

4. State the nature of your involvement with the Buffalo Area Chamber of Commerce and identify all positions you have held in that organization from 1984 to the present.

ANSWER:

I was elected a director of the Buffalo Area Chamber of Commerce in 1981 and re-elected to a second three-year term in 1984, when I became a member of the Executive Committee and vice chairman-communications. In August 1985, I was elected chairman of the Buffalo Area Chamber of Commerce and re-elected to a second term in June 1986. I also served as chairman of the Executive Committee.

5. For the period January, 1984 to the present, identify all letters relating to any federal, state or local elections which were distributed on your personal stationery and/or for which any of Goldome's facilities were used to produce, print, distribute and/or mail.

ANSWER:

None.

6. With regard to work performed on behalf of the Committee

to Re-elect Mayor Griffin using Goldome's mailroom facilities (e.g. automatic folding and inserting machines, postage machines, etc.):

a) Do any of the work orders which were included as Exhibits H-1 and H-3 in your submission to the FEC relate to the September 30, 1986 letter. If so, identify which work order(s) relate to that letter.

b) State the total number of hours that Goldome employees (both regular and temporary employees) devoted to each work order listed in Exhibits H-1 and H-3, and state how many of those hours were performed on an overtime basis.

c) State both the regular hourly pay rate and the overtime hourly pay rate for the employees who worked on these work orders.

ANSWER:

a) I do no know the answer, but I refer you to the Affidavit of Edwin A. Ratka.

7. Identify all other occasions when Goldome's mailroom facilities were made available to outside persons or organizations from 1984 to present.

a) State the names of such persons or organizations and describe the terms governing their usage of these facilities.

ANSWER:

I do not know the answer, but I refer you to the Affidavit of Edwin A. Ratka.

ROSS B. KENZIE

Subscribed and sworn to
before me in my District
this 16th day of March, 1987.

Robert M Edwards
NOTARY PUBLIC

My Commission Expires: ROBERT M. EDWARDS
Notary Public State of New York
Qualified in Erie County
My Commission Expires Sept. 30, 1988

BEFORE THE
FEDERAL ELECTION COMMISSION

In re	)	
	)	
	)	
Goldome FSB, and	)	MUR 2185
Ross B. Kenzie	)	
Chairman of the Board and	)	
Chief Executive Officer	)	
	)	

AFFIDAVIT OF EDWIN A. RATKA

1. My name is Edwin A. Ratka and I am employed by Goldome FSB, of Buffalo, New York as a Vice President and serve as Director of Corporate General Services.

2. I am submitting this statement in response to certain interrogatories asked of Ross B. Kenzie, Chairman and Chief Executive Officer of Goldome FSB, by the Federal Election Commission because I am the person most familiar with the facts sought by interrogatories 1(d), 2(f), 2(g), 2(h), 6 and 7.

3. With respect to interrogatory 1(d), Exhibit 1 is the work order for the open letter showing it took a total of 45 minutes to do the job. Exhibit 2 is the print shop production rates effective March 1985 (which were in effect on September 3, 1985) and the basis upon which those rates were determined.

4. With respect to interrogatory 2(f), the only account credited or charged to cover the cost of typing, printing, collating and mailing of the September 30, 1985 letter was the Committee to Re-elect Mayor Griffin.

5. With respect to interrogatory 2(f)(i), the documents

which show the billing of the letter of September 30, 1985 mailing to the Committee to Re-elect Mayor Griffin are as follows:

Exhibit	Identification
3	Memo dated September 30, 1985 for $848.83
4	Memo dated October 7, 1985 for $1,861.23
5	Check dated October 23, 1985 for $2,710.06

6. With respect to interrogatory 2(f)(2), there were no costs associated with this letter which were not billed to or paid for by the Committee to Re-elect Mayor Griffin.

7. With respect to interrogatory 2(g), the documents which show the basis for determining the costs of this letter are as follows:

Exhibit	Identification
6	Breakdown of Costs (Summarizing Exhibits 7-12)
7	Work Order for Printing Plate for letterhead
8	Work Order for two Printing Plates for text of letter
9	Work Order for Printing Plate for envelope return address
10	Work Order for Postage
11	Cost for Temporary personnel/ mail clerks
12	Statement of labeling envelopes

8. With respect to interrogatory 2(h), the supervisor was Mary Ellen Compton.

9. With respect to Interrogatory 6(a), the answer is no.

10. With respect to interrogatory 6(b), previously filed Exhibits H-1 and H-3 relate to the operation of the folding machine for campaign material not printed by Goldome. Exhibit H-1 is supported by attached Exhibits 13, 14, and 15; previously filed Exhibit H-3 is supported by attached Exhibit 17.

11. With respect to interrogatory 6(c), please refer to attached Exhibits 13, 16 (which relates to Exhibits 14 and 15), and Exhibit 18.

12. With regard to interrogatory 7, because the legal requirements for record retention in a banking organization are extensive, all records that do not have to be kept are destroyed as soon as possible. Records of the nature you have requested, are destroyed after 12 months of aging. However, the records for 1986 and January and February of 1987 show that a total of 49 organizations used the print shop facilities (Exhibit 19).

Print shop charges for these organizations were determined in the same manner as for the work done for the Committee to Reelect Mayor Griffin.

Edwin A. Ratka

EDWIN A. RATKA

Subscribed and sworn to
before me in my District
this 12 day of March, 1987.

CLODINE SINGER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19 87

Clodine Singer
NOTARY PUBLIC

My Commission Expires: March 30, 1987

89040762044

Request for Print[redacted]ervice GOLDOME [redacted]

All communications sent to 100 or more customers must be approved by the Marketing Dept. before being sent.

1. Form Number ________ Cost Center No. 581
2. Quantity ________
3. Size of Original ___ 8½x11 ___ 8½x14
   Other: State Size ____ x ____
4. Cut to Finished Size ___ yes ___ no
   State Size ____ x ____
5. Paper ___ White ___ Color ________ Specify Color
   ___ Letterhead ________ Name
   ________ Letterhead Phone No
   ___ Other ________ Please Specify
6. Punching ___ 3 Hole Left Side
   ___ Other ________ Be Specific
7. Spiral Bind ________ No. of Books
8. Collate (minimum of 3 sheets) ___ yes ___ no
9. Stapling ___ yes ___ no
10. Note: All jobs will be held for pickup unless this section is complete.

Deliver To Mailroom
Requested by Ruthanne G. Floor 3
Department/Address Marketing
Phone Extension ________ Date 9/3/85

Special Instructions

1700 To: Mailroom

Open Letter

For Print Shop Use Only

Job No.	Description	Form No.	Cost Ctr.	Quantity		Pressman	P.O. No.

Printing

Order	Plate	Ink
___ Special One Time	___ Use old plate	Color front ____
___ New form	___ Make new plate	Color front ____
___ Changed form	___ No. of plates	Color back ____
___ No change	___ No. of burns per plate ___	Color back ____

Paper

Pt	Wt	Color	Size & Mfg.	No. of Sheets
1	20	White	Pre-Printed	2500
2			Open Letter Ltd	
3			8½x11	
4				
5				
6				

Total Minutes Scheduled for Job 45
Actual Minutes for Job 45
Date Scheduled 9 / 3 / 85
Date Completed 9 / 3 / 85
Initials HW/DK Charge ________

Bindery

Pad ___ Band ___ Wrap ___ Box ___ Mail ___
Fold/Score ___ No. of Pkgs/Pads ___
Collate ___
1st Sheet ___ 2nd Sheet ___
3rd Sheet ___ 4th Sheet ___
Other ___
Total Minutes Scheduled for Job ___
Actual Minutes for Job ___
Date Scheduled ___ / ___ / ___
Date Completed ___ / ___ / ___
Initials ___ Charge ___
Costs ___ TYPESET 43.20
Negatives ___
Plates .80
Paper N/C
Labor 11.84
Spiral Covers ___
Spiral Rings ___
Other 20.00
Total Charge $ ~~32.00~~ 75.84

Del

868-00 11/84 White: Print Shop Canary: Print Shop Pink: Users Copy [redacted]

ATTACHME

Exhibit 1

PRINT SHOP PRODUCTION RATES

MARCH, 1985

	Hourly Rate	Hourly Rate With Overtime	Minute Rate	Minute Rate With Overtime
Bindery	$ 12.88	$ 16.05	$ .215	$ .268
Quick Copy (Kodak)*	9.28	13.92	.155	.232
Camera Operator	15.34	21.38	.261	.356
1700	15.78	19.36	.263	.323
360	13.24	17.96	.221	.299
385	19.34	25.98	.322	.433
702-P	19.78	26.43	.330	.441

*Plus machine rate of $ .022 per copy

Assumptions:

1. Supervisor's salary is allocated evenly to the eight functions performed.
2. Salary is the projected salary expense including merit increase. Effective date for all positions January 1.
3. If two or more individuals are in the same position, average projected salary is used as a basis for the rate.
4. Benefit expense calculated at 19 percent of annual salary.
5. Rate based upon a 1600 hour work year.
6. Rate includes equipment depreciation and maintenance costs.

ATTACHM [redacted]

Exhibit 2

Memorandum   EXHIBIT F-7

GOLDOME

MEMO TO: Ruthmary Goldman

FROM: David L. Galas

RE: Ross Kenzie - 2 Page Letter and Envelope

DATE: September 30, 1985

Printing charges for 2 page letter and envelope:

Quantity	
16,000 letters (8M each)	$552.24
8,000 envelopes	251.44
16,000 letters folded	45.15
Total Cost	$848.83

Ruthmary, please credit Print Shop, cost center 868, printing expense account no. 534390 to cover expenses.

DLG:mm

Exhibit 3

USED AS Bill

Memorandum

EXHIBIT F-2

GOLDOME

MEMO TO: Ruthmary Goldman

FROM: Beverly Carlisle

DATE: October 7, 1985

RE: Ross Kenzie - Hand Collating and Inserting of Two Page Letter

Mailing charges for two page letter:

	Postage Charges -	$ 1376.44
Applied Sticker -	Niagara Rehab. Center -	106.96
	Personnel Charges -	377.83
	Total Charges	$ 1861.23

Pls forward to the Committee for the reelection of the Mayor

thanks Ru-G

89040762047

Exhibit 4

EXHIBIT F-3

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

471

Two Thousand Seven Hundred and Ten — 06/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
3/22/85	Goldome	Letters & Env. - Postage	471	$ 2,710.06

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000471⑈ ⑆022000839⑆ 32 100094 3⑈

8904076043

Exhibit 5

EXHIBIT F-1

Breakdown of Mr. Kenzie's Personal Letter
9/30/85

- Invoice from Chamber of Commerce	$ 280.00
- Check from Committee to Re-Elect the Mayor - Payable to Chamber	<280.00>
	-0-
Printing Charges - Letterhead (Mr. Kenzie)	$ 231.76
- Imprint Letterhead	320.48
- Imprint Envelopes	251.44
Letters Folded	45.15
Postage	1376.44
Supervision (Goldome Employee)	44.25
Careers Inc. (Temporary Personnel)	333.58
Niag. Front. Vocational Rehab. Center - labels	106.96
	2710.06
Check from Committee to Re-Elect the Mayor - Payable to Goldome	<2710.06>
	-0-

3904076204

Exhibit 6

Request for Prin:

EXHIBIT F-4

All communications sent to 100 or more customers must be approved by the Marketing Dept. before being sent.

1. Form Number ______ Cost Center No. ______
2. Quantity ______
3. Size of Original ___ 8½x11 ___ 8½x14
   Other: State Size ______ x ______
4. Cut to Finished Size ___ yes ___ no
   State Size ______ x ______
5. Paper ___ White ___ Color ______ Specify Color
   ___ Letterhead ______ Name
   ______ Letterhead Phone No.
   ___ Other ______ Please Specify

6. Punching ___ 3 Hole Left Side
   ___ Other ______ Be Specific
7. Spiral Bind ______ No. of Books
8. Collate (minimum of 3 sheets) ___ yes ___ no
9. Stapling ___ yes ___ no
10. Note: All jobs will be held for pickup unless this section is complete.

Deliver To ______
Requested by Ruthmary Goldman Floor ______
Department/Address ______
Phone Extension ______ Date ______

Special Instructions

For Print Shop Use Only

Job No.	Description	Form No.	Cost Ctr.
6038	Ross Kenzie letterhead	NONE	[illegible]

Printing

Order	Plates	Ink
X Special One Time	___ Use old plate	Color front GREY
___ New form	___ Make new plate	Color front ___
___ Changed form	1 No. of plates	Color back ___
___ No change	___ No. of burns per plate ___	Color back ___

Paper

Pt	Wt	Color	Size & Mfg.	No. of Sheets
1	24	White	Neenah Bond	8,000
2				
3				
4				
5				
6				

Total Minutes Scheduled for Job 125
Actual Minutes for Job 125
Date Scheduled 9 / 25 / 85
Date Completed 9 / 25 / 85
Initials T.J. Charge ______

Bindery: Pad ___ Collate ___ 1st Sheet ___ 2nd Sheet ___ Other ___
Total Minutes ___ Actual Minutes ___ Date Scheduled ___ Date Completed ___ Initials ___
Costs: Negatives [illegible] Plates [illegible] Paper [illegible] Labor [illegible] Spiral Covers ___ Spiral Rings ___ Other 64.00 Total Charge [illegible]

3904076205 0

[redacted]

Exhibit 7

Request for Printing Service

EXHIBIT F-5

GOLDOME

All communications sent to 100 or more customers must be approved by the Marketing Dept. before being sent.

1. Form Number ______ Cost Center No. 574
2. Quantity ______
3. Size of Original ___ 8½x11 ___ 8½x14
   Other: State Size ______ x ______
4. Cut to Finished Size ___ yes ___ no
   State Size ______ x ______
5. Paper ___ White ___ Color ______ Specify Color
   ___ Letterhead ______ Name
   ______ Letterhead Phone No.
   ___ Other ______ Please Specify
6. Punching ___ 3 Hole Left Side
   ___ Other ______ Be Specific
7. Spiral Bind ______ No. of Books
8. Collate (minimum of 3 sheets) ___ yes ___ no
9. Stapling ___ yes ___ no
10. Note: All jobs will be held for pickup unless this section is complete.

Deliver To ______
Requested by Ruthmary Gilliam Floor ______
Department/Address ______
Phone Extension ______ Date ______

Special Instructions

For Print Shop Use Only

Job No.	Description	Form No.	Cost Ctr.	Quantity	Press
6045	IMPRINT Ross Kruse LETTER + 2 8½	NONE	[illegible]	8000 EACH	360

Printing

Order: X Special One Time; ___ New form; ___ Changed form; ___ No change

Plates: ___ Use old plate; ___ Make new plate; 2 No. of plates; ___ No. of burns per plate

Ink: Color front BLACK; Color back

Paper

Pt	Wt	Color	Size & Mfg.	No. of Sheets
1	24	Wht.	8½x11 Neenah	8,000
2				
3				
4				16,000 IMPS
5				
6				

Total Minutes Scheduled for Job 215

Actual Minutes for Job 215

Date Scheduled 9 22 85

Date Completed 9 26 85

Initials T.J. Charge

Bindery

Pad; Fold/Score; Drill; Cut & Trim; Other; 2nd Sheet; Other

Total Minutes Scheduled for Job

Actual Minutes for Job 12.90 /HR

Date Scheduled

Date Completed

Initials

Costs [illegible] – N/C

Negatives

Plates 6.30

Paper 26.56

Labor 47.52

Spiral Covers

Spiral Rings

Other 128.00

Total Charge 20.98

[redacted]

Exhibit 8

210 minutes at 12.90 per hr. recommended from Dave [illegible]

8904076205 1

EXHIBIT-F-6

GOLDOME

All communications sent to 100 or more customers must be approved by the Marketing Dept. before being sent.

1. Form Number ________ Cost Center No. 578
2. Quantity ________
3. Size of Original ___ 8½x11 ___ 8½x14
   Other: State Size ____ x ____
4. Cut to Finished Size ___ yes ___ no
   State Size ____ x ____
5. Paper ___ White ___ Color ________ Specify Color
   ___ Letterhead ________ Name
   ________ Letterhead Phone No.
   ___ Other ________ Please Specify

6. Punching ___ 3 Hole Left Side
   ___ Other ________ Be Specific
7. Spiral Bind ________ No. of Books
8. Collate (minimum of 3 sheets) ___ yes ___ no
9. Stapling ___ yes ___ no
10. Note: All jobs will be held for pickup unless this section is complete.

Deliver To ________
Requested by Ruthmary Gilman Floor 2
Department/Address ________
Phone Extension ________ Date ________

Special Instructions

For Print Shop Use Only

Job No.	Description	Form No.	Cost Ctr.			
6049	IMPRINT Ross Kenzie Envelopes	NONE	8,000	5000	[illegible]	[illegible]

Printing

Order	Plates	Ink
X Special One Time	___ Use old plate	Color front Black
___ New form	___ Make new plate	Color front ___
___ Changed form	1 No. of plates	Color back ___
___ No Change	___ No. of forms per plate 1	Color back ___

Paper

Qt	Wt	Color	Size & Mfg.	No. of Sheets
		White	No. 10 Envelopes	8,000

Total Minutes Scheduled for Job 180
Actual Minutes for Job 180
Date Scheduled 9 / 25 / 85
Date Completed 9 / 25 / 85
Initials T.S. Charge ________

Bindery

Pad
Fold/Score
Collate
1st Sheet
2nd Sheet
Other

Total Minutes Scheduled for Job
Actual Minutes for Job
Date Scheduled
Date Completed
Initials

Camera	5.90
Negatives	5.02
Plates	5.15
Paper	134.09
Labor	39.78
Spiral Covers	
Spiral Rings	
Other	64.00
Total Charge	254.49

[redacted]

Exhibit 9

89040762052

EXHIBIT F-8

GENERAL SERVICES

MASS MAILING WORK ORDER

NUMBER: 25-78 DATE: ___

SECTION I ITEM ___ AMOUNT (USE THIS SECTION FOR ITEMS THAT ARE NOT TO BE MAILED FROM MACHINE MAIL AREA.)

0·00 *

___ BURST ONLY ___

))))

___ FOLD ONLY ___

0·00 *

___ BURST & FOLD ___

Presorted 7 595· ×

0·18 =

1 369·03 *

Requested By: M Madison

Cost Center: 999 Ext. ___

SEC ... ERTED & MAILED ___

134· ×

NOT 0·04 =

Presorted 7·36 *

AMOUNT ___ SCHEDULED MAILING DATE ___

E NO ___ YES ___ NUMBER ___

7·36 +

1 369·03 +

INSERT 3 ___

INSERT 4 ___

002

Total 1 376·44 *

ABOVE ITEMS RELEASED BY: ___

COST CENTER: ___ EXT. ___

)))

0·00 +

SE

COMPLETED BY MAIL SERVICES

	___	FOLDED	___	INSERT	___
INSERT 1 BURSTED	___	FOLDED	___	INSERT	___
INSERT 2 BURSTED	___	FOLDED	___	INSERT	___
INSERT 3 BURSTED	___	FOLDED	___	INSERT	___

REGULAR MAIL -	NUMBER	___	AMOUNT	___
PRESORT MAIL -	NUMBER	7606	AMOUNT	___
BULK MAIL -	NUMBER	___	AMOUNT	___
NO POSTAGE -	NUMBER	___	AMOUNT	___

POSTAGE CHARGED YOUR COST CENTER - TOTAL $1376.44

PRESORT X ___ = SAVINGS BY PRESORT OVER FIRST CLASS

BULK X ___ = SAVINGS BY BULK OVER FIRST CLASS

White Copy - General Services

Canary Copy - Mail Center

Pink Copy - User Dept. Copy

Return to: General Services Dept.
6th Floor - Main Office

867--0001
Rev. 1/83

Completed By: ___

Date: ___ Ext. ___

[redacted]

Exhibit 10

83040762053

Careers Inc.

EXHIBIT F-10

547 Franklin Street ☐ Buffalo, New York 14202 ☐ (716) 882-1651

INVOICE # 9[illegible]

GOLDOME
ACCOUNTS PAYABLE
ONE FOUNTAIN PLAZA
BUFFALO NY 14203

DATE: 10/02/85

TERMS: NET 10 DAYS

ATTN-CC581 R.O'CONNOR
B10016851 R#

PERIOD- 9/23/85 TO 9/29/[illegible]

HOURS	RATE	DESCRIPTION		AMOUNT
6.50	5.25	MAIL CLERK	SIKORSKI, JOAN	34.[illegible]
6.50	5.25	MAIL CLERK	GRAHAM, ANNMARIE	34.[illegible]
7.50	5.25	MAIL CLERK	ORLIKOWSKI, RENEE	39.[illegible]
10.25	5.25	MAIL CLERK	SOBOCINSKI, DEBRA ANN	53.[illegible]
9.50	5.25	MAIL CLERK	SMITH, PAMELA G	49.[illegible]
9.25	5.25	MAIL CLERK	RUSTAN, MARY	48.[illegible]
10.50	5.25	MAIL CLERK	HAYNES, MARY	55.[illegible]
9.50	5.25	MAIL CLERK	RAPTARD, BONNIE SUE	49.[illegible]
		3% DISCOUNT		10.[illegible]

TO INSURE PROPER CREDIT
PLEASE RETURN YELLOW COPY WITH REMITTANCE

TOTAL AMOUNT DUE ▶ 353.5[illegible]

89040762054

Exhibit 11

EXHIBIT F-11

NIAGARA FR[redacted]IER
VOCATIONAL REHABILITATION CENTER
100 LEROY AVENUE
BUFFALO, NEW YORK 14214

*** [redacted] INVOICE ***

Customer

Ship to

C.C. 999

SOLD TO	SHIP TO
GOLDOME 1 FOUNTAIN PLAZA BUFFALO, NY 14203	GOLDOME 1 FOUNTAIN PLAZA BUFFALO, NY 14203

Delivery :
Ship Date : 09/27/85
Due Date : 10/30/85
Sales Rep : CONNIE GIACOMOZZO

Customer P.O. No :
Our Order No : 858400
Order Date : 09/27/85

Line No	Item and Description	Tax	Qty Ordered	Qty Shipped	Unit Price	Extended Amount
1	ROSS B.KENZIE ENV P.S.LABELS ON#10 ENV.FLAPS DOWN	N	3.000	3.000	[illegible]	106.95

Copy

Freight	Tax	Serv. Ch	Misc. Ch	Deposit	Discount	Total
0.00	0.00	0.00	0.00	0.00	0.00	106.95

[redacted]

83040762055

Exhibit 12

EXHIBIT K-1

GENERAL SERVICES

MASS MAILING WORK ORDER

NUMBER: 85- 51   DATE: 10-28-85

SECTION I   ITEM Mayne Mailing   AMOUNT   (USE THIS SECTION FOR ITEMS THAT ARE NOT TO BE MAILED FROM MACHINE MAIL AREA.)

______ BURST ONLY ______

______ FOLD ONLY ______

______ BURST & FOLD ______

Requested By: [signature]
Cost Center: 999   Ext. 5982

SECTION II   ITEM TO BE INSERTED & MAILED Insert Only

ITEM DATE ASAP.   AMOUNT 10,000   SCHEDULED MAILING DATE ASAP

RETURN ENVELOPE   NO ___   YES ___   NUMBER ______

INSERT 1 ______   INSERT 3 ______
INSERT 2 ______   INSERT 4 ______

ABOVE ITEMS RELEASED BY: ______
COST CENTER: ______   EXT. ______

SECTION III   COMPLETED BY MAIL SERVICES

ITEM BURSTED ______	FOLDED ______	INSERT ______
INSERT 1 BURSTED ______	FOLDED ______	INSERT ______
INSERT 2 BURSTED ______	FOLDED ______	INSERT ______
INSERT 3 BURSTED ______	FOLDED ______	INSERT ______

REGULAR MAIL - NUMBER		AMOUNT
PRESORT MAIL - NUMBER		AMOUNT
BULK MAIL - NUMBER		AMOUNT
NO POSTAGE - NUMBER	10,000	AMOUNT
POSTAGE CHARGED YOUR COST CENTER -		TOTAL

PRESORT X ______ = SAVINGS BY PRESORT OVER FIRST CLASS
BULK X ______ = SAVINGS BY BULK OVER FIRST CLASS

White Copy - General Services
Canary Copy - Mail Center
Pink Copy - User Dept. Copy

Return to: General Services Dept.
6th Floor - Main Office

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Rev. 1/83

Completed By: [signature]
Date: 10-28-85   Ext. 3544

8904076205

Exhibit 13

[illegible] Mailing (10,000) 10/28/85

10/28 - Nancy 2 hrs straight overtime @ $4.46/hr = $ 8.92

M E 2 hrs regular overtime @ $6.56/hr = 13.12

$ 22.04

[redacted]

Exhibit 13 p. 2

89040762057

EXHIBIT K-3

MASS MAILING WORK ORDER

NUMBER: 85-45 DATE: [illegible]

SECTION I

ITEM [illegible] AMOUNT (USE THIS SECTION FOR ITEMS THAT ARE NOT TO BE MAILED FROM MACHINE MAIL AREA.)

______ BURST ONLY ______

______ FOLD ONLY ______

______ BURST & FOLD ______

Requested By: [illegible]

Cost Center: [illegible] Ext. ______

SECTION II

South
University
Delaware
North
Illinois

ITEM TO BE INSERTED & MAILED [illegible]

ITEM DATE ______ AMOUNT [illegible] SCHEDULED MAILING DATE [illegible]

RETURN ENVELOPE NO ___ YES ___ NUMBER ______

INSERT 1 ______ INSERT 3 ______

INSERT 2 ______ INSERT 4 ______

Keep in [illegible] order

ABOVE ITEMS RELEASED BY: ______

COST CENTER: ______ EXT. ______

SECTION III

COMPLETED BY MAIL SERVICES

ITEM BURSTED		FOLDED		INSERT	
INSERT 1 BURSTED		FOLDED		INSERT	
INSERT 2 BURSTED		FOLDED		INSERT	
INSERT 3 BURSTED		FOLDED		INSERT	

REGULAR MAIL	- NUMBER		AMOUNT	
PRESORT MAIL	- NUMBER		AMOUNT	
BULK MAIL	- NUMBER		AMOUNT	
NO POSTAGE	- NUMBER		AMOUNT	
POSTAGE CHARGED YOUR COST CENTER -			TOTAL	

PRESORT X ______ = SAVINGS BY PRESORT OVER FIRST CLASS

BULK X ______ = SAVINGS BY BULK OVER FIRST CLASS

White Copy - General Services

Canary Copy - Mail Center

Pink Copy - User Dept. Copy

Return to: General Services Dept.
6th Floor - Main Office

867--0001
Rev. 1/83

Completed By: [illegible]

Date: [illegible] Ext. [illegible]

[redacted]

Exhibit 14

89040762058

EXHIBIT K-4

MASS MAILING WORK ORDER

NUMBER: 85-47 DATE: 10-18-85

SECTION I ITEM [illegible] AMOUNT (USE THIS SECTION FOR ITEMS THAT ARE NOT TO BE MAILED FROM MACHINE MAIL AREA.)

_______ BURST ONLY _______

_______ FOLD ONLY _______

_______ BURST & FOLD _______

Requested By: [illegible]
Cost Center: 999 Ext. ____

SECTION II ITEM TO BE INSERTED & MAILED [illegible]

ITEM DATE _______ AMOUNT 60,000 SCHEDULED MAILING DATE _______

RETURN ENVELOPE NO ___ YES ___ NUMBER _______

INSERT 1 _______ INSERT 3 _______
INSERT 2 _______ INSERT 4 _______

ABOVE ITEMS RELEASED BY: _______
COST CENTER: _______ EXT. _______

SECTION III **COMPLETED BY MAIL SERVICES**

ITEM BURSTED		FOLDED		INSERT	
INSERT 1 BURSTED		FOLDED		INSERT	
INSERT 2 BURSTED		FOLDED		INSERT	
INSERT 3 BURSTED		FOLDED		INSERT	

REGULAR MAIL -	NUMBER		AMOUNT	
PRESORT MAIL -	NUMBER		AMOUNT	
BULK MAIL -	NUMBER		AMOUNT	
NO POSTAGE -	NUMBER		AMOUNT	
POSTAGE CHARGED YOUR COST CENTER -			TOTAL	

PRESORT X _______ = SAVINGS BY PRESORT OVER FIRST CLASS
BULK X _______ = SAVINGS BY BULK OVER FIRST CLASS

White Copy - General Services
Canary Copy - Mail Center
Pink Copy - User Dept. Copy

Return to: General Services Dept.
6th Floor - Main Office

867--0001
Rev. 1/83

Completed By: [illegible]
Date: 10-19-85 Ext. ____

[redacted]

Exhibit 15

89040762054

Charges for Mayor's Mailings (2) to Cost Center #999:

10/15/85 - Nancy: 3.50 hrs regular overtime @ $6.69/hr = $ 23.42
10/16/85 - Nancy: 1.75 " " " " " = 11.71
M.E : 2.75 " " " @ $6.56/hr = 18.04
Marissa: 1.50 hrs straight overtime @ $3.72/hr = 5.58
35.33
10/17/85 - Nancy: 5.75 hrs regular overtime @ $6.69/hr = 38.47
M.E : 1.50 hrs " " " 6.56/hr 9.84
48.31
10/18/85 - Nancy: 5.25 hrs regular overtime @ $6.69/hr = 35.13
Marissa: .50 hrs straight " @ 3.72/hr = 1.86
1.00 hrs regular " @ 5.58/hr = 5.58
42.57
10/19/85 - Nancy 10.50 hrs regular overtime @ 6.69/hr = 70.25
M.E 7.50 " " " @ 6.56/hr = 49.20
119.45

total hours: 41.50
total $: $ 369.08

Work Orders 85-45 + 85-47

[redacted]

Exhibit 16

GENERAL SERVICES

EXHIBIT K-2 **MASS MAILING WORK ORDER**

NUMBER: ______ DATE: ______

SECTION I

ITEM ______ AMOUNT (USE THIS SECTION FOR ITEMS THAT ARE NOT TO BE MAILED FROM MACHINE MAIL AREA.)

______ BURST ONLY ______

______ FOLD ONLY ______

______ BURST & FOLD ______

Requested By: M. Madison

Cost Center: 999 Ext. ______

SECTION II

ITEM TO BE INSERTED & MAILED ______

ITEM DATE ______ AMOUNT ______ SCHEDULED MAILING DATE ______

RETURN ENVELOPE NO ___ YES ___ NUMBER ______

INSERT 1 ✓ ______ INSERT 3 ______

INSERT 2 ______ INSERT 4 ______

ABOVE ITEMS RELEASED BY: ______

COST CENTER: ______ EXT. ______

SECTION III

COMPLETED BY MAIL SERVICES

ITEM BURSTED ______ FOLDED ______ INSERT ______

INSERT 1 BURSTED ______ FOLDED ______ INSERT ______

INSERT 2 BURSTED ______ FOLDED ______ INSERT ______

INSERT 3 BURSTED ______ FOLDED ______ INSERT ______

REGULAR MAIL - NUMBER ______ AMOUNT ______

PRESORT MAIL - NUMBER ______ AMOUNT ______

BULK MAIL - NUMBER ______ AMOUNT ______

NO POSTAGE - NUMBER ______ AMOUNT ______

POSTAGE CHARGED YOUR COST CENTER - TOTAL ______

PRESORT X ______ = SAVINGS BY PRESORT OVER FIRST CLASS

BULK X ______ = SAVINGS BY BULK OVER FIRST CLASS

White Copy - General Services

Canary Copy - Mail Center

Copy - User Dept. Copy

Return to: General Services Dept.
6th Floor - Main Office

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Rev. 1/83

Completed By: ______

Date: ______ Ext. ______

[redacted]

Exhibit 17

Employee Cost - Mayor Griffin Mailing

10/3/85 - Nancy - 4.50 hrs straight overtime @ $4.46/hr = $20.07

10/4/85 - Nancy - .50 hrs straight overtime @ $4.46/hr = $2.23

2.75 hrs regular overtime @ $6.69/hr = $18.40

$20.63

10/5/85 - Nancy - 8.00 hrs regular overtime @ $6.69/hr = $53.52

M.E. - 8.00 hrs regular overtime @ 6.56/hr = 52.48

$106.00

10/6/85 Nancy - 5.00 hrs straight overtime @ $4.46/hr $22.30

2.00 hrs regular overtime @ $6.69/hr = 13.38

M.E. 2.00 hrs straight overtime @ $4.37/hr = 8.74

$44.42

total employee cost = $191.12

(10/3 - 10/6)

Work order # 85-44 [illegible] 27,000

COMMUNITY PRINT SHOP CHARGES
JAN. 1986 to FEB. 1987

JOB NO.	DESCRIPTION	ORGANIZATION	CHARGE	DATE
6686	Program	Buffalo Philharmonic	*	-
-	Newsletter	ARMA	54.34	-
-	Flyer	EDP Auditors Assn.	18.48	-
8035	Booklet	Ntl. Asso. of Bnkrs.	61.84	-
-	Postcards	October House	44.42	-
-	Newsletter	Porta Niagara Club	8.44	-
-	Flyer	Porta Niagara Club	12.66	-
-	Concert Flyer	Temple Beth Zion	$127.88	01/25/86
6529	Concert Flyer	Temple Beth Zion	189.39	02/06/86
6593	Concert Flyer	Temple Beth Zion	264.77	02/24/86
6691	Program	Porta Niagara Club	74.10	03/12/86
6848	Concert Flyer	Temple Beth Zion	75.13	04/17/86
6789	Program	Porta Niagara Club	*	04/17/86
6860	Postcards	Arts Council of Bfl.	11.29	04/30/86
7021	Flyers	Buffalo Philharmonic	80.39	05/27/86
7022	Newsletter	Comm. Food Ctr of WNY	245.99	05/29/86
7028	Program	Temple Beth Zion	53.13	06/02/86
-	Manuals	Foster Grandparents	19.64	06/19/86
-	Concert Flyer	Buffalo Philharmonic	54.81	06/30/86
7079	Program	Buffalo Philharmonic	54.81	07/06/86
-	Letterhead	NABW	24.83	07/09/86
-	Badges	Empire State Games	19.98	07/12/86
7169	Concert Flyer	Buffalo Philharmonic	55.50	07/14/86
7205	Concert Flyer	Buffalo Philharmonic	55.50	07/22/86
-	Letterhead	Empire State Games	423.58	07/25/86
-	Programs	Porta Niagara Club	95.76	08/14/86
7387	Brochures	Inst. of Intrnl Auditors	72.68	09/08/86
7385	Envelopes	Inst. of Intrnl Auditors	52.30	09/08/86
7386	Letters	Inst. of Intrnl Auditors	130.61	09/08/86
6808	Concert Flyer	Temple Beth Zion	25.66	09/09/86
7397	Covers	Empire State Games	17.04	09/09/86
7431	Letterhead	Buffalo Bills	143.22	09/16/86
7539	Posters	Art Show - Theatre Place	117.82	10/01/86
7555	Invite & Envelope	Art Show - Theatre Place	173.76	10/10/86
7587	Programs	Inst. of Intrnl Auditors	48.68	10/17/86
7603	Flyers	Art Show - Theatre Place	130.73	10/22/86
-	Flyers	Niagara Frontier Chpt.	11.65	11/12/86
-	Concert Flyer	Buffalo Philharmonic	44.60	11/17/86
-	Program	ARMA	26.73	11/28/86
7935	Postcards	Toast to Buffalo	21.84	12/29/86
-	Newsletter	ARMA	41.89	12/30/86
7967	Booklet	Eastern Star Masons	82.82	01/07/87
-	Letter	Niagara Frontier Chpt.	18.26	01/13/87
8026	Youth Cards	YMCA Fund Drive	13.48	01/20/87
8029	Programs	Erie Co. Parks Dept.	320.58	01/21/87
-	Posters	Junior Achievement	85.47	01/21/87
8061	Notepads	October House	*	01/28/87
8062	Posters	Buffalo Natural Science	34.02	01/28/87
8085	Announcements	WNY Food Center	259.31	02/02/87

* Cost information not located.

[redacted]

ATTACHMEN

Exhibit 19

GCC 2989

RECEIVED AT THE FEC
HAND DELIVERED
87 MAR 27 P4: 26

SMILEY, OLSON, GILMAN & PANGIA
ATTORNEYS AT LAW
1815 H STREET, NORTHWEST
WASHINGTON, D.C. 20006-3604
(202) 466-5100
TELEX WU 64174 ROGER
TELECOPIER (202) 463-6233

SUITE 310
10521 JUDICIAL DRIVE
FAIRFAX, VIRGINIA 22030
(703) 591-9200

150 BROADWAY
NEW YORK, NEW YORK 10038
(212) 406-4949

SUITE 500
1420 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19102
(215) 546-1430

530 NORTH BLOUNT STREET
RALEIGH, NORTH CAROLINA 27604
(919) 834-9988

39 BROAD STREET
(P.O. BOX 67, ZIP 29402)
CHARLESTON, SOUTH CAROLINA 29401
(803) 723-2323

ROBERT R. SMILEY III, P. C. (DC)
WILLIAM J. OLSON, P. C. (DC, VA)
NICHOLAS GILMAN, P. C. (DC, MD, PA)
MICHAEL J. PANGIA (DC, NY)
JOHN J. CARLINO (NY)
ROBERT A. MINEO (NC)
WILLIAM P. HARPER, JR. (NC)

NANCY A. CHILES (SC)
WILTON J. SMITH (VA)

OF COUNSEL
GUY O. FARLEY, JR. (VA)

March 27, 1987

HAND DELIVER

87 MAR 27 P4: 32

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

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

Attn: Lisa Klein, Esquire

Re: MUR 2185

Dear Mr. Noble:

Following up on our letter of March 23, 1987 in which we filed Answers to Interrogatories and Responses to a Request to Produce from Mr. Kenzie. Mr. Kenzie's Answers referred to an Exhibit 1, the 1985 membership directory of the Buffalo Chamber of Commerce, but this document was not included. It is included herein. The page numbers in the membership directory referenced on page 4 of the Answers are 44-45.

Sincerely yours,

William J. Olson

William J. Olson

WJO:rg

Enclosure

cc: Robert M. Edwards, Esquire

8 7 0 4 0 7 6 2 0 5 4

GENERAL DEVELOPMENT CORP., 1091
3637 Union Rd. 14225 681-7272
Howe, Robert B., G.M.

GENERAL-ELECTRO MECHANICAL CORP., 0094-C
785 Hertel Ave. 14207 876-9685
Speller, Thomas H., Sr., Chmn
Speller, Thomas H., Jr., Pres.
Straitiff, Robert, Dir. Mktg. & Sls

GENERAL HOME IMPROVEMENT, 0327
Box 424 14222 882-4458
Fraize, Bill, Owner

GENERAL MILLS, INC., 0254, 0528
54 S. Michigan Ave 14203 856-6100
Johnson, Alven S., Plt. Mgr
Wenger, Michael R., Flour Plt Mgr
McNeill, Francis A., Purch. Mgr
One American Dr 14225 633-6300
DeCarolis, R. A., Reg Sls Mgr
O-Cel-O Div.
305 Sawyer Ave
Tonawanda 14150 876-1596
Grieco, Joseph W., Pres

GENERAL MOTORS ACCEPTANCE CORP., 0496
6750 Main St 14221 631-4100
McPartlin, F. J., Control Br. Mgr

GENERAL MOTORS CORP., 0074
767 Fifth Ave
New York 10153 212-854-6368
Peterson, Peter J., Reg. Mgr

GENERAL PORCELAIN REFINISHING, 1040-C
96 Windemere Blvd 14226 833-1337
Laughlin, Joseph V., Pres

GENESEE AUTOMOTIVE INC., 0072
1917 Genesee St 14211 894-2198
Rohauer, Ronald G., Pres

GENESEE HEARING SERVICES, INC., 0649
61 Wehrle Dr 14225 837-6213
Stuart, Dennis C., Pres

GEORGER, DAN, MOTOR SALES, INC., 0072
2780 Bailey Ave 14215 833-3799
Georger, F. Danahy, Jr., Pres

GEORGI SANITATION SERVICE, 1189
PO Box 101
5337 Abel Rd
Hamburg 14075 649-4398
Georgi, Dave, Owner

GEORGIA-PACIFIC CORPORATION, 0172
Packaging Division
1110 Military Rd 14217 877-7800
Tufano, Charles C., G. M.

GEYER, ROBERT J., OFFICE MACHINES, INC., 0218-C, 0925-A, 1437
3665 Walden Ave., PO Box 349
Lancaster 14086 683-8035
Geyer, Robert J., Pres

GIAN, ROXIE, CONSTRUCTION CO., INC., 0327
210 Cornwall Ave 14215 895-4210
Gian, Roxie, Chmn
Gian, Ned J., Jr., Pres

GIBBONS, E. F., & ASSOC., INC., 0005
1430 Colvin Blvd 14223 875-0760
Gibbons, Edward, Jr., Pres

GIBRALTAR NETWORK, 0313-C
1050 Military Rd
PO Box 707 14217 873-6287
Keller, Peggy, Admn. Asst

GIBRALTAR STEEL CORP., 1308
635 Southpark Ave 14240 856-6500
Rosenecker, Joseph, Pres 684-1020
Lipke, Kenneth E., Pres, Gibraltar 684-1020
Erazmus, Walter, V. P. Fin 684-1020

GIBSON, A. C., CO., INC., 1125, 1310
875 Englewood Ave 14223 838-5960
Brewer, Fred, Mgr

GILANO ENTERPRISES, INC., 0660-B
1555 Broadway 14212 893-4400
Gilano, Nicholas, Pres

GILHAM, ROBERT, ASSOCIATES, LTD., 0785-A
PO Box 2
Hamburg 14075 649-8800
Gilham, Robert, Pres

GINO'S IMPORTED FOODS, 0627
2754 Elmwood Ave 14217 875-5022
Bonanno, Gino C., Owner

GINTZLER GRAPHICS, INC., 0724, 0776, 1054, 1347, 1354-A
100 Lawrence Bell Dr 14221 631-9700
Calamita, James A., V. P.

GIOIA MACARONI CO., INC., 0532, 0792-A
PO Box 237 14240 873-8600
Gioia, Richard E., Pres

GIRARD SHEET METALS, INC., 1190
809 Bailey Ave. 14206 823-5700
Bicz, Eugene J., Pres.

GIST, EARL D., INC., 0702-A1
Statler Towers, Rm. 1420
107 Delaware Ave. 14202 882-0885
Gist, Earl D., Pres

GLASER, BEN, SERVICE STATION, INC., 1392
1425 Clinton St. 14206 822-6162
Glaser, Alan, Pres.

GLAUBER & CARPENTER, INC., 0023
3940 Broadway 14227 681-1234
Glauber, Paul V., Pres

GLEN OAK GOLF COURSE, 0612-B
711 Smith Rd
E. Amherst 14051 688-4400
Stein, Albert, Pres

GLENN, O. J., MOVING & STORAGE, INC., 0893
United Van Lines
PO Box 162 14225 825-1105
Binks, Sidney W., Mgr

GLENNCO SALES, INC., 0003
4050 Ridge Lea Rd
Tonawanda 14150 837-1330
Glenn, David W., Pres

GLOBAL OUTREACH, INC., 0538
496 Pearl St 14202 842-2220
Blackwood, James O., Pres

GLOBE ADVERTISING CO., 0021, 0219
Div. of Cathedral Envelope Co., Inc.
980 Northampton St 14211 897-1800
Reitz, Howard T., Sls. Mgr

GLOBE FABRICATING COMPANY, INC., 0480-A
400 Ludington St 14206 895-5673
Fasolino, Robert, V. P.

GLOBE INTERNATIONAL, INC., 0126-A
PO Box 1062 14240 824-8484
Stewart, Donald S., Pres
Cardillo, Harry M., E. V. P.
Rothman, Miles S., V. P. Mfg
Kmec, Marc H., V. P. Per. & Purch

GOBER, MARY, ASSOCIATES, 0810-B
118 Hunters La 14221 632-2888
Gober, Mary, Pres

GODINHO & HARGESHEIMER, 0746
12 Main St
Hamburg 14075 648-4200
Hargesheimer, Elbert, III, Partner

GODSHAW AGENCY, 0702-A1
1868 Niagara Falls Blvd., Suite 311
Tonawanda 14150 693-3640
Godshaw, Michael F., C. L. U., Partner

GOETZ FLORAL, INC., 0525
1638 E. Delavan Ave 14215 892-5360
Braun, Edwin J., Pres

GOETZ OIL CORP., 0992
PO Box A 14217 876-4324
Schintzius, Stephen C., Pres

GOGOS PAINTING CO., INC., 0964, 0964-C
4366 Walden Ave
Lancaster 14086 684-7675
Gogos, Adam, Pres

GOGOS, SOTIRIOS, 0
129 Maple Rd 14221 836-9662

GOLAND, JAMES E., 8999
160 Farber La., Apt. 5 634-9571

GOHR DISTRIBUTING CO., INC., 0124
PO Box 26
One Bud-Mil Dr 14240 853-2121
Hammond, Richard A., Chmn. & C. E. O.
Strange, Anton, Pres
Hammond, Jeffrey R., V. P.
Quick, Thomas, V. P. & Sls. Mgr
James, Sue, V. P. & Ofc. Mgr

GOLAND, JAMES E., 0067
160 Farber La., Apt. 5 14221 634-9571

GOLD CIRCLE DEPARTMENT STORES OF WESTERN NEW YORK, 0373
2915 Walden Ave
Depew 14043 685-3800
Haynes, Floyd, V. P. & Dist. Mgr

GOLD CROSS AMBULANCE SERVICE, INC., 0041
174 W. Ferry St 14213 873-4567
Martinez, John J., Pres

GOLDBERG-ZOINO ASSOCIATES OF NEW YORK, P. C., 0456-D
1000 Rand Bldg 14203 856-8980
Reynolds, James H., G. M.
Guertin, Joseph D., Principal

GOLDEN PALACE CHINESE RESTAURANT, INC., 1109
3488 Sheridan Dr 14226 833-2270
Sha, Sylvia, Pres

...HABER RESEARCH A...
...mstead Ct. 14221 ....
Goldhaber, Dr. Gerald, Pres.

GOLDMAN TITANIUM CORP., 11...
PO Box 246
105 Dorothy St. 14240 ....
Goldman, Harold, Pres

GOLDOME BANK FOR SAVINGS, 0...
0496, 0660-B, 0702-D, 0702-E, 07...
0876, 1110, 1136
One Fountain Plaza 14203 ....
Kenzie, Ross B., Chmn. & C.E.O.
Haller, Calvin J., Pres. WNY Div
Ruch, Paul E., Pres. & C.O.O.
Zaleski, Peter P., E.V.P.
Emblidge, Warren E., Jr., Pres. Goldome C...
Bilbao, Thomas P., Pres. NY Div
Duch, Edward K., Jr., Grp. V. P.
O'Neil, Kevin J., Pres. GRCC
Bowen, Thomas, Grp. V. P.
Richards, H. Eugene, Grp. V. P.
Britton, Don, E.V.P.
Randaccio, Sharon D., V. P.
Eich, Donald, Sr. V. P.
Golding, James R., V. P.
Hamner, Joseph E., Jr., V. P.
Kirsch, Kenneth C., V. P.
Koscielniak, Kathleen J., V. P.
Kranz, Robert E., V. P.
Marshall, Richard L., V. P.
Nikischer, James E., V. P.
Parker, Hans J., V. P.
Pritchard, Alan S., Jr., V. P.
Ryan, Peter H., V. P.
Tarrant, Frank L., V. P. Chief Aud
Westermeier, Robert R., V. P. Aud
Wright, N. Mark, V. P.
Zielinski, Lawrence J., V. P.
Brost, Gary M., V. P.
Rohde, Robert F., V. P. Corp. Sec
Aderman, Wilfred L., Asst. V. P.
Culm, Robert L., Asst. V. P.
Donovan, Michael J., Asst. V. P.
Fenter, Thomas A., V. P.
Green, David B., Asst. V. P.
Kendall, William J., Asst. V. P.
Rakoczy, Robert B., V. P.
Randall, Richard J., Asst. V. P.
Ross, Peter M., Asst. V. P.
Warning, Linda A., Asst. V. P.
Zielinski, Barbara G., Asst. V. P.
Lateyfa, Ali, Asst. Treas
Ardanuy, Raymond N., V. P.
Bergman, Paul W., Asst. V. P.
Coley, Richard T., Asst. Treas
Conners, Karen, Asst. Treas
Connolly, James F., Asst. V. P.
Edelman, Sharon, Asst. V. P.
Englert, Francis X., Asst. V. P.
Frey, Peter F., Asst. Treas
Gardina, Joseph, Asst. Treas
Griffin, Donald E., Asst. Treas
Hickin, Gerald T., Asst. Treas
Hinners, John, Asst. Treas
Jackson, Barbara, Asst. Treas
Jezioro, Andrew M., Asst. V. P.
Jones, Thomas F., Asst. Treas
Kaczmarek, Robert, Asst. Treas. Contr
Kates, John C., Asst. Treas
Kinney, Jane C., Asst. V. P.
Langer, John L., V. P.
Losi, Amy K., V. P.
Madison, Marvin M., Asst. Treas
McLimans, William F., Asst. Treas
Miles, John A., V. P.
Neureuter, Howard P., Asst. Treas
Nickson, Edward H., Asst. V. P.
Nowlan, J. Clark, Asst. Treas
Power, Felix A. R., V. P.
Ratka, Edwin A., V. P.
Strong, Mary Jean, Asst. Treas
Swartzlander, Janet M., Asst. Treas
Zygaj, Susan E., Asst. Treas
Bork, Kenneth A., Asst. Treas
Karaszewski, John F., E. V. P. Credit Real
Sidoni, Louis, V. P. BSB Diver
Andrews, Drexel, V. P. Mktg. Datek
Weiss, Robert, V. P. Serv. Ops
Daniels, James, Asst. Treas
Miles, John, V. P.
Bailey-Amherst Ofc.
3134 Bailey Ave 14215 847-5800
Waller, Calvin, Asst. Treas. Mgr
Nowak, Marilyn D.
Boulevard Mall Ofc.
1205 Niagara Falls Blvd 14226 847-5800
Bork, Kenneth, Asst. Treas. Mgr
Broadway-Fillmore Ofc.
700 Fillmore Ave 14212 847-5800
Gerber, Charles, Asst. Treas. Mgr
Chautauqua County Ofc.
351 E. Fairmount Ave
Lakewood 14750 763-1806
Benson, Barry L., V. P. Reg. Mgr
Como Mall Ofc.
2929 Union Rd 14227 847-5800
Randall, Richard, V. P. Reg. Mgr
Delaware Park Ofc.
2156 Delaware Ave 14216 877-1820
Riedel, Jean, Asst. Treas. Mgr
Delaware-Sheridan Ofc.
3637 Delaware Ave 14217 847-5800
Curtis, Kathleen, Asst. Treas. Mgr
East Aurora Ofc.
55 Douglas La
E. Aurora 14052 652-6900
Castro, Raymond, Asst. Treas. Mgr

Eastern Hills Ofc.
4401 Transit Rd. 14221 847-6800
Renkas, Peter, Asst. Treas. & Mgr
Elmwood Ave. Ofc.
807 Elmwood Ave. 14222 886-4141
Hamner, Joseph E., V. P. Reg. Mgr
Hamburg Ofc.
5610 Camp Rd.
Hamburg 14075 847-5800
Belen, Tom, Asst. Treas. Mgr
Jamestown Ofc.
115 E. 4th St.
Jamestown 14701 847-5800
Kingsley, David, Asst. V. P. Mgr
Lancaster Ofc.
60 Central Ave.
Lancaster 14086 681-2210
Ehlers, Warren R., Asst. Treas. Mgr
Lockport Ofc.
5688 S. Transit Rd.
Lockport 14094 847-5800
Dickerson, Milton, Asst. Treas. Mgr
Niagara Falls/Summit Park Ofc.
880 Military Rd.
Niagara Falls 14304 297-3310
Miskey, John, Asst. Treas. Mgr
N. Tonawanda Ofc.
1071 Payne Ave.
N. Tonawanda 14120 847-5716
Machtel, Deanna B., Asst. Treas. Mgr
Olean Ofc.
2513 W. State St.
Olean 14760 847-5800
Snyder, Brian, Asst. Treas. Mgr
Orchard Park Ofc.
4191 N. Buffalo St
Orchard Park 14127 847-5800
Szymanski, Norbert, Asst. Treas. Mgr
Seneca-Cazenovia Ofc.
2199 Seneca St. 14210 847-5800
Oaika, Robert, Asst. Treas. Mgr
Seneca Mall Ofc./West Seneca Ofc.
101 Slade Ave. 14224 847-5800
Dolan, James, Asst. Treas. Mgr
Sheridan-Harlem Ofc.
3980 Sheridan Dr. 14226 847-5800
Thurston, John, Mgr
Thruway Mall Ofc.
Walden Ave. & Harlem Rd. 14225 847-5800
McCarron, Patrick, Asst. Treas. Mgr
Westfield Ofc.
29 Main St.
Westfield 14787 847-5800
Basile, Bruce P., Asst. Treas. & Mgr

GOLF DISCOUNT OF BUFFALO, INC., 1258
3930 Sheridan Dr. 14226 839-2410
Bredenberg, William J., Pres

GOMCO DIV., ALLIED HEALTH CARE PRODUCTS, INC., 0669-C
828 E. Ferry St. 14211 894-6678
Piccoli, Joseph, Jr., Plt. Mgr
Grabowski, David, Engrg. Mgr
Luh, Martin, Jr., Mgr. Acctg

GOOD BEGINNINGS, INC., 0812-A
PO Box 60722
Rochester 14606 254-6880
Kennel, Thomas C., Pres

GOOD & FAIR CARTING & MOVING, INC., 0893
75 Comet St. 14216 876-6067
Ferrentino, John, Jr., Pres

GOODBAR RESTAURANT INC., THE, 1109
1110 Elmwood Ave. 14222
Aliotta, Joseph, Sec

GOODMAN, AIMIS & ASSOC., 1091
237 Main St., Suite 523 14203 842-1124
Goodman, Stephen, Pres

GOODRICH, B. F., TIRE CO., 0115
1050 Main St. 14209 884-4040
Dickson, James P.

GORING KERR INC., 0842-A1
85 Oriskany Dr.
Tonawanda 14150 876-6900
Schutz, Jan S., G. M.

GORMAN, GERALD P., ATTY., 0746
237 Main St. 14203 854-1146

GORMAN, JOHN J., 0
55 Ralston Ave. #309 14217 694-8888

GOSSEL, HAROLD E., 1421-B
3689 Seneca St. 14224 674-9171

GOULD & SWANSON, P.C., 0006
1805 Liberty Bank Bldg. 14202 854-3110
Swanson, Roger C., Pres

GOW, S. H., & CO., INC., 0702-A1, 0702-B1
344 Delaware Ave. 14202 856-5877
Gow, Stephen H., C. E. O.
Gow, Timothy, Pres

GOW SCHOOL, THE, 1171
Emery Rd.
South Wales 14139 652-3450
Reid, Cecelia, Assoc. Dir. Dev

GRABENSTATTER & DUBISZ, 0006
30 Cayuga Rd. 14221 634-7780
Dubisz, Frank E., Partner

GRABENSTATTER, JACK G., 0006
Public Accountant
29 Knowlton Ave. 14217 876-3021

GRADL, JERRY, MOTOR SALES, 0071
2405 Bailey Ave. 14215 896-3350
Gradl, Gerald, Pres

GRAFF DIAMOND PRODUCTS INC., 0377-B
77 Wellington Ave. 14223 835-7593
Shearer, Thomas Alton, D. M.

GRAHAM, ROY, FORD-MERCURY, INC., 0071
S. Main St.
Cattaraugus 14719 337-3377
Graham, Roy, Pres

GRAND ISLAND SALES & SERVICE, INC., 1424
2038 Grand Island Blvd.
Grand Island 14072 773-3527
Simon, John R., Pres

GRAND JUDE PLUMBING CORP., 1031-A
37 Westbourne Dr.
Tonawanda 14150 694-5849
Grandinetti, Frank, Pres

GRAND NATIONAL SPORTS SUPPLY, INC., 0633
3775 Delaware Ave. 14217 877-9880
Grace, David P., Pres

GRANT, ALICE C., 0
985 Eggert Rd. 14226 832-8194

GRANT, L. A., REALTY, INC., 1091-D
2510 Delaware Ave. 14216 877-3480
Rutstein, Alvin, Pres

GRANT, RAY, PHOTOGRAPHER, 1002
29 Stephenson St. 14224 823-5296
Grant, Ray

GRANT, THORNTON J., 0
192 Schuele Ave. 14215 895-9386

GRAPHIC BUSINESS FORMS, INC., 0212-A
49 Buffalo St.
Hamburg 14075 648-2366
McCausland, James S., Pres

GRAPHIC CONTROLS CORP., 0699-B, 0834-A4, 1093-B, 1188-B
189 Van Rensselaer St.
PO Box 1271 14240 853-7500
Quinlan, Donald P., Pres. & C.E.O.
Randall, Lyman K., V. P. & G. M. IPD
Moscoe, Ronald, Mgr. Ops. Svc
Gates, William C., Chief Fin. & Acct
Mazurowski, John E., Mgr. Corp. Plan
Koewler, Louis A., Mgr. Corp. Dev
Evans, Robert A., V. P. & G. M. Med
Mozeko, Charles, Mgr. Market Res
Drake, Larry R., V. P. Hum. Res
Baubonis, Patricia A., Asst. Corp. Sec
Brown, Felix, Mgr. Corp. R. & D.
Randazzo, May C., Mgr. Pub. Aff
Tymm, Al F., Mgr. Advert
Shea, J. Richard, Mgr. Purch
DiSabito, David M., Mfg. Eng. QA-Med
Chapman, Raymond J., Div. Mktg. Mgr. Med
Roth, Edward M., Ill. Div. Mktg. Mgr. IPD
Saona, Raul, Intl. Prod. Mktg. Mgr

GRAPHITECH, INC., 0619-B
675 Delaware Ave., Suite 107 142021005 883-0167
Majewski, Ted, Rep

GRASHOW, BERGER & LONDON, 0746
5792 Main St.
Buffalo 14221 634-7400
Berger, Michael B., Partner

GRASS, M. J., SCREW MACHINE PRODUCTS CO., INC., 1182
19 Northampton St. 14209 883-5959
Johnston, Robert N., Pres

GRAVES LEASING CORP., 0495-B, 0749-A
Suite 108
1807 Elmwood Ave. 14207 875-1900
Graves, Nelson M., Jr., Pres

GRAY LINE OF BUFFALO, 0206
5355 Junction Rd.
Lockport 14094 625-9211
Weeks, R. Thomas, Pres

GRAY, LOIS, ENTERPRISES, 0804-F
274 Cindy Dr. 14221 633-8379
Gray, Lois, Owner

GRAYBAR ELECTRIC CO., INC., 0436, 1361-C
180 Perry St. 14240 854-3700
Miksch, George H., Br. Mgr

GRAYLINE ON NIAGARA FALLS, 0206
3466 Niagara Falls Blvd.
N. Tonawanda 14120 692-4288
Guido, Eugene A., Pres

GRAY'S AUTO & COLLISION, 0077
310 Kensington Ave. 14214 834-4297
Gray, Cholley, Pres

GREAT ARROW AUTO & TRUCK REPAIR, 0077
31 Barker St. 14209 883-0027
DeTambie, James, Owner

GREAT LAKES ASSOCIATES, INC., 1314
901 Fuhrmann Blvd. 14203 852-3850
Davis, J. J., Pres

GREAT LAKES AUTOMATION, INC., 0825
3125 Walden Ave.
Depew 14043 681-6544
Koeppen, Rex E., Pres

GREAT LAKES COLLECTION BUREAU, INC., 0312
625 Delaware Ave. 14202 881-6787
Castle, Joel, Pres
Castle, Roberta, Ms., Sec

GREAT LAKES FIRE ADJUSTMENT CO., 0496-B
849 Delaware Ave. 14209 882-4141
Casey, Edward S., Owner

GREAT LAKES FOOD BROKERS, INC., 0533
3686 Harlem Rd. 14215 833-1155
Wagner, James, Pres

GREAT LAKES HOME IMPROVEMENT, 0660-B
270 Jewett Ave. 14215 849-0819
Long, George, Owner

GREAT LAKES OPTICAL CO., INC., 0754
2125 Seneca St. 14210 824-5300
Denz, Jerome A., Pres

GREAT LAKES ORTHODONTIC LABORATORY INC., 0945-B1
1550 Hertel Ave. 14216 838-4633
Breada, Peter R., Pres

GREAT LAKES PAPER FIBRES CORP., 1473-A, 1479
PO Box 663 14240 854-3232
Bevilacqua, Arthur, G. M.

GREAT LAKES PLASTIC CO., 1024-A, 1025, 1025-A2
2371 Broadway 14212 896-3100
Barzyck, Chester L., Chmn
Rice, Curtis D., Pres
Kaye, Ronald, V. P.

GREAT LAKES PRESSED STEEL CORP., 0382, 0847
1400 Niagara St. 14213 885-4037
Nichols, Robert M., Jr., Pres

GREAT "X" SALONS, INC., 0119
1958 Eggert Rd. 14226 834-4600
Marino, Philip, Pres

GREATER BUFFALO BOARD OF REALTORS, INC., 0065
472 Franklin St. 14202 885-6080
Symoniak, Daniel, E. V. P.

GREATER BUFFALO DEVELOPMENT FOUNDATION, INC., 0065
1332 Rand Bldg. 14203 856-2708
Davies, John P., Exec. Dir

GREATER BUFFALO PRESS, INC., 1054
302 Grote St. 14207 876-6410
Koessler, John W., Jr., Chmn. & C.E.O.
Koessler, Paul J., Pres. & C.O.O.
Koessler, Mary R., V. P.
Vogt, Peter A., V. P. ICO Sls
Koessler, Kenneth L., Jr., Sec
Brosnahan, William P., Treas
Hilbert, Paul C., Dir. of Taxes

GREATER EASTSIDE C.D.C., 0676
384 Wood Lawn 14208 882-1882
Smith, Raymond A., Exec. Dir

GREATER NIAGARA FRONTIER COUNCIL INC. - BOY SCOUTS OF AMERICA, 0065
334 Delaware Ave. 14202 853-8815
Buerklin, David J., Exec. Dir
Sikut, Craig E., Dir. Comm

GRECK AGENCY, INC., THE, 0702-A1
856 Eggert Rd. 14226 837-7300
Greck, Edward, Pres

GRECO, DR. PASQUALE A., 1009
1275 Delaware Ave. 14209 884-3000

GRECO TAYLOR SHOP, 1348
831 Elmwood Ave. 14222 883-2107
Macaluso, Camillo, Owner

GREEK ACCENT, INC., THE, 1109
Main Place Mall 14202 855-1356
Kalodimos, Carmen C., Pres

GREEN, A. P., REFRACTORIES CO., 1096
4000 River Rd.
Tonawanda 14150 875-9700
Kern, W. C., Mgr

GREEN, JOHN A., 0
52 Grove 14207 873-2155

GREENAN & LORIGO, 0746
3755 Seneca St. 14224 675-6111
Greenan, Gerald J., Atty

FEDERAL ELECTION COMMISSION
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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Goldome FSB, and Ross B. Kenzie	)	MUR 2185
Mayor James Griffin, the Committee	)	
to Re-elect the Mayor and	)	
Janice A. Duffy, as treasurer	)	

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter to Goldome FSB, Ross B. Kenzie, Mayor James Griffin, the Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, based on the assessment of the information presently available.

6/1/88
Date

Lawrence M. Noble
General Counsel

8 9 0 4 0 7 6 2 0 6 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1988

William J. Olson
Smiley, Olson, Gilman & Pangia
1815 H Street, N.W.
Washington, D.C. 20006-3604

RE: MUR 2185
Goldome FSB and Ross B. Kenzie, as chairman of the Board and Cehif Executive Officer

Dear Mr. Olson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, Goldome FSB and Ross B. Kenzie, the Federal Election Commission, on June 6, 1986, found reason to believe that your clients, Goldome FSB and Ross B. Kenzie, violated 2 U.S.C. § 441b(a), and instituted an investigation in this matter.

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

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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

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

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2185
Goldome FSB, and Ross B. Kenzie	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initiated by the Commission pursuant to information obtained in the normal course of carrying out its supervisory responsibilities. It involves corporate contributions, in kind, from Goldome Federal Savings Bank ("Goldome") and Ross B. Kenzie, Chairman of the Board and Chief Executive Officer, made to the Committee to Re-elect the Mayor ("the Committee") of Buffalo, New York.

On June 6, 1986, the Commission found reason to believe that Goldome and Mr. Kenzie, as Chairman of the Board and Chief Executive Officer of Goldome, violated 2 U.S.C. § 441b(a).

Counsel for Mayor James D. Griffin, Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, indicated in a written response to the Commission that the Committee contacted Mr. Kenzie in late August 1985 and asked what, if any, services could be rendered the campaign by Mr. Kenzie or Goldome. The Committee was advised that nothing could be done as a contribution, but there were services that could be rendered at a fair price. Subsequently, Mr. Kenzie wrote two "open letters" supporting Mayor Griffin's re-election. Goldome allowed the Committee to use its phone bank as well as its employees and

Goldome facilities and equipment to insert and mail campaign materials supplied by the Committee.

The first open letter dated September 3, 1985, was printed on Goldome stationery, using Goldome facilities and mailed using Goldome postage. The first open letter was sent to Goldome employees living in western New York and expressly endorsed the re-election of the Mayor. Goldome charged the Committee $75.84 for the cost of printing the letters. The price charged did not include the cost of the stationery, envelopes, postage or labor charges incurred in drafting the letter by Ruthmary Goldman, Goldome's Public Relations Coordinator.

On September 30, 1985, Mr. Kenzie issued a second "open letter." The second letter contained a personal endorsement of the Mayor from Mr. Kenzie to the Buffalo business community. Bank records show that the Committee was billed $2,710.00 in Mid-October 1985. The bill included charges for obtaining mailing lists, printing of personalized stationery, postage, and labor. The Committee paid by check dated October 23, 1985.

On October 6, 15, 16, 17, 18, 19 and 28, 1985, campaign literature produced and provided by the Committee was folded and inserted into envelopes using Goldome's automated folding machine. The machine is capable of processing 8,000 pieces per hour. According to Goldome records, 252,000 pieces of material were processed. The cost of the overtime labor for the three employees involved was $484.24. According to counsel for Goldome, the Committee was billed $291.12 on December 4, 1985, and payment was made on December 9, 1985. Goldome subsequently billed the Committee $191.12 on December 12, 1985 and received payment on December 16, 1985.

During October of 1985 Goldome permitted the Committee to use, at cost, telephones in the Goldome phone bank. The calls were placed after Goldome banking hours. Goldome records indicate that on November 1, 1985, the Committee was billed $696.80. This bill represented a per unit charge by the telephone company for the cost of the calls. Payment was made by the Committee on November 8, 1985.

II. ANALYSIS

National banks and corporations organized by authority of any law of Congress are prohibited from making contributions or expenditures in connection with <u>any</u> election to <u>any</u> political office. 2 U.S.C. § 441b(a). Contributions or expenditures include any goods or services or anything of value. 2 U.S.C. § 441b(b)(2). Examples of goods or services include facilities, equipment, supplies and personnel and are considered contributions to the extent they are provided without charge or at a charge less than the usual or normal charge for such goods or services. 11 C.F.R. § 100.7(a)(1)(iii).

A. Use of Corporate Facilities by Mr. Kenzie and Goldome Staff

1. Section 114.9(a) Analysis

Commission regulations permit use of corporate facilities under certain conditions. *See* 11 C.F.R. § 114.9. To qualify for the exemptions of section 114.9(a)(1) the Commission's regulations set forth three requirements. First, the use of corporate facilities must be by stockholders or employees of the corporation. Second, the use must be occasional, isolated or incidental. Third, the activity must be on a volunteer basis. Once all three requirements are met the stockholder or employee using the corporate facilities is required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. See 11 C.F.R. § 114.9(a)(1).

The use of Goldome facilities was by Mr. Kenzie and other employees of Goldome. Therefore, the first requirement of section 114.9(a)(1) was fulfilled.

The second requirement, that the use be occasional, isolated or incidental, is defined as an amount of activity that does not prevent the employee from completing his or her normal workload or activity which does not exceed one hour per week for four hours per month. See 11 C.F.R. § 114.9(a)(1)(i) and (iii). Two Goldome employees worked over 10 hours in a one month period printing the two open letters. Accordingly, with the possible exception of Mr. Kenzie's efforts, the activity exceeded the time limitation of the second requirement.

Goldome employees worked overtime on October 6, 15, 16, 17, 18, 19 and 28, 1985. The Goldome mail room departmental policy is to announce to employees whenever overtime work is available, and to seek volunteers to work overtime. Under these circumstances the employees "volunteered" only insofar as they elected to work overtime for Goldome. The employees (except Mr. Kenzie), therefore, did not act as political committee volunteers. Consequently, Section 114.9(a)(1) does not apply.

Pursuant to 11 C.F.R. § 114.9(a)(2), stockholders or employees who make more than occasional, isolated or incidental use of corporations facilities, may still use those facilities. Under those circumstances, however, stockholders or employees are required to reimburse the corporation at the normal and usual rate for the use of such facilities rather than the more liberal provision of section 114.9(a)(1) that requires reimbursement only for increases in overhead or operating costs of the corporation.

The normal and usual charge for Goldome's printing the open letters would have been the commercial rate prevailing in the market at that time. See 11 C.F.R. § 100.7(a)(1)(iii)(B). Since Goldome does not normally provide this type of service, charges based on in-house rates for cost analysis purposes cannot be considered the usual and normal charge. In-house rates would have been permissible only if section 114.9(a)(1) were available to Goldome.

Furthermore, the facilities of Goldome, including office space, utilities and sophisticated machinery also were used to prepare campaign materials supplied by the Committee for dissemination. Goldome was only billed $484.24 for the cost of the labor. As previously noted, the use of the facilities was more than occasional, isolated or incidental and was not, in the main, volunteer activity. Thus the more liberal costing provision of section 114.9(a)(1) was unavailable in this instance as well as for printing letters. Accordingly, the charge should have been the usual and normal rate for use of Goldome's facilities for preparation of campaign materials to avoid making a contribution to the Committee prohibited by 2 U.S.C. § 441b. The amount charged and ultimately paid for by the Committee, however, was not the commercial rate, i.e., a rate that presumably would have included rental of office space, usage of sophisticated machinery, utilities and other overhead costs. Moreover, it is the view of this Office that the provisions of Section 114.9(a)(1) and (2) apply only where the volunteers themselves are reimbursing the corporations for the activity involved. Thus, these exemptions were unavailable to the Committee, regardless of whether the Committee or Goldome conformed to the other requirements of the provisions.

In support of their argument that there is no violation, Respondents' cite MUR 1268 where the Commission found the exemption of 11 CFR § 114.9(a)(1) applied. MUR 1268 however, is distinguishable from the matter now presented. In that MUR, the corporate official reimbursed the bank for his activities associated with the campaign. In the matter presently before the Commission the Committee reimbursed Goldome. As noted above, the section 114.9(a)(1) exemption does not apply when the campaign committee, rather than the corporate employee, reimburses the corporation at cost for the use of corporate facilities associated with individual volunteer activities.

2. Section 114.9(c) Analysis

Having failed to meet the requirements for use of corporate facilities by stockholders or employees, the activities of Mr. Kenzie and the Goldome employees may be analyzed under the provisions of 11 C.F.R. § 114.9(c). This section allows any person (including a political committee) to use the facilities of a corporation to produce materials in connection with a Federal election but, that person must reimburse the corporation within a commercially reasonable time for the normal and usual charge of producing the materials in the commercial market.

Goldome did not charge the Committee the cost of securing the services in the commercial market. In calculating the charges Goldome only considered labor costs. However, when calculating costs in the commercial market all overhead must be considered. The cost of machinery, office space and utilities must be included. In addition, because Goldome is not in the printing or direct mail business, charges based on in-house rates that consider only increases in overhead or operating costs cannot be considered the normal and usual charge. Rather, it would be the price the Committee would have had to pay to obtain the letters and campaign materials on the open, commercial market. This is the commercial rate, or the usual and normal charge. <u>See</u> 11 C.F.R. § 100.7(a)(1)(iii)(B). Therefore, by permitting the Committee to use Goldome facilities and equipment to produce materials for less than the normal and usual charge, Goldome made an in-kind contribution in violation of the Act.

B. Use of Goldome Telephones by the Committee

Also at issue in this matter is whether the use of Goldome facilities to conduct telephone campaigning on behalf of the Committee without charging for all costs associated with providing the service is a contribution in violation of 2 U.S.C. § 441b. Section 114.9(d) provides that persons, other than stockholders and employees of a corporation, as specifically mentioned in section 114.9(a), may use corporate facilities, such as telephones or typewriters or office furniture, for activity in connection with an election, but they must reimburse the corporation within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. 11 C.F.R. § 114.9(d).

Campaign volunteers for the Committee made calls to voters using Goldome telephones. The calls were made after Goldome banking hours. Goldome charged the committee for use of the telephones at cost. The $696.80 paid by the Committee represents a per unit charge for each call. No calculations or charges were made for the additional overhead resulting from the Committee's volunteers using the phone bank after hours.

In order to avoid an in-kind contribution, Goldome is required to determine the normal and usual charge for using the phones, including the use of office space, utilities and furniture to conduct the telephoning. See Advisory opinion 1978-

34.*/ This, or a charge equivalent to commercial rate in the particular market, would have been the amount that comprised the usual and normal charge in this instance.

III. CONCLUSION

A contribution is defined in 2 U.S.C. § 441b as any gift, subscription, loan, advance or deposit of money or anything of value. According to Section 100.7(a)(1)(iii) of the Commission Regulations anything of value includes in-kind contributions. Furthermore, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. Id. Because the activity at issue here was not isolated or incidental and because the employee volunteer, using the facilities did not reimburse the corporation for the costs involved, the exceptions of 11 CFR § 114.9(a)(1) and (2) cannot be applied to obviate the prohibited, in-kind contributions.

Reimbursement by the Committee to the bank is limited to that provided in section 114.9(c), which refers to use of corporate facilities to produce materials by "[a]ny person" at the usual and normal charge, rather than a reimbursement based only on increase in overhead. As discussed above, for Goldome to charge the Committee for the cost of the letters and campaign

*/ Advisory Opinion 1978-34 concerned a congressional candidate committee's plan to use corporate telephones. The Commission stated that it was necessary to charge the usual and normal amount for services, including the use of office space, utilities and furniture, to avoid an illegal, corporate contribution.

materials in accordance with Commission regulations, it was required to have done so at commercial rather than in-house rates. It is apparent that only in-house rates were charged by Goldome, thus respondents failed to meet the requirements of section 114.9(c), the only exemption available. Therefore, Goldome made a corporate contribution in violation of 2 U.S.C. § 441b insofaras it charged the committee less than the usual and normal rate for the materials prepared for the Griffin Committee.

Finally, by providing use of telephones at cost, Goldome made an in-kind contribution in violation of 2 U.S.C. § 441b(a). Charging the Committee for the calls at the cost to Goldome does not represent the normal and usual charges. As with the letters and campaign materials, the amount of the contribution is the difference between the normal and usual charge for the rental of such phones at the commercial rate and the amount actually paid by the Committee.

Accordingly, it is the view of this Office that by providing services to the Committee at less than the normal and usual charge, Goldome and Ross B. Kenzie violated 2 U.S.C. § 441b(a).

IV. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe Goldome Federal Savings Bank and Ross B. Kenzie as Chairman of the Board and Chief Executive Officer, violated 2 U.S.C. § 441b(a) by making an in-kind contribution to the Committee to Re-elect the Mayor.

6/23/88
Date

Lawrence M. Noble
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1988

Michael L. Broderick, Esquire
69 Delaware Avenue
Buffalo, New York 14202

RE: MUR 2185

Dear Mr. Broderick:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, Mayor James Griffin, the Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, the Federal Election Commission, on June 6, 1986, found reason to believe that your clients, violated 2 U.S.C. § 441b(a), and instituted an investigation in this matter.

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

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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

Michael L. Broderick
Page 2

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

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mayor James Griffin, the) MUR 2185
Committee to Re-elect the Mayor)
and Janice A. Duffy, as treasurer)

GENERAL COUNSEL'S BRIEF

I. <u>STATEMENT OF THE CASE</u>

This matter was initiated by the Commission pursuant to information obtained in the normal course of carrying out its supervisory responsibilities. It involves receipt of corporate contributions, in kind, by the Committee to Re-elect the Mayor ("the Committee") of Buffalo, New York from Goldome Federal Savings Bank ("Goldome") and Ross B. Kenzie, Chairman of the Board and Chief Executive Officer.

On June 6, 1986, the Commission found reason to believe that Mayor James Griffin, the Committee to Re-elect the Mayor and its treasurer, */ violated 2 U.S.C. § 441b(a).

Counsel for respondents, Mayor James D. Griffin, Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, indicated in a written response to the Commission's factual and legal analysis that the Committee contacted Mr. Kenzie in late August 1985 and asked what, if any, services could be rendered the campaign by Mr. Kenzie or

*/ The name of the treasurer of the Committee to Re-elect the Mayor was not available to the Commission until the receipt of responses to the Commission's reason to believe notification. We now know that the treasurer is Janice A. Duffy.

Goldome FSB. The Committee was advised that nothing could be done as a contribution, but there were services that could be rendered at a fair price. Subsequently, Mr. Kenzie wrote two "open letters" supporting Mayor Griffin's re-election. Goldome allowed the Committee to use its phone bank as well as its employees and Goldome facilities and equipment to insert and mail campaign materials supplied by the Committee.

The first open letter dated September 3, 1985, was printed on Goldome stationery using Goldome facilities and mailed using Goldome postage. The first open letter was sent to Goldome employees living in western New York and expressly endorsed the re-election of the Mayor. Goldome billed the Committee $75.84 on September 10, 1985. The bill paid by the Committee on September 16, 1985 included only labor charges for printing. The price charged did not include the cost of the stationery, envelopes, postage or labor charges incurred in drafting the letter by Ruthmary Goldman, Goldome's Public Relations Coordinator.

On September 30, 1985, Mr. Kenzie issued a second "open letter." The second letter contained a personal endorsement of the Mayor from Mr. Kenzie to the Buffalo business community. Bank records show that the Committee was billed $2,710.00 in Mid-October 1985. The bill included charges for obtaining mailing lists, printing of personalized stationery, postage, and labor. The Committee paid by check dated October 23, 1985.

On October 6, 15, 16, 17, 18, 19 and 28, 1985, campaign literature produced and provided by the Committee was folded and inserted into envelopes using Goldome's automated folding machine. The machine is capable of processing 8,000 pieces per hour. According to Goldome records, 252,000 pieces of material were processed. The cost of the overtime labor for the three employees involved was $484.24. According to counsel for Goldome, the Committee was billed $291.12 on December 4, 1985, and payment was made on December 9, 1985. Goldome subsequently billed the Committee $191.12 on December 12, 1985 and received payment on December 16, 1985.

During October of 1985, Goldome permitted the Committee to use, at cost, telephones in the Goldome phone bank. The calls were placed after Goldome banking hours. Goldome records indicate that on November 1, 1985, the Committee was billed $696.80. This bill represented a per unit charge by the telephone company for the cost of the calls. Payment was made by the Committee on November 8, 1985.

II. ANALYSIS

National banks and corporations organized by authority of any law of Congress are prohibited from making contributions or expenditures in connection with <u>any</u> election to <u>any</u> political office. 2 U.S.C. § 441b(a). In addition, section 441b(a) prohibits <u>any</u> candidate, political committee, or other person from accepting or receiving <u>any</u> contribution prohibited by this section. Contributions or expenditures include any services or anything of value. 2 U.S.C. § 441b(b)(2). Examples of goods or services include facilities, equipment, supplies and personnel and are considered contributions to the extent they are provided without charge or at a charge less than the usual or normal charge for such goods or services. 11 C.F.R. § 100.7(a)(1)(iii).

A. Use of Corporate Facilities by Mr. Kenzie and Goldome Staff

1. Background

Commission regulations permit use of corporate facilities under certain conditions. 11 C.F.R. § 114.9. Section 114.9(a) excepts from the prohibition of section 441b the occasional, isolated, or incidental use of corporate facilities by stockholders and employees of the corporation for individual volunteer activity in connection with a Federal election. 11 C.F.R. § 114.9(a)(1). The stockholders and employees must reimburse the corporation to the extent that the overhead or operating costs of the corporation are increased. 11 C.F.R. § 114.9(a)(1). To qualify for the exception in section 114.9(a)(1) the person who uses a corporate facility must reimburse the corporation. However, if a stockholder or employee makes more than occasional, isolated or incidental use of a corporation's facilities for individual volunteer activity connected with an election, that individual is responsible for reimbursing the corporation within a commercially reasonable time for the normal and usual rental charge for the use of such facilities. 11 C.F.R. § 114.9(a)(2).

The language of sections 114.9(a)(1) and (2) makes it clear that Mr. Kenzie, as the person who volunteered his services to produce the "open letters," using bank personnel and facilities, is the only person able to benefit from the exception available in those sections. The Committee's reimbursement of Goldome for Kenzie's services did not satisfy the requirement that a person using the facility must reimburse the corporation. _See_ 11 C.F.R. § 114.9(a)(1) and (2). Therefore, reimbursement by the Committee appears to have been limited to that provided in section 114.9(c), which refers to use of facilities by "[a]ny person," at the usual and normal charge to produce materials, rather than a reimbursement based only on increase in overhead. As discussed below, it is the view of this Office that by knowingly accepting and receiving the services provided by Goldome and Ross B. Kenzie at less than the normal and usual charge, the Committee and Janice A. Duffy, as treasurer, violated 2 U.S.C. § 441b(a).

2. Cost Analysis

The normal and usual charge for printing the open letters would have been the cost prevailing in the market at that time. _e_ 11 C.F.R. § 100.7(a)(1)(iii)(B). Since Goldome does not rmally provide this type of service, charges based on in-house r tes for cost analysis purposes cannot be considered the usual a d normal charge. Therefore, if the Committee was to reimburse Goldome for the cost of the letters in accordance with Commission regulations, it should have done so at the commercial rather than the in-house rate.

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3. Section 114.9(c) Analysis

Section 114.9(c) allows any person (including a political committee) to use the facilities of a corporation to produce materials in connection with a Federal election but, that person must reimburse the corporation within a commercially reasonable time for the normal and usual charge for producing the materials in the commercial market. Thus, if it is not a stockholder or employee that is actually using corporate facilities to provide services to a committee on a volunteer basis and reimbursing the corporation pursuant to section 114.9(a), then the committee/recipient must pay at the commercial rate ("normal and usual charge") pursuant to section 114.9(c). Therefore, by permitting the Committee use of Goldome facilities and equipment to produce materials for less than usual and normal charge Goldome made an in-kind contribution in violation of the Act. Accordingly, the acceptance of this in-kind contribution by the Committee is a violation of 2 U.S.C. § 441b(a).

B. Use of Goldome Telephones by the Committee

Also at issue in this matter is whether acceptance of the se of Goldome facilities to conduct telephone campaigning on half of the Committee without payment for all costs associated th providing this service is a violation of 2 U.S.C. § 441b.

Section 114.9(d) provides that persons, other than ockholders and employees of a corporation, as specifically entioned in section 114.9(a), may use corporate facilities, such as telephones or typewriters or office furniture, for activity in connection with an election, but they must reimburse the corporation within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. 11 C.F.R. § 114.9(d).

Campaign volunteers for the Committee made calls to voters using telephones in the Goldome phone Bank. The calls were made after Goldome banking hours. The $696.80 paid by the Committee represents a per unit charge for each call. No calculations or charges were made for the additional overhead resulting from the Committee's volunteers using the phone bank after hours.

The per unit charge for calls made does not represent a normal and usual rental charge. Therefore, an in-kind contribution in violation of the prohibitions of 2 U.S.C. § 441b resulted because Goldome did not bill the Committee at the commercial rate for all costs logically associated with the use of corporate facilities after hours. See Advisory Opinion 1978-34. */

III. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe the Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution from the Goldome Federal Savings Bank and Ross B. Kenzie as Chairman of the Board and Chief Executive Officer.

6/23/88
Date

Lawrence M. Noble
General Counsel

*/ Advisory Opinion 1978-34 concerned a congressional candidate committee's plan to use corporate telephones. The Commission stated that it was necessary to charge the usual and normal amount for services, including the use of office space, utilities and furniture, to avoid an illegal, corporate contribution.

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GILMAN, OLSON & PANGIA

ATTORNEYS AT LAW

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1420 WALNUT STREET
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(215) 546-1430

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUL -8 PM12:54

July 5, 1988

Anthony L. Marshall, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20643

Re: MUR 2185

Dear Mr. Marshall:

We have received Mr. Noble's letter of June 24, 1988 regarding the above-referenced MUR on June 27, 1988 and we understand that our Respondent's Brief is currently due on July 12, 1988.

Our client is situated out-of-state and our client's General Counsel is currently on his summer vacation. We have scheduled a telephone conference with him to discuss this case after his return from vacation on July 11, 1988. For these reasons, we respectfully request a 20-day extension of time, or until August 1, 1988, in order to file our Respondent's Brief.

If this cannot be arranged, please let me know.

Sincerely yours,

William J. Olson

William J. Olson

cc: Robert M. Edwards, Esquire

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Thomas V. Considine
Attorney and Counselor at Law

605 Brisbane Building
Buffalo, N.Y. 14203
Telephone 854-8244

GCC# 9740

88 JUL 11 AM 10:36

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUL 11 PM 4:06

July 7, 1988

Federal Election Commission
Washington, D.C. 20463

ATTN: Lee Andersen

RE: MUR 2185

Gentlemen:

Please be advised that the above referred to matter was assigned to the undersigned as of July 1, 1988. Since that date, I have been in contact with your office.

I am in the process of reviewing the law and marshalling documentation in support of the facts as my clients recall them. Not having been involved in the campaign, it is impossible for me to present a complete and accurate display of our position without more time.

May I respectfully request that an extension of twenty (20) days be given which should prove sufficient time within which to respond.

Thanking you for your courtesy and cooperation, I am,

Yours very truly,

THOMAS V. CONSIDINE

TVC:jgp

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2185

NAME OF COUNSEL: THOMAS V. CONSIDINE

ADDRESS: 605 Brisbane Building
Buffalo, New York 14203

TELEPHONE: (716) 854-8244

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

June 16, 1986
Date

James D. Griffin
Signature

RESPONDENT'S NAME: HON. JAMES D. GRIFFIN

ADDRESS: 65 Niagara Square
Buffalo, New York 14202

HOME PHONE: Unnecessary

BUSINESS PHONE: (716) 855-4841

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1988

William J. Olson, Esquire
GILMAN, OLSON & PANGIA
1815 H Street, N.W.
Washington, D.C. 20006-3604

RE: MUR 2185
Goldome FSB and
Ross B. Kenzie

Dear Mr. Olson:

This is in response to your letter dated July 5, 1988, which we received on July 8, 1988, requesting an extension of 20 days until August 1, 1988 to respond to the General Counsel's Brief. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on August 1, 1988.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
by GHK

BY: Lois G. Lerner
Associate General Counsel

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Plum

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1988

Thomas V. Considine, Esquire
605 Brisbane Building
Buffalo, NY 14203

RE: MUR 2185
Mayor James Griffin,
the Committee to
Re-elect the Mayor,
and Janice A. Duffy,
as treasurer

Dear Mr. Considine:

This is in response to your letter dated July 7, 1988, which we received on July 11, 1988, requesting an extension of 20 days until August 1, 1988 to respond to the General Counsel's Brief. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on August 1, 1988.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner by GOR

BY: Lois G. Lerner
Associate General Counsel

FEDERAL ELECTION COMMISSION

MATTER UNDER REVIEW NO. 2185

RESPONDENTS -
MAYOR JAMES D. GRIFFIN,
COMMITTEE TO RE-ELECT THE MAYOR
AND
ITS TREASURER, AS TREASURER

MEMORANDUM

THOMAS V. CONSIDINE
Attorney at Law
605 Brisbane Building
Buffalo, New York 14203
PHONE: (716) 854-8244

FACTUAL AND LEGAL RESPONSE

During the Mayoral election campaign, Mayor James D. Griffin and the Committee asked Ross B. Kenzie what, if any, services could be rendered the campaign by Mr. Kenzie or Goldome FSB. The Committee was advised that nothing could be done as a contribution to the election campaign itself, but there were services that could be rendered at a fair price. Thereafter, services were provided, in fact.

In September of 1985, Mr. Kenzie authorized the printing of an open letter to all bank employees. The cost of producing this open letter was presented the Committee to Re-Elect Mayor Griffin on September 10, 1985 in the amount of $75.84. It was paid in full by Committee check on September 16, 1985. The bank draft was processed October 7, 1985.

On September 30, 1985, Mr. Kenzie, as a private citizen, sponsored a letter that was sent to the general Buffalo business community endorsing Mayor Griffin. It was not on Goldome FSB stationery and an invoice was presented to the Committee in mid October of 1985. A small portion of the bill for those services (folding and stuffing) was not included in the October invoice. That portion in the amount of $191.12 was presented for payment on December 12, 1985.

During October of 1985, Goldome FSB permitted campaign volunteers to use a Goldome FSB phone bank, with the express understanding that the Committee would be billed on a per unit basis. A log of calls was maintained and a bill rendered November 1, 1985. The bill was immediately paid on November 8, 1985 and processed by the bank on November 14, 1985.

A campaign-end review revealed a second service that was unbilled which was forwarded to the Committee on December 4, 1985, paid December 9, 1985 and apparently processed by the bank on January 3, 1986.

CONCLUSION

Mayor Griffin and the Committee to Re-Elect the Mayor and its Treasurer, as Treasurer, asked the bank to provide the services. The bank, through Mr. Kenzie, made the services available insisting, however, that according to law, they be paid for, for full value, upon receipt of invoices. It was never intended or expected that the bank would contribute or expend any services or make a gift, loan or advance of any service, or thing of value that would not be paid for in full.

Services were provided, or if you will, sold to the Committee. Invoices were received and perceived by the Mayor and the Committee as fair an reasonable. All payment were made within a week of the invoices.

Respectfully submitted,

Thomas V. Considine

THOMAS V. CONSIDINE

6CC# 27

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August 5, 1988

<u>HAND DELIVER</u>

RECEIVED
FEDERAL ELECTION COMMISSION
88 AUG -5 PM 5:12

Ms. Marjorie Emmons
Secretary
Federal Election Commission
999 E Street, N.W., 9th Floor
Washington, D.C. 20463

Re: <u>MUR 2185</u>

Dear Ms. Emmons:

Respondents in the above-referenced MUR, Goldome FSB and Ross B. Kenzie, as Chairman and Chief Executive Officer, hereby file ten copies of their Respondents' Brief. The date on which this brief was due was verbally extended until today by the General Counsel's office.

Sincerely yours,

William J. Olson

William J. Olson

Enclosures

cc: R. Lee Andersen, Esquire
Office of the General Counsel
(including three copies of brief)

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ecct 27

BEFORE THE
FEDERAL ELECTION COMMISSION

IN RE GOLDOME FSB AND ROSS B. KENZIE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER	MUR 2185

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 AUG -5 PM 5:12

RESPONDENTS' BRIEF

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Counsel for Respondents

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BEFORE THE
FEDERAL ELECTION COMMISSION

IN RE GOLDOME FSB AND ROSS B. KENZIE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER	)	MUR 2185

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FEDERAL ELECTION COMMISSION

IN RE GOLDOME FSB AND ROSS B. KENZIE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER	MUR 2185

RESPONDENTS' BRIEF

Respondents, Goldome FSB and Ross B. Kenzie, Chairman of the Board of Goldome and its Chief Executive Officer, hereby submit their brief in opposition to the FEC General Counsel's Brief dated June 23, 1988.

STATEMENT OF ISSUES

I. Whether Goldome, which was a federal mutual savings bank at the time of the alleged violation, having recently converted from a state mutual savings bank, was subject to the restrictions contained in 2 U.S.C. section 441b(a) which prohibit contributions or expenditures with respect to state and local elections?

II. Whether Goldome, which was a federal mutual savings bank at the time of the alleged violation, was entitled to communicate in writing with its members with respect to the 1985 Buffalo Mayoral election?

III. Whether Goldome, which billed, and was promptly reimbursed, for all services rendered to the Committee to Re-Elect Mayor Griffin, charged precisely the right amount to the Committee for printing, folding, and telephone usage?

IV. Whether respondent Kenzie consented to the alleged underbilling of the Committee to Re-Elect Mayor Griffin for printing, folding, and telephone usage?

STATEMENT OF THE CASE

This Matter Under Review (hereinafter "MUR") was commenced based on a referral from Michael Simone, Supervisory Agent for the Second District of the Federal Home Loan Bank Board to the Commission.

The Respondents are Goldome FSB (hereinafter "Goldome") and Ross B. Kenzie, Chairman and Chief Executive Officer of Goldome FSB (hereinafter "Kenzie").

The FEC General Counsel describes this MUR as one involving "possible corporate contributions, in-kind, from Goldome FSB." (General Counsel's Factual and Legal Analysis, at 1).

Prior to contacting respondents, the FEC General Counsel sought and obtained a finding from the Commission that there was reason to believe that respondents violated 2 U.S.C. section 441b(a), and respondents were so notified by letter dated June 11, 1986. A copy of the FEC General Counsel's Factual and Legal Analysis (hereinafter "General Counsel's Analysis") was provided to respondents, and they were invited to submit factual and legal materials relevant to the Commission's consideration of the matter.

Respondents filed their Response to the General Counsel's Factual and Legal Analysis (hereinafter "Respondents' Analysis") timely on July 21, 1986. The Respondents' Analysis was comprehensive, with 16 pages addressing all issues both factually and legally, asserting respondents' jurisdictional defense, together with 16 exhibits, including the Affidavit of Anthony V. Mancuso (dated July 9, 1986) relating to Goldome's internal audit and the Affidavit of Michael J. Neff (dated July 2, 1986) relating to certain costing issues for telephone usage.

Over seven months later, on February 25, 1987, the FEC General Counsel's office submitted interrogatories and a request for production of documents to respondents, to which respondent Kenzie timely responded on March 23, 1987. At that time respondents also submitted the Affidavit of Edwin A. Ratka (dated March 30, 1987) with 19 exhibits attached thereto relating to certain costing issues for printing.

Over 15 months after receipt of those answers and documents, on June 24, 1988, the FEC General Counsel advised Goldome that it was prepared to recommend that the Commission find probable cause to believe that a violation has occurred. Respondents were provided the FEC General Counsel's Brief (dated June 23, 1988) and given an opportunity to file a brief in response, which gave rise to the filing of this document.

STATEMENT OF FACTS

I. NATURE OF GOLDOME

During the period in question, September through November 1985, Goldome FSB was an unincorporated federal mutual savings bank. The initials in the bank's name, "FSB", stand for "federal savings bank." Goldome adopted a Plan of Governance effective August 3, 1983 and Goldome held a charter as a Federal Mutual Savings Bank from the Federal Home Loan Bank Board (hereinafter "FHLBB").

Prior to the period in question, Goldome had been a New York state-chartered mutual savings bank. Subsequent to the period in question, Goldome has become a New York state-chartered stock savings bank.

II. KENZIE OPEN LETTER TO GOLDOME EMPLOYEES

On September 3, 1985, respondent Kenzie wrote a letter to the Goldome employees living and working in Western New York, all of whom were also members and depositors of the bank. (Appendix 1.) The printing charges are shown on a Goldome request for printing service (as reflected by the affidavit of Edwin A. Ratka, Exhibit 1). On September 16, 1985, the Committee to Re-elect Mayor Griffin paid $75.84 by check to Goldome for its charges with respect to respondent Kenzie's letter. (Appendix 2.)

III. KENZIE OPEN LETTER TO BUFFALO BUSINESS COMMUNITY

On September 30, 1985, respondent Kenzie sent a letter on his personal stationery in his capacity as Chairman of the

Chamber of Commerce to the Buffalo business community. (Appendix 3.) The letter was printed at the Goldome printing facilities. On October 23, 1985, the Committee to Re-elect Mayor Griffin paid $2,710.06 to Goldome for charges of printing the letter. (Appendix 4.)

IV. GOLDOME RENTAL OF TELEPHONES

On September 30, 1985, the Committee to Re-elect Mayor Griffin began its paid use of Goldome telephones. On October 26, 1985, the Committee to Re-elect Mayor Griffin ended this use. On November 1, 1985, Goldome billed the Committee to Re-elect Mayor Griffin for the telephone usage. (Appendix 5). On November 8, 1985, the Committee to Re-elect Mayor Griffin transmitted a check in the amount of $696.80 to Goldome for telephone usage. (Appendix 6.)

V. GOLDOME SALE OF FOLDING SERVICES

Beginning in early October, 1985 and ending on October 28, 1985, Goldome performed certain folding services for pay for the Committee to Re-Elect Mayor Griffin. Goldome submitted two bills for this work. On December 4, 1985, Goldome issued an invoice to the Committee to Re-elect Mayor Griffin in the amount of $291.12 for folding charges (Appendix 7) which was paid on December 9, 1985. (Appendix 8.) On December 12, 1985, Goldome additionally billed folding work to the Committee to Re-elect Mayor Griffin in the amount of $191.12 (Appendix 9) which was paid on December 16, 1985. (Appendix 10.)

SUMMARY OF ARGUMENT

It is alleged that Goldome violated 2 U.S.C. section 441b(a) which prohibits national banks and federal corporations from making contributions or expenditures with regard to state or local elections. Goldome is alleged to have made an impermissible contribution to the Committee to Re-elect Mayor Griffin with respect to the 1985 Buffalo Mayoral election. It is alleged that Goldome sold certain services to a mayoral campaign and used the wrong formula for determining the price of those services.

There was no violation of 2 U.S.C. section 441b(a) by Goldome for several reasons. First, as a federal mutual savings bank operating under the auspices of the Federal Home Loan Bank Board, Goldome was clearly neither a national bank operating under the auspices of the Comptroller of the Currency nor a federal corporation (such as the Tennessee Valley Authority). At the time of the passage of the Federal Election Law in 1971, there was no such entity as a federal mutual savings bank, and there is no indication in either federal election law or the laws governing the creation of federal mutual savings banks that federal election laws would apply to this type of entity. The first time that the Federal Election Commission appears to have attempted to assert jurisdiction over federal mutual savings banks was an Advisory Opinion dated July 14, 1988, almost three years after the relevant period at issue in this MUR.

Even if federal mutual savings banks were construed to be national banks or federal corporations, those state mutual savings banks such as Goldome which converted to federal charters were expressly protected by a "grandfather" clause in federal banking legislation, under which such banks could continue indefinitely to conduct all activities permitted by state law, such as involvement in state or local elections in New York, even if otherwise proscribed by federal law.

One of the expenditures complained of involved a letter from respondent Kenzie to certain persons, all of whom were members of Goldome (as well as being employees and depositors) indicating Kenzie's support for a particular candidate in the Mayoral race. In view of the fact that all recipients of the letter were members of Goldome, it was totally permissible for the letter to be sent. Goldome's members are analogous to stockholders in a corporation, and such communications on any subject whatsoever are perfectly permissible under the Federal Election Campaign Act. Despite the fact that Goldome could have expended its own funds to produce this letter, it billed the Committee to Re-elect Mayor Griffin and was promptly reimbursed.

Indeed, Goldome was fully reimbursed for each of the services rendered to the Committee, including printing, telephone rentals, and folding work, upon the advice of counsel which had been sought by Kenzie prior to allowing the bank to perform the services in question. A detailed analysis of each of the services performed shows that an appropriate amount was charged to the Committee. Even if the formula used to calculate the amount billed for one or two services in question was too low, the amount Goldome was unnecessairly reimbursed for the production of the Kenzie letter to employees/depositors/members and the excessive amount reimbursed for certain other services more than offset any alleged undercharge to the campaign committee.

As respondent Kenzie acted only after receiving the advice of counsel, and had ordered that proper reimbursement be obtained, he obviously did not "consent" to any improper expenditure of bank funds.

The FEC General Counsel's allegation that Goldome made impermissible contributions is false, as no cash or in-kind contributions were made to the campaign committee, and therefore only expenditures were involved. With respect to the letter to the Buffalo business community, the communication, even if an expenditure, was fully protected by the First Amendment. Lastly, even if there was a technical error in fixing the price to be charged to the campaign committee, the mistake is understandable in view of the confusing state of the law in this area, even to attorneys not specialized in election law, and de minimis in terms of the amount of money involved.

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ARGUMENT

I. FEDERAL MUTUAL SAVINGS BANKS, PARTICULARLY THOSE WITH LEGISLATIVE GRANDFATHER RIGHTS BY VIRTUE OF CONVERSION FROM STATE MUTUAL SAVINGS BANKS, ARE NOT SUBJECT TO THE RESTRICTIONS IN 2 U.S.C. SECTION 441b(a) PROHIBITING INVOLVEMENT IN STATE AND LOCAL ELECTIONS

A. Only National Banks and Federal Corporations are Limited with Respect to Non-Federal Elections

The FEC General Counsel contends that respondents violated one provision of the Federal Elections Campaign Act (hereinafter "FECA"), 2 U.S.C. section 441b(a), in that it made one or more impermissible corporate contributions or expenditures with respect to the 1985 Mayoral Election in the City of Buffalo, New York. No other violation of the FECA has been alleged. Generally speaking, the statute in question, 2 U.S.C. section 441b(a), contains two major provisions:

(a) prohibiting contributions or expenditures by any "national bank or any corporation organized by authority of any law of Congress" in <u>any elections</u>; and

(b) prohibiting contributions or expenditures by any corporation or labor organization in <u>federal elections</u>.

Insofar as the alleged violation by Goldome relates only to a City Mayoral election, which is a non-federal election, the only provision of the statute that is relevant to this MUR is the provision applicable to any national bank or corporation organized under by any law of Congress. Specifically, 2 U.S.C. section 441b(a) states:

> It is unlawful for <u>any national bank</u>, or <u>any corporation organized by authority of any law of Congress</u>, to make a contribution or expenditure in connection with <u>any election to any political office</u>, or in connection with any primary election or political convention or caucus held to select candidates for any political office.... [Emphasis added.][1]

Thus, the threshold issue is whether Goldome at the time of the alleged violation (September to November 1985) was either a national bank or federal corporation. It is unclear which of those two provisions the FEC General Counsel's office contends applied to Goldome. The FEC General Counsel's only assertion of jurisdiction is contained in the General Counsel's Analysis (at 9), to wit: "Goldome FSB is a federally chartered bank, and therefore is within the purview of Section 441b(a)." Nevertheless, as will be discussed <u>infra</u>, at the time of the alleged violation Goldome was not a national bank, nor was it a federal corporation.

B. Goldome was Not a National Bank <u>During the Period in Question</u>

Goldome is not now, nor has it ever been, a national bank. At the time of the alleged violation, Goldome was a federally-chartered mutual savings bank. Goldome received its original charter from the Federal Home Loan Bank Board in 1983. As a

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[1] The provisions of the FECA dealing with national banks and corporations originated with the Tillman Act, 34 Stat. 864 (January 26, 1907) and with Senator Tillman's particular concern as to the role of national banks in federal election campaigns. 40 Cong. Rec. 5365 (1906).

federal mutual savings bank, Goldome was organized pursuant to 12 C.F.R. section 543.11, based upon the Federal Home Owners Loan Act of 1933, 48 Stat. 128, 12 U.S.C. section 1464. The Federal Home Owners Loan Act of 1933 is to be distinguished from the National Banking Act of 1864, 13 Stat. 99; 12 U.S.C. section 21, *et seq*., pursuant to which national banks are organized.

These two separate types of financial institutions fall under the purview of entirely different federal regulatory bodies. National banks are regulated by the Comptroller of the Currency (12 U.S.C. section 22), and federal mutual savings banks are regulated by the Federal Home Loan Bank Board (12 U.S.C. section 1462).

This distinction between "national banks" and federally chartered savings banks has been judicially noticed. In *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F. Supp. 572 (D.D.C. 1987), the Court explained why federally chartered savings banks are not national banks, as follows:

> *Federally chartered savings banks* that are *neither national banks* (which are governed by the Comptroller of the Currency) nor members of the Federal Reserve System (which are subject to the jurisdiction of the System's Board of Governors) are "regulated" by the FHLBB. [664 F. Supp., at 573, n. 1 (emphasis added)].

Cf., *Pioneer First Federal Savings and Loan Association* v. *Pioneer National Bank*, 637 P.2d 661 (Wash.App. 1982).

Nor can it be contended that the term "national bank" was a term without specific meaning which should be interpreted broadly to encompass all federal financial institutions that existed at the time of the passage of the FECA, or may be created at any time in the future.[2]

C. Goldome was Not a Federal Corporation During the Period in Question

The prohibitions of federal election law contained in 11 C.F.R. section 114.2(a) involving state and local elections only "apply to the activities of a national bank or corporation organized by any law of Congress...." Goldome is neither a "national bank", as discussed supra, nor a "corporation organized by any law of Congress."[3] It operates under a charter issued by

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[2] "It seems obvious that Congress did not intend to authorize or empower THE FEDERAL ELECTION COMMISSION to regulate or investigate state elections. As to elections per se, the very name of the Commission delineates the scope of its jurisdiction. The Act names no offices except elective federal offices. Except for enforcing applicable federal constitutional amendments governing the franchise, Congress may not usurp the regulation and supervision of state elections. That would be a blatant rupture of the federal system ordained by the Constitution." Federal Election Commission v. Lance, 635 F.2d 1132, at 1143 (5th Cir. 1981) (dissenting opinion of four circuit court judges).

[3] Entities that are clearly a "corporation organized by any law of Congress" would appear to include entities such as: Tennessee Valley Authority ("[T]here is created a body corporate by the name of the 'Tennessee Valley Authority'...." 16 U.S.C. section 831) (Monsanto Co. v. Tennessee Valley Authority, 448 F. Supp. 648 (N.D.Ala. 1978); Veterans of Foreign Wars (Crum v. Veterans of Foreign Wars, 502 F. Supp 1377 (D.Del. 1980); Disabled American Veterans (Rice v. Disabled American Veterans, 295 F. Supp. 131 (D.D.C. 1968); Federal Savings & Loan Insurance Corporation (Hancock Financial Corp. v. Federal Savings & Loan Insurance Corp., 492 F.2d 1325 (9th Cir. 1974); United States Olympic Committee (Burton v. United States Olympic Committee, 574 F. Supp. 517 (C.D.Cal. 1983); American National Red Cross (Patterson v. American National Red Cross, 101 F. Supp. 655 (S.D.Fla. 1951); and federal corporations incorporated under statutes codified in Title 36, U.S. Code.

the Federal Home Loan Bank Board, but the statute creating federal savings banks, 12 U.S.C. section 1646, does not actually organize any corporation whatsoever. Accordingly, no federal savings banks are covered by its proscriptions.

Under a loose interpretation of the word "corporation", it appears clear that virtually any group of persons in a common enterprise could be considered a body corporate.[4] Further, virtually any of dozens of federal regulatory authorities could be considered to impart some type of federal imprimatur to that body corporate. Nevertheless, it must be seriously questioned whether Congress intended the sweep of its proscription to be this broad, for three separate reasons, discussed <u>infra</u>.

First, to consider a federal mutual savings bank and other such entities as subject to this particular restriction in the FECA one would need to interpret the Federal Election Campaign Act, and its predecessor Tillman Act, in a peculiar manner. The FEC General Counsel construes the phrase "national bank or corporation organized by any law of Congress...." in a strained fashion. This construction apparently assumes that all financial institutions operating under any type of federal regulation are "corporation[s] organized by any law of Congress." If this were clearly true, a national bank would be a "corporation organized by any law of Congress," as 12 U.S.C. section 24 states that "[u]pon duly making and filing articles of association and an

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[4] <u>Cf</u>. <u>East Oakland Township</u> v. <u>Skinner</u>, 94 U.S. 256 (1877).

organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate...." Since all national banks would be included in the phrase "corporation organized by any law of Congress," the words "national bank" would be rendered mere surplusage in 2 U.S.C. section 441b(a). This construction would result in a violation of a basic principle of statutory construction -- that each word must be given effect. "'It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.' A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous...." 2A Sutherland Statutory Construction, section 46.06 (1984).[5]

Second, the Federal Election Campaign Act was enacted by the House of Representatives and Senate in December 1971, and the Act was signed into law on February 7, 1972. The predecessor

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[5] Like the Congress, the FEC understands how to write regulations broadly when it intends to, and narrowly when it intends to. For example, in contrast to 11 C.F.R. section 114.2(a), in defining the term "contribution or expenditure" the regulations do not use the phrase "national bank or corporation organized by any law of Congress" but rather exclude from the definition of a "contribution or expenditure":

> a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the National Savings and Loan Insurance Corporation, or the National Credit Union Administration.... [11 C.F.R. section 114.1.]

statute to 2 U.S.C. section 441b(a) was the Tillman Act, enacted in 1907.

Federal mutual savings banks did not exist until the enactment of the Financial Institutions Regulatory And Interest Rate Control Act of 1978, 92 Stat. 3641. This Act was substantially amended by the Garn-St. Germain Depository Institutions Act of 1982, 96 Stat. 1469, which "in effect, create[d] a new institution, the FDIC-insured, FHLBB-chartered savings bank." S. Rep. No. 536, 97th Cong., 2nd Sess., _reprinted in_ 1982 U.S. Code Cong. & Ad. News 3099.

The FEC General Counsel apparently takes the position (although he never states under which prong he believes jurisdiction over Goldome lies -- as a national bank or as a federal corporation) that the Congress, in enacting the Tillman Act in 1907 and the Federal Election Campaign Act in 1971, intended to include within the parameters of 2 U.S.C. section 441b(a) a type of federal financial institution that was not then in existence.

Third, although the Congress has had ample opportunity to assert jurisdiction over entities such as Goldome, it has never done so. For example, during Congress' consideration of the Financial Institutions Regulatory and Interest Rate Control Act, _supra_, or the Garn-St. Germain Act, _supra_, there was no statement that the Congress intended the newly created institutions to be subject to the Federal Elections Campaign Act. Also, no amendment to the Federal Election Campaign Act can be found subsequent to the creation of federal mutual savings banks which would indicate Congress' intention to proscribe their role in state and local elections.

D. Goldome Had "Grandfather" Rights Under Federal Law to Act as it Did

Assuming, arguendo, that Goldome, as a federal mutual savings bank, was either a national bank or a federal corporation, Goldome was also a bank that had converted from state savings bank to a federal savings bank and thereby was allowed, by an express "grandfather" clause in the applicable federal bank statute, to conduct activities it had been previously allowed to conduct under state law, including a limited role in state elections. The "grandfather" provision is as follows:

> An association which was formally organized as a savings bank under State law may, to the extent authorized by the Board, continue to carry on any activities it was engaged in on December 31, 1977, and to retain or make any investments of a type it held on that date.... [12 U.S.C. section 1464(a)(1), emphasis added]

The purpose of this "grandfather" clause was to eliminate all disincentives for state chartered savings banks to convert to a federal charter and to encourage such conversions by eliminating concerns about losing rights previously enjoyed under state law.

The Federal Home Loan Bank Board has implemented regulations pursuant to this statute to permit the exercise of those "grandfather rights" as follows:

> A Federal savings bank formerly chartered or designated as a mutual savings bank under state law may exercise any authority it was authorized to exercise as a mutual savings bank under state law at the time of its conversion from a state mutual savings bank to a Federal or other state charter. [12 C.F.R. section 543.11-1, emphasis added.]

At the time of its conversion from a state mutual savings bank to a federal mutual savings bank, Goldome was authorized under New York State law to "make expenditures, including contributions" in state and local elections up to $5,000 per calendar year. N.Y. Elec. Law, section 14-116 (McKinney 1978). Goldome made no other expenditures or contributions with respect to any election in 1985; thus under state law it was permitted to expend or contribute $5,000 with respect to the 1985 Mayoral race.

E. Respondents Had No Notice in September 1985 of a July 1988 FEC Advisory Opinion Asserting Jurisdiction Over Federal Savings Banks

Within the past twenty days the Commission has issued an Advisory Opinion which, for the first time, expressly attempts to assert jurisdiction under the statute in question over federal mutual savings banks. A.O. 1988-12, July 14, 1988.[6] Therefore, it cannot properly be said that Goldome was on notice in the fall of 1985 of the position of the FEC General Counsel as to the interpretation of the statute in question.

[6] Prior to last month, the only vaguely comparable Advisory Opinion asserting jurisdiction over a federally regulated financial institution related only to federal savings and loan associations. A.O. 1981-33, September 21, 1981.

II. THE KENZIE OPEN LETTER TO GOLDOME EMPLOYEES WAS A PERMISSIBLE COMMUNICATION TO ITS MEMBERS

A. The Kenzie Open Letter of September 3, 1985 Was Distributed Only to Members of Goldome

In an open letter dated September 3, 1985, respondent Kenzie communicated to certain individuals concerning the upcoming primary election for Mayor of the City of Buffalo. (Appendix 1.) In that letter Kenzie urged those Goldome employees living and working in Western New York:

> to consider joining [Kenzie] in supporting Mayor James D. Griffin, a local businessman, administrator and public servant who has given renewed vibrancy to our City and County.

The letter closed with the encouragement:

> [w]hether or not you agree with me, I hope that you will all get out and vote -- particularly in the primary.

The FEC General Counsel has contended that, by distributing the letter to all Goldome employees, Mr. Kenzie exceeded the bounds of federal election law which proscribes certain communications by a corporation with persons outside the class of corporate stockholders and executive or administrative personnel, and their families, with whom Goldome could freely communicate in accordance with 2 U.S.C. section 441b(b)(2). (General Counsel's Analysis, at 9-10.)

The communication in question was made to the employees of Goldome, and at the time of this communication (September 3, 1985), every employee of Goldome who received the letter was also an account holder of Goldome.[7] All Goldome employees were paid by direct deposit to a designated bank account, and largely due to certain favorable account terms for employees,[8] all employees of Goldome, on the date of the alleged violation, had voluntarily elected to participate in Goldome's own direct deposit program and had become account holders and members of Goldome.

Additionally, it should be noted that the Kenzie letter of September 3, 1985 was not distributed to "all Goldome employees" as stated in the General Counsel's Analysis (at 1), but only to those employees living in Western New York, as the letter itself states. (Appendix 1.) (Those living in Western New York were approximately 60 percent of the total number of employees.)

B. The FECA Permits Communications between Stock Corporation and Stockholders, Nonstock Corporation and Members, and Unincorporated Membership Association and Member

As indicated by the General Counsel's Analysis, an evaluation of the alleged violation requires an analysis of the exclusions set out in 2 U.S.C. section 441b(b)(2) as they relate to Goldome. The General Counsel's Analysis appears to concede that had the letter in question been sent to the shareholders of

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[7] It should be noted that each employee's election to open an account was voluntary, as required by the Electronic Fund Transfer Act. 15 U.S.C. section 1693k.

[8] These favorable account terms as of September 3, 1985 included no service charge on checking accounts, checks personalized free of charge, pay checks deposited in employees' accounts given immediate credit, and no minimum balance required in savings account to earn interest -- when normally a $250 minimum balance was required.

a corporation there would be no violation of this section. Such communications are permitted by 2 U.S.C. Section 441b(b)(2), which provides that:

> the term "contribution or expenditure" ...shall *not* include --
> (A) communications by a corporation to its *stockholders* and executive or administrative personnel and their families or by a labor organization to its members and their families *on any subject*.... [Emphasis added].

The implementing regulations extend this analysis to incorporated membership organizations, and directly correlate a stock corporation's stockholders with a nonstock corporation's members.

> An incorporated membership organization, incorporated trade association, incorporated cooperative or *corporation without capital stock* may communicate with its *members*.... [11 C.F.R. section 114.3(a)(2) (emphasis added).]

Therefore, even if Goldome were a corporation, which it was not, it could contact all of its account holders without restriction. The term "members" is defined for purposes of the entirety of this part of the Code of Federal Regulations as follows:

> "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or *corporation without capital stock*.... [11 C.F.R. section 114.1(e) (emphasis added).]

As discussed, *supra*, Goldome is not a corporation, but rather is an unincorporated association, with members. As such, it obviously has the same right to communicate with its members that

> MR. CANNON: Yes, the Senator is correct, that the provisions of section 321(b)(2)(C), and later on page 19, section 321(b)(4)(C) would permit, for example, a mutual life insurance company or a separate segregated fund established by such an organization to solicit contributions for such a fund from its members. So any type of an organization that had members, though not categorized as stockholders, and so on, would be covered under that provision.
>
> MR. ALLEN: And could solicit at any time?
>
> MR. CANNON: They could solicit at any time, just as a corporation and its separate segregated fund can solicit certain classes at any time....
>
> MR. ALLEN: I appreciate the answers from the chairman. I am glad he mentioned specifically a mutual life insurance company.... Any mutual life insurance company would be able to solicit its policyholders since they are the group that make up the corporation.
>
> MR. CANNON: If the policyholders are members within the definition of that type of an organization, then they could be solicited under that provision of the law. [122 Cong. Rec. 12468-69 (1976) (emphasis added)].

Goldome is a mutual federal association, and is not a corporation under state or federal law. As such it does not have stockholders. It does, however, have account holders who, like the policy holders of a mutual life insurance company, are its members and with whom it can freely communicate.

D. Case Law and FEC Advisory Opinions Support the Right of Membership Associations to Communicate with Their Members

In other settings, there is significant legal support for the direct analogy between stockholders and account holders that is being drawn here. For example, in OCHS v. Washington Heights Federal Savings & Loan Ass'n, 17 N.Y.2d 82, 215 N.E.2d 485, 268 N.Y.S.2d 294 (1966), the Court of Appeals of New York, where Goldome is located, stated:

> There is no doubt that many of the specific characteristics of a Federal savings and loan association are analogous to those of a stock corporation. The association members (both depositors and borrowers) possess rights and duties similar to those of a shareholder in a typical stock corporation, e.g., a financial interest in the association; the right to vote on management policy and to elect the board of directors; proxy voting; the power to call special meetings under specified circumstances, and the right to amend the by-laws of the association. We hardly need point out that these are some of the most basic attributes indigenous to a shareholder in a corporation ....[17 N.Y.2d at 86-87 (emphasis added)]

The decision in OCHS was favorably cited in In re McVann, 96 Misc.2d 879, 409 N.Y.S.2d 923 (N.Y.Sup.Ct. 1978), where the New York Supreme Court, Queens County, flatly stated:

> The rights of members in federal savings and loan associations are analogous to those of a corporate shareholder. [409 N.Y.S.2d at 926 (emphasis added).]

See also Kupiec v. Republic Federal Savings & Loan Ass'n, 512 F.2d 147 (7th Cir. 1975).

The breadth of the ownership, voting, and other rights possessed by Goldome account holders becomes evident when contrasted with the rights of members that were said by the FEC to be adequate to justify solicitation (not just communication as in the instant case) under 2 U.S.C. section 441b(b)(4)(C) in FEC Advisory Opinion 1977-67. Indeed, the instant case easily meets even the more stringent test set out in the Dissenting Opinion of two Commissioners, in that there are "member rights and obligations vis-a-vis the corporation" and members have "direct and enforceable participatory rights as a matter of law," members have the right to "direct the policies and activities of the corporation," and members have the right to "elect corporate directors or officers." The instant case also easily meets the test implied by Federal Election Commission v. National Right to Work Committee, 459 U.S. 197 (1982).

Account holders of a federal mutual savings bank are members of that bank in the same way that policy holders are members of a mutual life insurance company. It is clear that the FECA was not intended to limit communications by organizations with their members.[9]

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[9] Members of Goldome have specific rights analogous to stockholders of a corporation. The Federal Mutual Charter of Goldome provides expressly that account holders have voting rights:

> In consideration of all questions requiring or permitting action by the members of the savings bank, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. [section 6]

The Charter provides for the right of members to participate in election of trustees (directors):

> Members of the savings bank shall elect trustees by ballot.... [section 7]

The Charter provides for membership rights upon dissolution:

> All holders of accounts of the savings bank shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or

It has been demonstrated that, in writing to certain employees/account holders/members of Goldome, Mr. Kenzie did not "exceed the class of individuals" with whom the bank could communicate under 2 U.S.C. section 441b(b)(2) as alleged in the General Counsel's Analysis, at 9-1. Such communications are constitutionally and legally protected. Even if Goldome were a national bank or a federal corporation, such communications could be paid for by the entity and could be "on any subject." 2 U.S.C. section 441b(b)(2)(A).

> involuntary liquidation, dissolution, or winding up of the savings bank. [section 8]

The Charter also provides for membership voting in any amendment of the charter, other than preapproved amendments:

> Any other amendment, addition, alteration, change, or repeal of this charter must be submitted to, and preliminarily approved by, the Board prior to submission to and approval by the members at a legal meeting. [section 9]

III. THE REIMBURSEMENTS MADE TO GOLDOME FOR SERVICES RENDERED WERE PROPER

A. Respondents Arranged for Reimbursements based on the Advice of Bank Legal Counsel

Despite the respondents' belief in its own well supported position that the FECA does not apply to Goldome, respondents had arranged for Goldome to be reimbursed by the Committee to Re-Elect Mayor Griffin based on the advice of the Bank's legal counsel.[10] This was done in order to avoid any possible criticism about the use of bank funds to pay for the letter, as recommended by the Bank's legal counsel. (Kenzie Answers to Interrogatories, No. 1.) There was obviously a good-faith effort to make a proper reimbursement. Nevertheless, the FEC General Counsel contends that the amount of the reimbursement was not precisely accurate.

As evident from the analysis of this transaction, <u>infra</u>, the issues involved are not simple. They are certainly not easily understood by the layman, or, indeed, even the general,

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[10] The FEC General Counsel makes much of the reimbursements being paid to Goldome being impermissible for volunteer activity under 11 C.F.R. section 114.9 as they were made by the Committee to Re-elect Mayor Griffin, and not by respondent Kenzie. This requirement of the source of the reimbursement is nowhere expressly contained in the regulations. Indeed the terms "reimburse" and "reimbursement" appear several times in 11 C.F.R. section 114.9(a). Their meaning appears to be more concerned with payments being received by the corporation than the source of those payments. Respondents contend that the FEC General Counsel's narrow reading of this regulation would result in an overly-technical finding of a violation that does not make sense and is not in the interests of justice. MURS 1013 and 1268 would appear to indicate that the reimbursement need not come from the employee.

banking or corporate lawyer with only a passing familiarity with federal election law. Respondents acted in good faith to comply with the law upon the advice of counsel and should not be penalized in this area where even persons experienced in election law can obviously disagree.[11]

B. Respondent Kenzie Did Not "Consent" to Any Improper Expenditure of Bank Funds

The FEC General Counsel has alleged that respondent Kenzie, as President and Chief Executive Officer of Goldome, violated 2 U.S.C. section 441b(a) which states:

> [i]t is unlawful for...any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor

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[11] With respect to the gravamen of the complaint alleged by the FEC General Counsel, that Goldome applied the wrong formula in determining the charges assessed to the Committee to Re-elect Mayor Griffin, it is easy to understand how anyone other than those experienced with federal election law (and even those who are experienced) could find the rules extremely confusing. Over time there have developed different rules for pricing different types of goods and services which could hardly be called self-evident. For example: the use of corporate airplanes and other means of transportation has a special rule to charge the first-class air fare, not the cost of the flight, but only in certain circumstances (11 C.F.R. section 114.10(e)); meeting rooms normally made available to clubs may be rented to candidates, but only on the same terms given to other groups, irrespective of whether the charge imposed is more than or less than the actual cost involved (11 C.F.R. section 114.12(b)); corporate vendors of food and beverages can charge less than market price, but only if the charges at least equal cost, and only up to $1,000 per year per candidate, with a total limit of $2,000 per calendar year (11 C.F.R. section 114.1(a)(2)(v)); individual volunteers are required only to reimburse the corporation to the extent that overhead or operating costs are increased, but only if the use is "occasional, isolated, or incidental" (11 C.F.R. section 114.9(a)); etc. As stated above, the rules are hardly self-evident.

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> organization, as the case may be, prohibited by this section. [Emphasis added.]

<u>See</u> 11 C.F.R. section 114.2(d), stating that "no officer...shall <u>consent</u> to any contribution or expenditure...prohibited by this section." (Emphasis added.)

It is clear that at no time did respondent Kenzie "consent" to making a contribution or expenditure. Indeed, the terms on which he approved the transactions were expressly conditioned upon full payment by the Committee to Re-elect Mayor Griffin. Assuming, <u>arguendo</u>, that in carrying out these instructions an employee at the bank made a technical miscalculation of the amount to charge the Committee, this mistake cannot be vicariously attributed to respondent Kenzie. It is well established that "[a] bank president...is not an insurer of the honesty of the...agents employed by the bank, and is only required to exercise reasonable care and diligence in the supervision of such subordinates in the performance of their duties. 1 <u>Michie's on Banks and Banking</u>, Ch. 3, section 64 (1986). <u>See also</u> <u>Davenport</u> v <u>Prentice</u>, 126 App.Div. 451, 110 N.Y.S. 1056 (1908); <u>Davenport</u> v. <u>Prentice</u>, 134 App.Div. 916, 118 N.Y.S. 933 (1909).

During Congressional consideration of the Tillman Act, the predecessor statute to 2 U.S.C. section 441b, a question was asked by Mr. Powers of the bill's floor leader, Mr. Gaines of West Virginia, concerning what would constitute consent by an officer or director of a corporation:

> Mr. POWERS: I want to ask the gentleman how he construes that portion of the bill on page 2 in which it is stated that every officer or director of any corporation who shall consent to any contribution by a corporation in violation of the foregoing, etc. shall be punished.
>
> Mr. GAINES of West Virginia: I take it that that means to give his consent as a director, in his capacity as such director.
>
> Mr. POWERS: It does not say consent by his vote.
>
> Mr. GAINES of West Virginia: But it seems to me that the language is reasonably clear, and that is what it means.
>
> Mr. POWERS: Would the gentleman understand it to include a man who might be an officer in a corporation and who did not enter a protest against it?....
>
> Mr. GAINES of West Virginia: Certainly not. Consent is active. The mere failure to register a protest would not mean consent within the meaning of this act. I take it that the old statement that "silence gives consent" is not a legal declaration. [41 Cong. Rec. 1452 (1907) (emphasis added)].

The requirement for of active "consent" to be active is obviously a much higher level of personal participation in and approval for the activity than the most that could be inferred from the instant circumstances which rests only on vicarious responsibility. Accordingly, it is clear that respondent Kenzie did not violate the Act.[12]

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[12] The alleged recipient of an impermissible contribution -- the candidate or his committee -- is prohibited from "knowingly accepting or receiving any contribution prohibited by this section." 11 C.F.R. section 114.2(d). It should be clear from the discussion, supra, that, if respondents Goldome and Kenzie believed that they were complying with all applicable laws in charging the campaign for work performed, the Committee to Re-

C. The Reimbursement for the Kenzie Open Letter to Goldome Account Holders and Members Was Properly Made to Goldome

Even though respondent Kenzie's communication to Goldome members could have been paid out of bank funds (See Section II A, *supra*), it was not. The total printing bill for the letter of September 3, 1985 was $75.84. That amount was promptly billed to the Committee to Re-elect Mayor Griffin and was paid by the Committee in full on September 16, 1985, thirteen days after the communication was distributed. (Appendix 2.)[13]

At the time in question Goldome believed that this amount covered "all costs," as evidenced by the intra-office Goldome memorandum dated September 17, 1985. (Appendix 11.) In point of fact this amount did cover all costs (Appendix 12) despite the assertion of the FEC General Counsel that it did not. The FEC General Counsel makes certain allegations concerning these costs: (1) that Goldome was not reimbursed the postage paid in transmitting the letter; and (2) that Goldome did not charge for the paper and envelopes (General Counsel's Brief at 2). These allegations are false. Goldome was not reimbursed for postage because no such expenses were incurred. The letter was distributed to Goldome employees internally at the bank's

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elect Mayor Griffin could not have committed a "knowing" violation.

[13] Insofar as Goldome could have properly paid for the letter itself, the $75.84 received from the Committee to Re-Elect Mayor Griffin should operate as a credit against which other costs could be offset.

offices. No disposable envelopes were used. As to charging for paper, the "Request for Printing Services" (Appendix 12) sets forth a charge for "supplies" which was for pre-printed stock at .008 per copy for 2,500 copies, or $20.00. The reason that this charge did not appear on the line called "paper" on the Request for Printing Services is that the letter was not printed on plain paper but was printed on "open letter" pre-printed stock. As such, the stock was charged as "supplies", not "paper".

D. The Reimbursement for the Kenzie Open Letter To the Buffalo Business Community Was Properly Made to Goldome

On September 30, 1985, respondent Kenzie issued an "open letter" to the Buffalo business community in his capacity as Chairman of the Chamber of Commerce. (Appendix 3.) The General Counsel's Brief makes no allegations of fact whatsoever on which to base a conclusion that the Committee's payment of $2,710.06 to the bank for this letter was inadequate.

The second Affidavit of Edwin A. Ratka (Appendix 13) establishes that the prices charged by the Goldome print shop were comparable to commercial rates during the period in question. When this matter was investigated previously, Mr. Ratka also obtained a price from a commercial printer in July 1986, ten months after the printing was performed, showing a price for the printing, folding, and inserting component of the job at $965.00. Goldome charged $1,182.41 for this same printing, folding and inserting work, or $216.83 more than the

Committee could have obtained for the same work (of the total charge of $2,710.06) commercially.[14]

Even if there had been no such overpayment, a mere reimbursement of incremental costs to Goldome would have been adequate. The letter was written by respondent Kenzie in his private capacity. He wrote the letter as a "concerned businessman." FEC regulations permit a volunteer to use corporate facilities if certain conditions are met, including reimbursement being made "within a commercially reasonable time." 11 C.F.R. section 114.9(a)(2). Additionally, any person who uses the facilities of a corporation to produce materials must make such reimbursement on the same basis. 11 C.F.R. section 114.9(c).

As to the $2,710.06 expense item associated with respondent Kenzie's volunteer activity, the bank was reimbursed in full. This reimbursement was timely, as the letter to the Buffalo business community was mailed on September 30, 1985, and Goldome received reimbursement on October 23, 1985. It is true that this check was not drawn on the account of respondent Kenzie, but rather on the account of the Committee. Under 11 C.F.R. section 114.9 it should not matter who made the reimbursement, as the FEC General Counsel strenuously insists, but rather that it was made,

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[14] Insofar as this represented an overpayment by the Committee to Re-Elect Mayor Griffin, this amount should operate as an offset against other expenses.

and was timely.[15] It is difficult to believe that the

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[15] On at least two prior occasions in the context of Matters Under Review, the FEC has dealt with similar situations involving national banks, unlike Goldome, which are subject to 2 U.S.C. section 441b. In both cases reimbursement was considered adequate by the General Counsel's office.

In MUR 928, a national bank purchased advertising in various local political party "ad books" and purchased tickets to "politically sponsored events." The total funds expended directly by the bank were $2,600. These were considered political contributions. The FEC General Counsel's Report explained that the:

> bank president...made restitution of the $2,600 which had been disbursed.... In order to remedy the situation, the Commission might, in other circumstances, demand that the bank seek reimbursement from the recipient or pay a civil penalty. However, in light of the Comptroller's office having notified the bank that reimbursement by the Board or by those responsible for the contributions would constitute rectification and the bank having taken that action, we recommend that the matter not be pursued. [MUR 928, General Counsel's Report, at 1-2]

In MUR 1268, a national bank made contributions to two state campaigns. The FEC General Counsel's Report stated:

> Upon discovery of the violations... [the] Chairman of the Board, reimbursed the Bank for the contributions made to the Gil Carmichael for Governor Campaign which amounted to $1,050. This amount was also refunded to [the Chairman] by the Carmichael Campaign. In addition, [the Chairman] reimbursed the Bank for $250 which was the amount of the contribution to the Ed Pittman Campaign. As [the Chairman] desired to make a personal contribution to that committee, he did not ask for a refund from them.... Although it is clear the Bank violated the Act, the General Counsel recommends the Commission take no further action in light of [the Chairman's] explanation of the circumstances and the fact that the Bank has been reimbursed. [MUR 1268, General Counsel's Report, at 1-2].

It should be noted that in the instant case, unlike the two prior MURs, there was no contribution or donation, but rather a sale of services for which reimbursement was promptly invoiced and received.

difference between compliance and noncompliance is to be based on whether one or two checks had been written.

Moreover, the availability of the lesser payment rate requiring reimbursement "only to the extent that overhead or operating costs of the corporation are increased" in 11 C.F.R. section 114.9(a) should be clear. The FEC General Counsel asserts that this lesser rate is not available, inter alia, because Goldome employees, in the aggregate, worked more than four total hours on the project.

First, the only test specified in the regulation is whether the activity constituted "occasional, isolated, or incidental use." 11 C.F.R. section 114.9(a)(i). The regulation also contains a "safe harbor" provision (11 C.F.R. section 114.9(a)(iii)), under which an employee volunteer can conclusively know that his activity is "occasional, isolated or incidental" if it does not exceed one hour per week or four hours per month. Commission's Explanation Prior to Publication, Section 114.9, July 26, 1976. The FEC General Counsel implies that the hourly test specified in the "safe harbor" provision is the only way that an employee can be found to have made an "occasional, isolated or incidental use". This is not true.[16]

Second, the regulation specifies that:

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[16] The Commission has already previously allowed, in at least one case, a volunteer to disregard overhead costs without consideration of the number of hours worked. In O.C. 1975-30, the FEC General Counsel approved an attorney's campaign work without obtaining reimbursement for overhead costs if they were in no way increased by his campaign work.

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> 'occasional, isolated, or incidental use' generally means --
> (1) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period.... [11 C.F.R. section 114.9(a)(1)]

Under this test, it cannot be seriously argued that the volunteer assistance by either respondent Kenzie or Mrs. Ruthmary Goldman was anything other than "occasional, isolated, or incidental".

Third, even in applying the "safe harbor" hourly test, unlike the approach of the FEC General Counsel which would aggregate the time spent by each employee in applying this hourly test, the test should be per employee, rather than aggregated. Respondent Kenzie was a volunteer with respect to the campaign, as was Mrs. Ruthmary Goldman who drafted the letter. Each had the opportunity to work four hours per month as a volunteer at their office.

E. The Reimbursement for the Costs of the Telephone Usage <u>Was Properly Made to Goldome</u>

The FEC General Counsel's Office alleges that Goldome only passed on the costs of the per call charges to the Committee to Re-elect Mayor Griffin. Actually, the charges always exceeded Goldome's costs. The cost to Goldome for the calls from September 30, 1985 to October 20, 1985 was 7.9 cents per call and Goldome charged 8 cents. Effective October 20, 1985, the cost to Goldome was 9.7 cents and Goldome charged 10 cents. (Affidavit of Michael J. Neff.) It is undisputed that full payment was made in a timely fashion.

The FEC General Counsel alleges that the commercial rental value of the space was not charged. Respondent maintains that real estate over which a user has virtually no control and must share with the "landlord" during certain restricted times is of little commercial value and charging a price in excess of the per call cost met the requirement of the statute. The Affidavit of Michael J. Neff clearly sets out the terms on which the telephones were used. Callers from the Committee were interspersed with callers from Goldome conducting telemarketing for the bank and the space was always lighted and heated for the benefit of the Goldome callers. The presence of the Mayor's campaign callers in no way added to the requirements for heat and light. The only increased cost was for the per phone usage. Even if one attempted to fully allocate such fixed costs as phone installation, depreciation, etc., it is submitted that these calls would likely be less than the 0.1 cent and 0.3 cents per call charged to the Committee in excess of unit costs.

Goldome had an established pattern of providing access to its telemarketing facilities, termed Kwik Line, on an after hours basis to a variety of organizations. For example, Goldome had previously provided these telephone facilities at no cost to the annual fund raising campaigns of the United Way, the Buffalo Symphony Orchestra, and similar organizations.

The conditions imposed on the use of the telephones by the Committee to Re-elect Mayor Griffin were virtually identical to those imposed on other organizations. (Affidavit of Michael J. Neff.) The only difference was that the Committee was required to pay the usage charges.

Goldome set the price it charged with reference to, but in excess of, the cost that it incurred. Therefore, Goldome charged the Committee slightly more per call than its actual cost. Mr. Neff set out the pricing and conditions for the use of the telephones in his letter of September 23, 1985. (Affidavit of Michael J. Neff, Exhibit G-1.) When the telephone vendor increased Goldome's costs, the price to the Committee was increased on October 24, 1985. (Affidavit of Michael J. Neff, Exhibit G-2.)[17]

It is important to realize that Goldome's rental of these telephones was not one-sided. Goldome also offered to rent its telephone facilities to the opponent of Mayor Griffin, George K. Arthur, at the same price and under the same conditions as offered to the Committee to Re-elect Mayor Griffin. Goldome expressly advised the Arthur campaign committee of the dates and times on which phones were available. The Arthur Campaign

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[17] The General Counsel's Brief states: "[s]ince Goldome does not normally provide this type of service, charges based on in-house rates for cost analysis purposes cannot be considered the usual and normal charge." (at 5) Goldome did sell services to other entities on a regular basis. See, e.g., Affidavit of Edwin A. Ratka, Exhibit 19).

Committee decided not to take advantage of this offer for its own reasons.[18]

The above-stated facts show that 11 C.F.R. section 114.09(d) was fully complied with, both in terms of the charges rendered and the payments received.

F. The Reimbursement for the Folding Machine Usage Was Properly Made to Goldome

Goldome has certain automatic folding and inserting machines which are physically located in the Goldome Mail Room/Folding Room. This machinery is capable of folding, stuffing, sealing and labeling 8,000 pieces per hour. It is operated by regular employees, and occasionally temporary personnel, who are specifically trained on this equipment. The established Goldome mail room departmental policy is to announce to employees whenever overtime work is available, and to ask employees to volunteer for this work. Despite the fact that employees must volunteer to take this overtime work, they are paid for their overtime work.

The use of the facilities occurred during October 1985. The Committee was billed $291.12 on December 4, 1985, and payment in full was made on December 9, 1985. (Appendices 7 and 8.) Goldome subsequently discovered a separate work order which had

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[18] No inquiry was made by the Arthur campaign committee regarding the purchase of other services, but had there been such an inquiry, the response would have been to sell these services on the same basis as they were sold to the Committee to Re-Elect Mayor Griffin.

been overlooked.[19] Immediately upon its discovery, on December 12, 1985, this work order for $191.12 was billed to the Committee. Payment was received on December 16, 1985. (Appendix 9 and 10.)[20]

FEC regulations permit the "use of corporate or labor organization facilities to produce materials" under certain conditions, as follows:

> Any person who uses the facilities of a corporation or labor organization to produce materials in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market. [11 C.F.R. section 114.9(c)]

In its Explanation and Justification statement relative to this regulation, the FEC stated:

> If, for example, a candidate had his or her handbills reproduced on a mimeograph machine by a labor organization, the candidate would be required to reimburse the labor organization in the amount of the normal and usual charge for producing the handbills in the commercial market. The reimbursement must be made within a commercially reasonable time.

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[19] The FEC General Counsel does not allege that this brief delay in billing constitutes a violation.

[20] With respect to both requests for reimbursement and reimbursements made subsequent to the 1985 Mayoral election (consisting of invoices of December 4 and 12 and payments of December 9 and 16), respondents could not have violated 2 U.S.C. section 441b in that they "would not have been done for the purpose of influencing the election, which is the sine qua non of the [Federal Election Campaign Act]." Federal Election Commission v. Lance, supra, at 1143 (dissenting opinion of Chief Judge Coleman and Judges Garza, Tate, and Clark).

Although Goldome was not a national bank or federal corporation (and in any event enjoyed grandfather rights under federal law to act as it did), the application of this regulation to the facts shows that Bank's performance of this service was permissible, and it was timely billed to and paid by the Committee at appropriate rates.

Goldome charged $484.24 to the Committee to Re-elect Mayor Griffin for folding work. The FEC General Counsel does not contend that Goldome failed to charge a price less than the full labor charges associated with the folding work, but he contends Goldome should have charged an additional amount for rent, heat, light, etc. allocated to this job, or, in the alternative, the charge that would have been made by a commercial firm.

In order to provide the Commission with information on these non-labor costs, an analysis has been made based on information supplied by Goldome's accounting, corporate real estate, and risk management department regarding the costs associated with the 82.5 hours that the folding machine was operated on this job.

Although it is impractical to speculate as to the market rate for the precise type of folding work performed years earlier, the market rate can be crudely estimated based upon an analysis of Goldome costs.

<u>Table 1</u>

Goldome FSB
1985 Cost Analysis of Folding Machine
(located at 325 Delaware Avenue, Buffalo, New York)

Depreciation: Orig. Cost of Machine $6,3191.62 - by 8 years = $789.9525 depreciation per year - by 8760 hours per year = $.0901772 per hours X 82.5 folding for Mayor hours - $7.439619 total for job.

Space cost: 325 Delaware Avenue has 102,000 sq. ft. Annual rent is $1,160,450 divided by the total square footage $11.37696 per sq. ft. x 20 sq. ft. = $227.5392 annually divided by 8760 hours per year = $.0012987 per hour X 82.5 folding for Mayor hours = $.1071427 total for job.

Insurance: Annual fire and liability charges on the machine = $13.985, divided by 8760 hours = $.0015964 per hour X 82.5 folding for Mayor hours = $.131703 for the job.

Utilities: Total charges for electric, gas and water at 325 Delaware Avenue $119,799 divided by 102,000 sq. ft. = $1,1745 per sq. ft. X 20 sq. ft. = $23.49 divided by 8760 hours per year = $.0026815 per hour X 82.5 folding for Mayor hours = $.2212237.

Taxes: $155,022.18 annually for 325 Delaware Avenue, divided by 102,000 sq. ft. = $1.5198252 X 20 sq. ft. = $30,396504 divided by 8760 hours per year = $.0034699 per hour X 82.5 hours = $.2862667.

Recap of Costs

Depreciation	$7.439619
Rent	.1071427
Insurance	.131703
Utilities	.2212237
Taxes	.2862667
Total	$8.1859551

The total labor costs charged were $484.24 and the total non-labor costs were $8.19, for a total cost of $492.43. Assuming a one-third mark up over costs to cover a healthy profit level, the commercial rate can be crudely estimated at an additional $164.14.

It is submitted that any alleged "undercharge", such as this estimated "undercharge" of $164.14, should be considered in view of the excess reimbursements received for the Open Letter to

Employees ($75.84) (See Section III.C.) and the Open Letter to the Buffalo Business Community ($216.83) (See Section III.D.). When viewed as a whole, therefore, it is clear that, Goldome received <u>excessive reimbursement</u> from the Committee to Re-elect Mayor Griffin of $128.53.

G. The FEC General Counsel's Allegation that Goldome Made Impermissible <u>Contributions is False</u>

The FEC General Counsel has alleged that Goldome made "possible corporate contributions, in-kind, from Goldome FSB." (General Counsel's Analysis, at 1.) This allegation of improper "contributions" is completely in error. It cannot be seriously contended that respondents made any improper contributions, as it made no contributions at all. Respondents are accused of violating 2 U.S.C. section 441b, which prohibits certain "contributions or expenditures". It appears clear that the facts asserted by the FEC General Counsel allege only improper "expenditures", since nothing whatsoever was contributed to the Committee to Re-elect Mayor Griffin.

There are important differences for purposes of the First Amendment analysis of statutes regulating campaign speech between "contributions" and "expenditures". As defined in <u>Buckley</u> v. <u>Valeo</u>, 424 U.S. 1 (1975), a "contribution" is a direct payment to a candidate or campaign committee. 424 U.S., at 19. An expenditure is money spent for the purpose of influencing the outcome of an election. <u>See also Federal Election Commission</u> v.

Lance, *supra*, at 1141. Particularly with respect to the letter to the Buffalo Business Community, this attempt by the FEC General Counsel to penalize respondent's expenditure would be subject to a serious challenge under the First Amendment.

IV. EVEN IF ESTABLISHED, ANY VIOLATION WAS DE MINIMIS AND SHOULD NOT BE THE BASIS FOR FURTHER ACTION

Assuming, arguendo, that 2 U.S.C. section 441b(a) applied to Goldome, and that the reimbursements made were determined to be inadequate, any violation is de minimis and should not be the basis of a finding of probable cause to believe that a violation has occurred. In previous cases, the Commission has taken this approach.

In MUR 1268, a bona fide national bank made $1,300 in contributions to two state candidates. Upon discovery of the violations, the Bank was reimbursed by the Chairman of the Board. The Commission found a violation, but decided to take no further action. (Appendix 14.)

In MUR 928, a bona fide national bank made $2,600 in expenditures for advertisements in political ad books or for the purchase of tickets to politically sponsored events. Upon notification by the Comptroller of the Currency, the President of the bank made restitution of $2,600. The Commission found a violation, but decided to take no further action. (Appendix 15.)[21]

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[21] See also Pre MUR-85, MUR 707, MUR 927, MUR 2273.

CONCLUSION

Respondents submit that the FEC should determine that no further action should be taken against respondents in this MUR for the reasons set out above, including: that federal mutual savings banks such as Goldome are not national banks or federal corporations subject to the state and local election prohibition contained in 2 U.S.C. section 441b; that Goldome was a bank that had converted from a state mutual bank to a federal mutual charter and under federal banking law had "grandfather" rights to expend or contribute money with respect to state and local elections; that no contributions were made whatsoever; that Goldome was fully entitled to communicate with its members with respect to the election; that Goldome was properly reimbursed for all services sold to the Committee to Re-elect Mayor Griffin; that respondent Kenzie acted reasonably and only upon the advise of counsel and never consented to any improper expenditures; that any alleged underbillings were more than offset by overpayments for other items; and that any alleged expenditure was de minimis and does not justify further action.

Respectfully submitted,

WILLIAM J. OLSON
Gilman, Olson & Pangia
1815 H Street, N.W., Suite 600
Washington, D.C. 20006-3604
(202) 466-5100

3 9 0 4 0 7 6 2 1 4 9

Robert M. Edwards

ROBERT M. EDWARDS   By [illegible]
Vice President & General Counsel
Goldome FSB
One Fountain Plaza
Buffalo, New York 14203
(716) 847-5800

FREDERICK A. WOLF
Saperston, Day, Lustig, Gallick,
Kirschner & Gaglione, P.C.
Goldome Center
One Fountain Plaza
Buffalo, New York 14203-1486
(716) 856-5400

August 5, 1988   Counsel for Respondents

OPEN LETTERS

GOLDOME

An Open Letter to All Goldome Employees Living and Working in Western New York:

WE'RE GOLDOME
WE'VE GOT TO BE
The Best

During the past several years that I have served Goldome, you have often heard me say "I believe in Buffalo."

My faith has been justified many times over. Despite our torturous transition from a smokestack-dependent economy to a diversified one, Buffalo is again on the move.

Certainly, the past several years have been good ones for Goldome. We have grown from a $3-billion regional savings bank to a $13-billion broadly based financial institution employing 2500 men and women in Western New York alone. We can be proud, also, that Goldome has been a catalyst and a leading financial backer in the remarkable revitalization of downtown Buffalo and the reclamation of its urban neighborhoods.

I believe that our success as a company — and the progress we have made as a city — would have been less without the support and expertise of our Mayor, James D. Griffin. Mayor Griffin has eliminated a $19-million deficit, reduced the crime rate and has worked tirelessly to bring new dollars to Buffalo through state and urban programs.

Mayor Griffin has been instrumental in providing an Urban Development Action Grant, that — in partnership with Goldome's commitment to build its new corporate headquarters — resulted in the construction of two banks and a hotel/retail center representing $200-million of private and public investment at this end of Main Street. This, in turn, triggered development of Buffalo's Theater District and enhanced prospects for the use of the City's new rapid transit.

Without the Mayor's expertise and support, it is difficult to imagine that many of our long-awaited and deeply needed revitalization projects would have come to fruition. The Mayor has been a partner with Goldome and others in the business community in the development of our waterfront and urban renewal projects, including Lovejoy, Pratt/Willert, St. Mary's Square and Roosevelt Apartments projects.

The relationship that Mr. Griffin has forged with the County, State and Federal governments — and with the business community — has contributed enormously to our progress. I know Jim Griffin personally. He runs a lean, efficient administration, and he is beholden to no one.

As the September 10th primary nears, I would like to encourage each of you to consider the Mayor's efforts and contributions to the community and to our welfare over the past seven years. I ask you to consider joining me in supporting Mayor James D. Griffin, a local businessman, administrator and public servant who has given renewed vibrance to our City and County.

Whether or not you agree with me, I hope that you will all get out and vote — particularly in the primary.

Ross B. Kenzie

Ross B. Kenzie
Chairman and
Chief Executive Officer

3 9 0 4 0 7 6 2 1 5 4

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

340

PAY Seventy-five 84/100 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO
9/16/85	Goldome FSB	Pstg. Open Letter	340

$ 75.84

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000340⑈ ⑆022000839⑆ 32 100094 3⑈

3

ROSS B. KENZIE

Suite 1200, Three Fountain Plaza, Buffalo, NY 14203

September 30, 1985

An Open Letter to the Business Community of Buffalo

Dear Fellow Businessman:

This letter is not personalized, as I had wished, due to the constraints of time and money. But please read on.

I'm writing to you not as the Chairman of Goldome, nor the Chairman of the Chamber of Commerce, nor at any expense to either of these entities, but rather as a concerned businessman.

On November 5th, we will be faced with a decision that will directly impact our respective businesses and our city for the next four years. We will once again - for better or for worse - elect a mayor for the city of Buffalo.

Those of you who know me have no question as to where I stand on the upcoming mayoral election. I am convinced that the success of the business community and the progress we have made as a city would have been far less without the support and the guidance of Mayor Jim Griffin.

Mayor Griffin has been the chief architect and catalyst in the revitalization of downtown Buffalo, the development of its waterfront and the reclamation of its urban neighborhoods. He has worked tirelessly to bring new Federal and State dollars to Buffalo. And he has forged a liaison with business - large and small - that was unknown prior to his election to Mayor in 1977.

The Mayor is not perfect -- who is? There are obviously things that have taken place in his administration that are not completely beneficial to the business community. I think we all wish he wouldn't be quite as quick on the trigger and that he would be a little more statesmanlike. Nevertheless, we should be mindful that Mayor Griffin's programs have produced results.

Over the past eight years, Jim Griffin has helped make available more than $60 million in federal grants, commercial and industrial loans, minority loans and small business loans to help 292 Buffalo businesses. Those businesses, in turn, have invested $332 million in private financing for new development. Through this partnership, more than 7,800 jobs were retained in Buffalo and 5,551 new jobs were created, with another 3,000 new jobs projected. This does not include the 2,300 new construction jobs created by these projects. That speaks clearly about this administration's commitment to business. Jim knows that jobs are the bottom line.

Over the past eight years, the Griffin administration has spent $307 million on neighborhood programs. This includes loans and grants to homeowners, free paint, commercial loans to neighborhood businesses and a homestead program which allows people to buy a vacant home for $200, provided they will restore it.

In the inner city, this administration has built 239 garden apartments, and, in partnership with the business community, has completed urban renewal projects including Lovejoy, Pratt/Willert, St. Mary's Square, Roosevelt Apartments, and others including 250 units for the elderly at St. John's Towers and God's City.

Through fiscal responsibility, Mayor Griffin has turned a $19 million deficit into a surplus. And he has helped to reduced the crime rate by almost 10% a year. Police are more visible; the K-9 Corp. was increased from 9 dogs to 20, and 31 walking tours were added throughout the city.

Most importantly, Jim Griffin is his own man, beholden to no one. He is free to act on his convictions, and, on the record, his actions have been good for business and good for Buffalo.

Maybe the other candidate would do a fine job as mayor, but we don't know that. I submit to you that known is better than unknown -- that proven results are better than possible results, and that a proven bottom line, as we all know, beats a plan made on the if-come.

Whether or not you agree with my choice of Jim Griffin for mayor, I would like to leave you with one thought -- Buffalo will elect a mayor on November 5th, and it is crucial that the businessmen of this community be a leading force in the electoral process. I urge you to be an active participant and to encourage your employees to get out and vote in this election, which is so critical to the future of our city. Let people know where you stand.

Very best regards,

Ross B. Kenzie

Ross B. Kenzie

8904076:159

COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

REMITTANCE ADVICE

10-83
220

471

Two Thousand Seven Hundred and Ten $\frac{06}{100}$ DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO	
10/23/85	Goldome	Letters & Env. - Postage	471	$ 2,710.06

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000471⑈ ⑆022000839⑆ 32 100094 3⑈

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Goldon[redacted]untain Plaza, Buffalo, NY 14203-1499 716[redacted]

GOLDOME

November 1, 1985

Mr. Robert Tatu
Griffin Re-Election Headquarters
40 Bailey Avenue
Buffalo, NY 14220

Dear Mr. Tatu:

I understand that your volunteers have completed their phone calls, and will not be using our phones any longer. I have, therefore, prepared a final accounting of calls made and payment due.

Week	Number Calls	Unit Cost	Amount
09/30 - 10/05	2,160	8¢	$172.80
10/07 - 10/12	2,320	8¢	185.60
10/14 - 10/19	1,130	8¢	90.40
10/21 - 10/26	2,480	10¢	248.00
	8,090		$696.80

Please remit $696.80 payable to Goldome FSB. Mail the payment to my attention in the Kwik-Line Department at One Fountain Plaza, Buffalo, NY 14203.

Sincerely,

Michael J. Neff
Assistant Vice President

MJN:km

cc: Jan Duffy

bcc: T. Bowen
R. Edwards
M. Chodorow
K. Ball

89040762151

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COMMITTEE TO RE-ELECT MAYOR GRIFFIN
1947 SENECA STREET
BUFFALO, NEW YORK 14210

10-83
220

509

PAY Six Hundred and Ninety-six ———— 80/100 DOLLARS

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	CHECK AMOUNT
11/4/85	Goldome FSB	Phones	509	$ 696.80

KEY BANK OF WESTERN NEW YORK N.A.
2187 SENECA STREET, BUFFALO, NY 14210

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

⑈000509⑈ ⑆022000839⑆ 32 100094 3⑈

7

Goldome [redacted] n Plaza, Buffalo, NY [illegible] [redacted]

GOLDOME

December 4, 1985

Committee to Re-elect Mayor Griffin
1947 Seneca Street
Buffalo, NY 14210

Gentlemen:

Please forward your check in the following amount, to reimburse Goldome for expenses incurred for inserting letters to be mailed during the campaign.

Items were inserted in the envelopes and sealed. No postage was affixed. Detail is as follows:

Work Order	Date	Number/Pieces	Cost
85-45	10/16	92,000	$149.63
85-47	10/19	60,000	119.45
85-51	10/28	10,000	22.04
			$291.12

Please draw check payable to Goldome and return to my attention.

Very truly yours,

Marvin M. Madison

Marvin M. Madison
Manager, Office Support Services

MMM:mm

8

8 9 0 4 0 7 6 2 1 6 7

1947 SENECA STREET
BUFFALO, NEW YORK 14210

541

PAY Two Hundred and Ninety-one —— 12/00 DOLLARS

CHECK AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	
12/9/85	Goldome	Envelopes Inserts + Seal	541	$ 291.12

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2167 SENECA STREET, BUFFALO, NY 14210

⑈000541⑈ ⑆022000839⑆ 32 10009⑈ 3⑈

Goldome One [redacted]laza, Buffalo, NY 14203-1499 716 847-[redacted]

GOLDOME

December 12, 1985

Committee to Re-Elect Mayor Griffin
1947 Seneca Street
Buffalo, NY 14210

Gentlemen:

Thank you for your check in the amount of $291.12 to cover inserting and sealing of envelopes.

We do have one final item that was not billed. Please remit your check to cover this work order.

Work Order 8544 92,000 Inserted 10/6/85 = $191.12

TOTAL
$482.24

Please contact me if you have any questions.

Very truly yours,

Marvin M. Madison
Assistant Controller

MMM/caj

10

8904076217 1

1947 SENECA STREET
BUFFALO, NEW YORK 14210

555

PAY One Hundred and Ninety-one —— 12/100 DOLLARS

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.
12/16/85	Goldome	W.O. #8544	555

CHECK AMOUNT $ 191.12

COMMITTEE TO RE-ELECT MAYOR GRIFFIN

Janice A. Duffy

KEY BANK OF WESTERN NEW YORK N.A.
2157 SENECA STREET, BUFFALO, NY 14210

⑈000555⑈ ⑆022000839⑆ 32 100094 3⑈

Memorandum

GOLDOME

TO: David L. Galas

FROM: Ruthmary Goldman RG

RE: Open Letter - September 3, 1985

DATE: September 17, 1985

Attached is a check in the amount of $75.84 from the Committee to Re-Elect Mayor Griffin. This is reimbursement for all costs incurred for the Open Letter signed by Ross Kenzie of September 3, 1985 to all Goldome employees in support of the Mayor.

/bjw

achment

Kenneth C. Kirsch

8 9 0 4 0 7 0 2 1 7 3

Reque[redacted] Printing Service [redacted]

GOLDOME

All communications sent to 100 or more customers must be approved by the Marketing Dept. before being sent.

1. Form Number ______ Cost Center No 581
2. Quantity ______
3. Size of Original ___ 8½x11 ___ 8½x14
   Other State Size ______ x ______
4. Cut to Finished Size ___ yes ___ no
   State Size ______ x ______
5. Paper ___ White ___ Color ______ Specify Color
   ___ Letterhead ______ Name
   ______ Letterhead Phone No
   ___ Other ______ Please Specify
6. Punching ___ 3 Hole Left Side
   ___ Other ______ Be Specific
7. Spiral Bind ______ No of Books
8. Collate (minimum of 3 sheets) ___ yes ___ no
9. Stapling ___ yes ___ no
10. Note All jobs will be held for pickup unless this section is complete

Deliver To Mailroom

Requested by Dutkowy G. Floor 3

Department Address Marketing

Phone Extension ______ Date 9/3/85

Special Instructions

1700 To: Mailroom

Open letter

For Print Shop Use Only

Job No.	Description	Form No.	Cost Ctr.	Quantity	Press	Pressman	P.O. No.

Printing

Order	Plates	Ink
___ Special One Time	___ Use old plate	Color front ______
___ New form	___ Make new plate	Color front ______
___ Changed form	___ No. of plates	Color back ______
___ No change	___ No. of burns per plate ___	Color back ______

Paper

Pt	Wt	Color	Size & Mfg	No. of Sheets
1	20	Wht	Pre-Printed	2500
2			Open letter Ltrhd	
3			8½x11	
4				
5				
6				

Total Minutes Scheduled for Job 45

Actual Minutes for Job 45

Date Scheduled 9 / 3 / 85

Date Completed 9 / 3 / 85

Initials HW/DK Charge ______

Bindery

Pad	Band	Wrap	Box	Mail

Fold/Score	Drill	Cut & Trim Size	No. of Pkgs/Pads

Collate

1st Sheet ______ 3rd Sheet ______

2nd Sheet ______ 4th Sheet ______

Other ______

Total Minutes Scheduled for Job ______

Actual Minutes for Job ______

Date Scheduled ___ / ___ / ___

Date Completed ___ / ___ / ___

Initials ______ Charge ______

Costs	Typeset 43.20
Negatives	
Plates	.80
Paper	N/C
Labor	11.84
Spiral Covers	
Spiral Rings	
Other .008 Supplies	20.00
Total Charge	$ ~~[illegible]~~ 75.84

13

BEFORE THE
FEDERAL ELECTION COMMISSION

In re	)	
	)	
	)	
	)	MUR 2185
Goldome FSB and	)	
Ross B. Kenzie	)	
Chairman Of the	)	
Board And Chief	)	
Executive Officer	)	

AFFIDAVIT OF EDWIN A RATKA

1. My name is Edwin A. Ratka, and in 1985 I was employed by Goldome FSB, of Buffalo, New York as a Vice President with the working title of Director of Corporate General Services.

2. With respect to the request for printing service for the Open Letter To Employees dated 9/3/85, the labor charge of $11.84 also includes other factors such as machinery maintenance contracts, equipment depreciation, supplies and other overhead.

3. When I first learned about the FEC investigation, I was asked how much the printing services for the Chamber of Commerce letter would have been if done by an independent printer. I made inquiries and determined that the printing, including necessary preparation, of 16,000 sheets of paper, 8,000 envelopes, and folding and inserting the letters would amount to a total of $965.00. This compares to Goldome's billing of the Mayor's Campaign Committee for those services of $1,182.41.

4. Further, I periodically compared the costs of work done by the print shop with what the work would cost if done by an independent print shop. It was my experience that the print shop charges were comparable to the charges for similar work by outside print shops, which resulted in an on going debate within Goldome about whether the Goldome print shop should be discontinued and all work done by independent printers. On several occasions, the decision to discontinue the Goldome print shop was narrowly averted mainly for the reason that operating a captive print shop assured Goldome of having its printed products available in a timely manner, which could not be guaranteed by independent printing companies. Goldome realized that if it discontinued its own print shop, it assumed the risk that a rush printing order

could not be completed by an outside print shop in the time required and this fact tipped the balance in favor of maintaining our own print shop. My conclusion is that the charges of the Goldome Print Shop were about the same per job as would have been charged by outside printers and I have no reason to believe that the Griffin work cost is any different because it was priced like any other work.

This completes my statement.

Further, affiant sayeth naught.

Edwin A. Ratka

Edwin A. Ratka

Sworn to and subscribed before me
this 22nd day of July, 1988

Robert M. Edwards

ROBERT M. EDWARDS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1988

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14

BEFORE THE FEDERAL ELECTION COMMISSION
October 15, 1980

In the Matter of)
) MUR 1268
Bank of Jackson)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 29, 1980, the Commission found reason to believe that the Bank of Jackson (the Bank), (a national bank) violated 2 U.S.C. § 441b by contributing $1300 to two state candidates. The cover letter and Notification of Reason to Believe, which the Commission approved on August 19, 1980, were sent on August 21, 1980.

II. FACTUAL AND LEGAL ANALYSIS

On September 29, 1980, this office received a response from James M. Speed, Chairman of the Board. (See Attachment 1). Mr. Speed explained that the Bank was organized on September 28, 1979, and that prior to this, the experience of its principal officers had only been with state-chartered banks. Less than one month after the organization of the Bank, the contributions in question were made. According to Mr. Speed, the Bank officers were unaware of the prohibitions of 2 U.S.C. 441b. Such contributions were permissable by state-chartered institutions.

Upon discovery of the violations, James T. Speed, then Chairman of the Board, reimbursed the Bank for the contributions made to the Gil Carmichael for Governor Campaign which amounted to $1,050. This amount was also refunded to Mr. Speed by the

Carmichael Campaign. In addition, James M. Speed, then President of the Bank, reimbursed the Bank for $250 which was the amount of the contribution to the Ed Pittman Campaign. As Mr. Speed desired to make a personal contribution to that committee, he did not ask for a refund from them.

2 U.S.C. § 441b prohibits national banks from making a contribution in connection with any election to any political office. Although it is clear the Bank violated the Act, the General Counsel recommends the Commission take no further action in light of Mr. Speed's explanation of the circumstances and the fact that the Bank has been reimbursed.

III. Recommendation

1. Take no further action against the Bank of Jackson.
2. Send the attached letters.
3. Close the file.

30 October 1980
Date

Charles N. Steele
General Counsel

Attachments
1. Letter from Speed
2. Proposed letters

79 MAY 11 P4: 13

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
First National Bank of Schiller Park	)	MUR 928
	)	

GENERAL COUNSEL REPORT

I. Background

This matter was referred to the Commission by the Comptroller of the Currency. On March 14, 1979, the Commission adopted the recommendation of the General Counsel and found reason to believe that the First National Bank of Schiller Park violated 2 U.S.C. §441b by making several contributions/expenditures to local political groups.

II. Analysis

The referral from the Comptroller dated December 6, 1978 coupled with respondent's letter dated April 2, 1979 (Attachment A), corroborate the facts in this matter. The respondent, through its attorney Floyd Babbitt, indicated that the contributions/expenditures (approximately $2,600 dating back to 1976) were expended for either the purchase of advertisements in political ad books or for the purchase of tickets to politically sponsored events.

Upon notification by the Comptroller on December 6, 1978, and after receipt of a letter dated February 26, 1979 from the Comptroller Regional Counsel insisting that the bank be reimbursed from whatever source - including the Board of Directors[1/] - bank

---

1/ Upon telephonic inquiry to the Regional Counsel's office, the General Counsel's office was assured that the February 26, 1979 letter to the First National Bank of Schiller Park was similar in form and content to the February 26, 1979 letter to the First Arlington National Bank. (Attachment C).

president Robert Walcott made restitution of the $2,600 which had been disbursed. This office has been assured that reimbursement was made by Mr. Walcott on April 17, 1979 (Attachment B).

The respondent, a national bank having made political contributions is clearly in violation of 2 U.S.C. §441b, although apparently not intentionally. In order to remedy the situation, the Commission might, in other circumstances, demand that the bank seek reimbursement from the recipient or pay a civil penalty. However, in light of the Comptroller's office having notified the bank that reimbursement by the Board or by those responsible for the contributions would constitute rectification and the bank having taken that action, we recommend that the matter not be pursued.

III. Recommendation

1. Take no further action.
2. Close the file.
3. Send the appropriate letters.

8/11/79
Date

William C. Oldaker
General Counsel

Attachments

Letter dated December 6, 1978 (A)
Letter dated April 2, 1979 (A)
Letter dated April 17, 1979 (B)
Letter dated April 18, 1979 (B)
Letter dated February 26, 1979 (C)
Proposed letters

89040762185

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 JUN 26 AM 11:45

SENSITIVE
EXECUTIVE SESSION

JUL 11 1989

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Goldome FSB, and Ross B. Kenzie	)	
	)	MUR 2185
Mayor James Griffin, the Committee to Re-elect the Mayor and Janice Duffy, as Treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was initiated by the Commission based upon a referral from the Federal Home Loan Bank Board. It involves in-kind contributions by a federally chartered savings bank to a 1985 mayoral candidate in Buffalo, New York, in the form of mailings by the bank Chairman and CEO advocating the mayor's re-election, the folding and stuffing of campaign literature, and the provision of telephone banks. The bank billed, and received reimbursement from, the mayor's campaign for most of the direct costs associated with the activities. Specifically, the Commission found reason to believe that Goldome Federal Savings Bank ("Goldome") and Ross B. Kenzie, Chairman and CEO of Goldome, Mayor James T. Griffin, and the Committee to Re-elect the Mayor, and its treasurer, violated 2 U.S.C. § 441b(a). After an investigation, this Office circulated briefs in support of its position. Both Goldome and the Committee have submitted reply briefs.

II. ANALYSIS

The analysis of this matter is contained in the General Counsel's Briefs. Several additional points raised by Respondent Goldome are addressed below.

1. Goldome argues first (Br. 6, 9-15) that although a Federal savings bank at the time in question, it was not subject to section 441b's prohibition on contributions and expenditures in connection with local elections. In support of this threshold argument, Goldome first contends that it was not a corporation "organized by authority of any law of Congress," within section 441b(a)'s prohibition, and second maintains that because it originated as a state chartered bank, it retained certain grandfather rights.

Goldome had been a state chartered bank and in 1983 was chartered by the Federal Home Loan Bank Board ("Bank Board" or "Board") as a Federal savings bank, under the authority of 12 U.S.C. § 1264(a) and (o). Pursuant to section 1264(a), "the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal savings banks, and to issue charters therefor" (emphasis added). Under section 1264(o), "the Board ... may authorize, under the rules and regulations of the Board, the conversion of a State-chartered savings bank insured by the Federal Deposit Insurance Corporation into a Federal savings bank ... and to provide for the organization, incorporation, operation, examination, and regulation of such institution" (emphasis added). Title 12 C.F.R. Part 543 of the Bank Board's regulations provides for the organization of Federal savings and loan associations and Federal savings banks, both described as Federal mutual associations (<u>see</u> 12 C.F.R. § 543.5), and 12 C.F.R. § 544.4 provides that "[i]ssuance by the Board of a charter to a Federal mutual association within the meaning of § 543.5 of this subchapter constitutes the incorporation of that association by the Board."

Counsel parses the statutory phrasing, arguing (Br. 13) that 12 U.S.C. § 1264 "does not actually organize any corporation whatsoever." As we have shown, however, Federal savings and loan associations and Federal savings banks are chartered and incorporated under Bank Board regulations promulgated pursuant to express statutory directive. As a consequence, such institutions are "corporations organized by authority of any law of Congress," and the Commission has consistently so concluded. <u>See</u> AOs 1980-7, 1981-33 and 1988-12.

Goldome also relies on a grandfather clause promulgated by the Bank Board pursuant to 12 U.S.C. § 1264(a)(1) (1981), permitting "[a] Federal savings bank formerly chartered or designated as a mutual savings bank under state law ... [to] exercise any authority it was authorized to exercise as a mutual savings bank under state law at the time of its conversion." 12 C.F.R. § 543.11-1. Notwithstanding the FECA, counsel contends, the bank could permissibly contribute to candidates for local office under this clause, because (Br. 17) "Goldome was authorized under New York State law to 'make expenditures, including contributions' in state and local elections up to $5,000 per calendar year." The cited provision, however, contains no specific "authority" given to Goldome under New York law "to exercise as a mutual savings bank," but simply permits general corporate treasury spending in state and local elections. N.Y. Stats. sec. 14-116. Thus, the Board's regulation on its face does not support Goldome's argument.1/

2. Goldome also argues that even if the bank made a contribution in violation of section 441b(a), respondent Kenzie, Goldome's President and Chief Executive Officer, is not liable for such violation because he did not "consent to any contribution or expenditure" (Br. 28, quoting section 441b(a)). Contrary to respondents' argument, however, Mr. Kenzie himself had initial discussions with Mayor Griffin and his committee about what assistance the bank could provide the Mayor's campaign; he authorized and directed all the activities involved in this matter; and he signed the two letters prepared and distributed using bank facilities. Because he was an active participant in the activities which gave rise to a violation of section 441b(a), Mr. Kenzie is liable for consenting to the resulting corporate contribution, and Respondents have failed to persuade that anything more is necessary for a corporate officer to be liable under section 441b(a).

1/ In MUR 2381, the Commission similarly concluded that federal savings banks converted from state banks could not continue to make political contributions to state candidates as permitted by state law. In that matter, the Federal Home Loan Bank Board, prior to the adoption of its regulation at 12 C.F.R. § 543.11-1, had explicitly purported to permit the respondent state savings bank to continue to make contributions to state and local candidates after its conversion to a federal savings bank. Under those circumstances, the Commission resolved the matter by a conciliation agreement which did not require payment of a civil penalty.

3. Goldome makes several arguments in support of its belief that the bank permissibly required reimbursement of only its increased cost from the mailing, brochure folding, and telephone bank activities. First, it argues (Br. 32-33) that this permissive reimbursement provided at 11 C.F.R. § 114.9(a)(1) is available although the Committee itself paid back the bank for services rendered. This Office adheres, however, to its position to the contrary expressed in the General Counsel's Brief. Not only does the regulation explicitly contemplate reimbursement by the individual volunteer, but it plainly was intended simply to permit corporate employees to engage in volunteer activities using corporate facilities without such activities resulting in a corporate contribution, not to permit campaigns to pay corporations at less than fair market value for campaign services. Goldome also argues that the regulation's "safe harbor" of four hours per week should be (Br. 35) "per employee" and it attacks the General Counsel's aggregation of hours for purpose of the safe harbor provision (GC Brief re Goldome at 4). The General Counsel's Brief in fact concluded that work by clerical employees at the direction of Mr. Kenzie was not "individual volunteer activity" within the meaning of section 114.9(a)(1); this Office strongly objects to Goldome's suggestion that a corporate CEO could, within this exemption in the regulations, direct numerous employees on campaign activity so long as no individual employee spent more than four hours per

week or ten hours per month.[2/]

4. Goldome sought and received reimbursement for only the direct cost of telephone calls made from Goldome telephone banks made available to the campaign. As the General Counsel's Brief indicated, the failure to charge a commercial rate for this service resulted in a contribution by the bank. In response, Goldome asserts that the charge in fact made was from .1 cent to .3 cents in excess of the per call cost, and argues that there was little increased cost to the bank beyond the phone calls made. Although the phone banks were made available in the evenings and weekends, Goldome maintains (Br. 36) that during these times, "[c]allers from the Committee were interspersed with callers from Goldome conducting telemarketing for the bank." As explained in the General Counsel's Brief, however, the standard for payment under these circumstances would not be the bank's "increased cost" (Br. 36), but rather a market rate reimbursement. Goldome does not contend that the .1 cent and .3

2/ Goldome does calculate (Br. 40-41) an additional amount that should have been billed as a market rate reimbursement for its folding, stuffing and sealing of 252,000 pieces of campaign materials for dissemination during October 1985 (GC Brief at 2-3). It argues, however, that these services could not violate section 441b's prohibition on federal bank contributions in connection with local elections because (Br. 39 n.20) the requests for reimbursement and the actual reimbursements for these services took place after the election. First, the Commission interprets the FECA to regulate contributions to defray campaign expenses made after the election. FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988). More importantly though, Goldome actually provided the above-described services during the election campaign; its failure to receive payment until after the election obviously cannot place its in-kind contribution beyond the purview of the Act.

cent charge over actual per call cost of the telephone vendor was intended as anything more than a rounding off to the nearest cent for ease of calculation. Since Goldome did not charge a market rate, the fact that the Committee's arrangement otherwise resembled the conditions given by Goldome to other non-profit organizations does not rescue the arrangement, because Goldome could permissibly and intended to make in-kind contributions to these organizations.3/

We have shown that the bank's services provided on behalf of Mayor Griffin's campaign were in-kind contributions to that campaign in violation of 2 U.S.C. § 441b(a). On the other hand, as described in the General Counsel's Brief, the bank did receive reimbursement for most costs, and the amount of the actual in-kind contribution would not appear to be substantial. More significantly, the violations at issue involve a 1985 mayoral campaign, and the transactions if repeated would no longer run afoul of the FECA: Goldome in fact reverted to a New York state bank on August 19, 1987, and so is no longer prohibited by the FECA from contributing to candidates for local office. Accordingly, under these particular circumstances and considering the proper ordering of Commission resources, this Office believes

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3/ Goldome also maintains (Br. 37-38 & n.18) that it offered its phone banks to the Mayor's electoral opponent on the same terms, and would have provided the opponent the mailing and other services provided to the Mayor's committee, if requested. No documentary evidence is set forth in support of this assertion, and it appears highly implausible in view of Mr. Kenzie's unabashed goal of using bank facilities to help re-elect Mayor Griffin. In any event, however, a Federal savings bank may make in-kind contributions neither in support of one local candidate nor in support of two competing candidates.

the Commission should make probable cause findings against the respondents in this matter, but determine to take no further action as to them and close the file.

For the reasons stated above and in the General Counsel's Briefs in this matter, the Office of the General Counsel recommends the Commission find probable cause to believe Goldome FSB and Ross B. Kenzie as Chairman of the Board and Chief Executive Officer, violated 2 U.S.C. § 441b(a) but take no further action. This Office also recommends the Commission find probable cause to believe Mayor James Griffin, the Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, violated 2 U.S.C. § 441b(a) but take no further action.

III. **RECOMMENDATIONS**

1. Find probable cause to believe Goldome FSB and Ross B. Kenzie as Chairman of the Board and Chief Executive Officer violated 2 U.S.C. § 441b(a), and take no further action as to these respondents.

2. Find probable cause to believe Mayor James Griffin, the Committee to Re-elect the Mayor and Janice A. Duffy, as treasurer, violated 2 U.S.C. § 441b(a), and take no further action as to these respondents.

3. Close the file in this matter.

4. Send the attached letters.

6/23/89
Date

Lawrence M. Noble
General Counsel

Attachment
Letters

Staff assigned: Jonathan Bernstein

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Goldome FSB, and Ross B. Kenzie)
) MUR 2185
Mayor James Griffin, the Committee)
to Re-elect the Mayor and)
Janice Duffy, as Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 11, 1989, do hereby certify that the Commission decided by a vote of 6-0 to reject the recommendations contained in the General Counsel's June 23, 1989 report and instead take the following actions in MUR 2185:

1. Allow the reason to believe findings to stand.
2. Take no further action.
3. Close the file.
4. Direct the Office of General Counsel to send appropriate letters in accord with the meeting discussion of July 11, 1989.

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

Attest:

July 12, 1989
Date

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

89040762195

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 19, 1989

William J. Olson, Esquire
Smiley, Olson, Gilman & Pangia
1815 H Street, N.W.
Washington, D.C. 20006-3604

RE: MUR 2185

Dear Mr. Olson:

On June 6, 1986, the Federal Election Commission found reason to believe your clients Goldome FSB and Ross B. Kenzie, as Chairman of the Board and Chief Executive Officer, violated 2 U.S.C. § 441b(a) by making an in-kind contribution to Mayor James Griffin and the Committee to Re-elect the Mayor. The Commission then instituted an investigation. After considering all the circumstances involved, however, on July 11, 1989, the Commission determined to take no further action against your clients, and closed its file in this matter.

The Commission reminds you that a federal savings bank's provision of goods and services to candidates for local office at less than the commercial rate violates 2 U.S.C. § 441b(a). Your clients should take steps to insure that this activity does not occur in the future.

The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

If you have any questions, please contact Jonathan Bernstein, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 19, 1989

Michael L. Broderick, Esquire
69 Delaware Avenue
Buffalo, New York 14202

RE: MUR 2185

Dear Mr. Broderick:

On June 6, 1986, the Federal Election Commission found reason to believe that your clients, Mayor James Griffin, the Committee to Re-elect the Mayor and its treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution from Goldome FSB and Ross B. Kenzie as Chairman of the Board and Chief Executive Officer. The Commission then instituted an investigation in this matter. After considering all the circumstances involved, however, on July 11, 1989, the Commission determined to take no further action against your clients, and closed its file in this matter.

The Commission reminds you that acceptance of goods and services from a federal savings bank for less than the commercial rate is a violation of 2 U.S.C. § 441b(a). Your clients should take steps to insure that this activity does not occur in the future.

The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

If you have any questions, please contact Jonathan Bernstein, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

89040762190

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 19, 1989

Michael Simone
Supervisory Agent - Second District
Federal Home Loan Bank Board
One World Trade Center, Floor 103
New York, NY 10048

RE: MUR 2185
Goldome FSB

Dear Mr. Simone:

This is in reference to the matter involving Goldome FSB, which your office referred to the Federal Election Commission by letter dated December 13, 1985.

On June 6, 1986, the Commission found reason to believe that Goldome FSB and Ross B. Kenzie violated 2 U.S.C. § 441b(a) by making an in-kind contribution to the Committee to Re-elect the Mayor, and that Mayor James Griffin and the Committee to Re-elect the Mayor, and its treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution from Goldome FSB and Ross B. Kenzie. The Commission then instituted an investigation in the matter. After considering all the circumstances involved, however, on July 11, 1989, the Commission determined to take no further action against the respondents, and closed the file in this matter.

We appreciate your cooperation in helping the Commission meet its enforcement responsibilities under the Act. If you have any questions, please contact Jonathan Bernstein, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2185

DATE FILMED 8/29/89 CAMERA NO. 4

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